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January 25, 2005

The Honorable Max Baucus  
Ranking Minority Member  
Committee on Finance  
United States Senate

The Honorable Charles B. Rangel  
Ranking Minority Member  
Committee on Ways and Means  
House of Representatives

The Honorable Sander M. Levin  
Ranking Minority Member  
Subcommittee on Trade  
Committee on Ways and Means  
House of Representatives

Subject: *U.S.-China Trade: Summary of 2003 World Trade Organization  
Transitional Review Mechanism for China*

China's 2001 accession to the World Trade Organization (WTO) raised expectations with Congress and the private sector about the prospects for China to reform its markets and allow greater access to foreign goods and services. As part of our long-term body of work related to China's membership in the WTO, we reported in October 2004 on how the U.S. Trade Representative (USTR) and the Departments of Commerce, State, and Agriculture were positioned to monitor and enforce China's compliance with its WTO commitments in 2003.<sup>1</sup> In that report, we examined the multilateral annual WTO review of China's progress, referred to as the Transitional Review Mechanism (TRM). We found that the TRM has ongoing limitations in its participation and its procedures. We made recommendations to improve related U.S. government activities. In a subsequent request, you asked us to provide detailed information about the TRM process in 2003 so that you could better gauge the level of activity and the efficacy of the United States and other WTO members' efforts to utilize it.

In response to your request, we compiled information about WTO members' participation and about the particular implementation issues raised by the United States and other WTO members' during the TRM, using WTO documents. We

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<sup>1</sup>For more information, see GAO, *U.S.-China Trade: Opportunities to Improve U.S. Government Efforts to Ensure China's Compliance with World Trade Organization Commitments*, GAO-05-53 (Washington, D.C.: Oct. 6, 2004).

organized this information into separate tables for each of the 16 WTO subsidiary bodies with a role in reviewing China's WTO commitments (encs. I through XVI).<sup>2</sup> We further discuss our methodology below.

## **Summary**

As seen in the enclosed tables, 11 out of a total of 148 WTO members participated in the 2003 multilateral review of China's trade commitment implementation. These members participated in the TRM process by submitting written questions to China prior to meetings of 16 WTO subsidiary bodies with a role in the Transitional Review Mechanism (TRM), or by raising issues verbally with China during these meetings, which occurred from September to December 2003. Specifically, 7 WTO members both submitted written questions and discussed issues verbally in some TRM meetings: the United States, the European Communities, Japan, Chinese Taipei,<sup>3</sup> Australia, Canada, and Mexico. Four other members—Brazil, Korea, Norway, and Pakistan—only participated verbally during some meetings. The United States was the most active member in the 2003 TRM, participating one or both ways in 14 of the 16 subsidiary bodies; the exceptions were the Committees on Balance-of-Payments Restrictions and Rules of Origin. Table 1 displays an overview of member participation for the 2003 TRM.

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<sup>2</sup>The subsidiary bodies are described as councils or committees and generally are organized according to the various trade subjects covered by the WTO agreements. These subsidiary bodies include the Committees on Agriculture, Anti-dumping Practices, Balance-of-Payments Restrictions, Customs Valuation, Import Licensing, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade, Trade in Financial Services, and Trade-Related Investment Measures, as well as Councils for Trade in Goods, Trade in Services, and Trade-Related Aspects of Intellectual Property Rights.

<sup>3</sup>Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu.

**Table 1: WTO Member Participation in China's Transitional Review Mechanism, 2003**

<b>WTO subsidiary body</b>	<b>Date of meeting</b>	<b>WTO members that submitted written questions</b>	<b>WTO members that participated in meeting</b>	<b>Chinese submission of required TRM information</b>
Committee on Agriculture	9/25/2003	U.S., Chinese Taipei	U.S., EC, Chinese Taipei	N/A
Committee on Import Licensing	10/2/2003	U.S., EC, Japan, Chinese Taipei	U.S., EC, Japan, Chinese Taipei	Yes
Committee on Rules of Origin	10/3/2003	Chinese Taipei	Chinese Taipei	N/A
Committee on Trade-Related Investment Measures	10/3/2003	U.S., EC	U.S., EC, Japan, Brazil	Yes
Committee on Customs Valuation	10/6/2003	U.S., Chinese Taipei	U.S., EC, Chinese Taipei	Yes
Committee on Market Access	10/20/2003	U.S., EC, Japan	U.S., EC, Japan	Yes
Committee on Safeguards	10/20/2003	Japan	U.S., EC, Japan	Yes
Committee on Antidumping Practices	10/23/2003	U.S., Japan	U.S., Japan	N/A
Committee on Subsidies and Countervailing Measures	10/28/2003	U.S., EC, Mexico	U.S., EC, Japan, Mexico	Yes
Committee on Sanitary and Phytosanitary Measures	10/29/2003	U.S., EC, Chinese Taipei	U.S., EC, Chinese Taipei	N/A
Committee on Technical Barriers to Trade	11/7/2003	U.S., EC, Japan	U.S., EC, Japan	Yes
Committee on Balance-of-Payments Restrictions	11/13/2003	Chinese Taipei	Chinese Taipei	N/A
Council on Trade-Related Aspects of Intellectual Property Rights	11/18/2003	U.S., EC, Japan, Chinese Taipei	U.S., EC, Japan, Chinese Taipei, Korea, Pakistan	Yes
Council for Trade in Goods	11/26/2003	U.S., EC, Japan	U.S., EC, Japan, Canada	Yes
Committee on Trade in Financial Services	12/1/2003	U.S., EC, Japan, Chinese Taipei, Canada	U.S., EC, Japan, Chinese Taipei, Canada, Australia, Norway	N/A
Council for Trade in Services	12/5/2003	U.S., EC, Japan, Chinese Taipei, Australia	U.S., EC, Japan, Chinese Taipei, Australia	Yes

Source: GAO analysis of WTO documents.

Notes:

Chinese Taipei = Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

EC = European Communities.

N/A = not applicable.

The number and scope of issues raised by WTO members during the 2003 TRM process varied by WTO subsidiary body, as demonstrated in the enclosed tables. Some committees addressed numerous issues. For example, the Council on Trade-Related Aspects of Intellectual Property Rights covered various concerns, including those related to how China treated semiconductor layout design, pharmaceutical products, and consulting services. In contrast, only a few issues were brought up in the Committee on Balance-of-Payments Restrictions. Chinese Taipei was the only member to raise concerns to this committee, and these took the form of a few specific questions, such as the rationale behind China's regulation governing small value trade between Chinese Taipei and China. In addition, the enclosed tables reveal that some issues are broad in nature, while others are very technical and specific.

## **Background**

China's December 2001 accession to the WTO resulted in commitments to open and liberalize its economy so as to offer a more predictable environment for trade and foreign investment in accordance with WTO rules. However, at the time of its accession, some WTO members noted that because of the significant size, rapid growth, and transitional nature of the Chinese economy, a pragmatic approach should be taken, and this was reflected in China's accession agreement. China's WTO commitments, many of which were scheduled to be phased in over time, required China to make extensive changes to its trade regime. As a result, WTO members, particularly the United States,<sup>4</sup> pushed for China's accession package to include commitments creating this Transitional Review Mechanism (TRM). This mechanism, which is unique to China, is intended to be a means for WTO members to annually review China's implementation of its WTO commitments and the development of China's trade with other WTO members until all of China's commitments are phased in.<sup>5</sup> This multilateral monitoring process allows WTO members to better understand China's trade practices and to communicate their expectations to China.

China's WTO accession agreement defines (1) the scope and process for the WTO review and (2) the method of exchange of information. First, the agreement lays out the scope of review and some procedures for China and WTO members to follow; these require annual reviews by 16 WTO subsidiary bodies and then a broader review by the WTO General Council, which makes use of the findings of the subsidiary bodies. The reviews are to occur annually for eight years, with a final review by the 10th year.<sup>6</sup> Second, China's accession agreement calls for China to provide a broad

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<sup>4</sup>A provision in the legislation authorizing the President to grant permanent normal trade relations to China stated that "it shall be the objective of the United States to obtain ... an annual review within the WTO of the compliance by the People's Republic of China with its terms of accession to the WTO." Pub. L. 106-286 § 401, 114 Stat. 900.

<sup>5</sup>The TRM is in addition to WTO's trade policy review mechanism, which provides for a broad review of the trade regimes of all WTO members on a scheduled basis. WTO members viewed the trade policy review mechanism as insufficient to oversee China's implementation of its commitments and pursued the TRM.

<sup>6</sup>The final review can take place at an earlier date to be decided by the General Council.

range of information annually to the WTO subsidiary bodies for their reviews on its (1) economic policies, (2) framework for making and enforcing policies, (3) policies affecting trade in goods and services, and (4) trade-related intellectual property regime.<sup>7</sup>

In October 2004, we reported on how the USTR and the Departments of Commerce, Agriculture, and State pursued China's WTO compliance in 2003. Among other things, we found that overall WTO member participation in the review declined from the previous year, and U.S. submission of questions was less timely. Furthermore, procedural and other types of problems that arose during the 2002 review continued to limit the effectiveness of the 2003 TRM. Specifically, the United States and some other members were disappointed that China refused to provide written answers to members' written questions in advance of TRM meetings. Additionally, some members were disappointed that the review did not result in any conclusions or recommendations regarding China's implementation. Nevertheless, the TRM has benefits, and we concluded that these could be enhanced by increased member participation and earlier U.S. submissions, both of which would increase the potential for full and informed responses from China.<sup>8</sup>

## **Scope and Methodology**

To prepare tables detailing issues raised by the United States and other WTO members, as well as responses from China, we analyzed official World Trade Organization documents. These documents include members' communications submitted prior to the TRM meetings and minutes to TRM meetings for all 16 WTO subsidiary bodies with roles in reviewing China's WTO commitments. We did not include information on informal side meetings frequently held by the U.S. and Chinese officials. According to a USTR official, U.S. delegates further explained U.S. concerns at these informal meetings and were often able to obtain more detailed responses from China. In addition, we did not include issues or responses raised outside of items specifically labeled under the TRM agenda.

Within the tables, we categorized issues and responses into broad theme topics, most of which are identical or similar to those used by WTO members. For instances in which the United States and other WTO members raised similar issues, we aligned these issues in the tables. If China provided responses to issues raised, we used our judgment to align the issues with responses to the extent possible, but we did not evaluate the extent to which China answered specific issues raised by WTO members. We generally reported Chinese responses verbatim from statements documented in the TRM meeting minutes, making only minor editorial modifications for language clarity. However, in categorizing China's responses, we rearranged parts of them and did not include some of China's general statements if we could not link them to a

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<sup>7</sup>See GAO, *World Trade Organization: First-Year U.S. Efforts to Monitor China's Compliance*, GAO-03-461 (Washington, D.C.: Mar. 31, 2003).

<sup>8</sup>For more information, see GAO, *U.S.-China Trade: Opportunities to Improve U.S. Government Efforts to Ensure China's Compliance with World Trade Organization Commitments*, GAO-05-53 (Washington, D.C.: Oct. 6, 2004).

specific issue; therefore, the enclosed tables may not present as complete a picture of China's responses as the original source documents. Furthermore, we did not prepare a table for the final 2003 TRM meeting in the WTO General Council. Six members besides China participated and made general statements about China's trade reforms rather than raise specific implementation issues during the General Council meeting.<sup>9</sup>

Since our work is based mainly on publicly available information, we did not request agency comments but provided a draft letter with enclosures to the Office of the U.S. Trade Representative. A USTR official provided technical comments that we have incorporated into this report, as appropriate.

We performed our work from September through December 2004 in accordance with generally accepted government auditing standards.

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We are sending copies of this report to interested congressional committees and the U.S. Trade Representative. We will make copies available to others on request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact me at (202) 512-4128 or at [yagerl@gao.gov](mailto:yagerl@gao.gov), or Adam Cowles, Assistant Director, at (202) 512-9637 or [cowlesa@gao.gov](mailto:cowlesa@gao.gov). Victoria Lin, Bradley Hunt, and Jamie McDonald were the principal contributors to this report.



Loren Yager  
Director, International Affairs and Trade

Enclosures

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<sup>9</sup>For minutes of the 2003 General Council meeting, see [www.wto.org](http://www.wto.org), document symbol WT/GC/M/84.

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Enclosure I

Committee on Agriculture

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Trade in soybeans</b>			
Disagreement that China's State Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) identified valid scientific basis for suspension of soybean imports from companies based on detections of phytophthora sojae in shipments of soybeans.	Written <sup>a</sup>		Concerning quarantine of agricultural products, China stated that in formulating and implementing Sanitary and Phytosanitary (SPS) measures, China strictly abided by the SPS Agreement and all other World Trade Organization (WTO) rules, especially the science-based and transparency principles. Since 1999, China had identified several cases of soybean epidemic in imports shipped from the United States. China had notified the U.S. authorities nine times, but no improvement had been made on the part of the United States. For the time being, China had not banned any foreign companies to export soybeans to China. China hoped that the U.S. authorities would take strict quarantine measures with respect to its exports of soybean to China so as to ensure soybean shipments were free from this epidemic or any other diseases. (Verbal <sup>c</sup> ) China had discovered soybean rust in the U.S. shipments but so far China had not and was not planning to take any actions to suspend U.S. or other Members' exports of soybeans to China. China was seeking solutions to solve this problem and suggested that discussions continue at a technical level. (Verbal <sup>c</sup> )
Reason for China's delayed announcement of its plans for a suspension of soybean shipments from companies in question.	Written, <sup>a</sup> Verbal <sup>c</sup>		
Purpose of announcing plans for a suspension of shipments without setting a date on which the suspension would become effective.	Written, <sup>a</sup> Verbal <sup>c</sup>		
Existence and result of risk assessment in accordance with the requirements of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).	Written, <sup>a</sup> Verbal <sup>c</sup>		
Explanation of how suspending shipments of soybeans from the companies in question would address the identified risk.	Written, <sup>a</sup> Verbal <sup>c</sup>		
Explanation of how China is ensuring, consistent with its obligations under the SPS Agreement, that any measures addressing Phytophthora sojae are not arbitrarily or unjustifiably discriminating between Members.	Written, <sup>a</sup> Verbal <sup>c</sup>		



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Transparency of tariff-rate quotas (TRQ)</b>			
Information on the fill rate of TRQs by product and the average quota amount that each quota holder obtains.		Chinese Taipei - Written, <sup>b</sup> Verbal <sup>c</sup>	Tariff quota fill rates (in percent) provided for wheat, corn, rice, soybean oil, rape-seed oil, palm oil, sugar, cotton, wool, and wool tops for 2002, and January through August of 2003. (Verbal <sup>c</sup> )
Public availability of information on quota holders.		Chinese Taipei - Written, <sup>b</sup> Verbal <sup>c</sup>	
Criteria China uses in TRQ allocation decision.		Chinese Taipei - Written, <sup>b</sup> Verbal <sup>c</sup>	
<b>Other</b>			
Export subsidies on corn and possible discriminatory value-added tax policies.	Verbal <sup>c</sup>		

Source : GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: G/AG/W/59; dated 9/12/03.

<sup>b</sup>Communication from Chinese Taipei: G/AG/W/60; dated 9/12/03.

<sup>c</sup>Committee report detailing verbal statements made during meeting: G/AG/R/36; meeting dated 9/25/03.

Committee on Anti-dumping Practices

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>General</b>			
Lack of access to, and lack of completeness of, the public record in Chinese anti-dumping investigations; type of documents in official record in an investigation or review.	Written, <sup>a</sup> Verbal <sup>c</sup>		<p>China had enacted the Provisional Rules on Access to Public Information in anti-dumping (AD) investigations. Its Article 5 provides for the types of public information that can be accessed by the interested parties. Its legal authority can be found in Article 23 of the AD Regulations. (Verbal<sup>c</sup>)</p> <p>Actually, access to information on injury and causal link was made possible under Article 8 of the Anti-Dumping Regulations of China, as well as in Articles 6 and 9 under the rules on the investigation and the determination of injury to the industries. Here, there was a particular circumstance already referred to, that is the Government's restructuring process. The functions of the former State Economic and Trade Commission (SETC) with regard to the investigation of injury had already been incorporated into the newly established Ministry of Commerce (MOFCOM). Therefore, the information relating to both the analysis of dumping and the determination of the injury was now provided by MOFCOM, and the interested parties may access MOFCOM for that information. (Verbal<sup>c</sup>)</p>
Availability, on a regular basis, of documents related to the injury aspects of anti-dumping proceedings.	Written, <sup>a</sup> Verbal <sup>c</sup>		<p>The process of government restructuring was still going on. Of course, it was China's intention to make such documents or information available in the public reading room in the future. Even before the Ministry of Commerce was established, SETC already had a statutory requirement to disclose such information to the interested parties, which can be found in Article 43 of the Rules on the investigation and determination of industry and injury. (Verbal<sup>c</sup>)</p>
Mechanisms for judicial, arbitral or administrative review are in place to allow parties to challenge a final determination by the Ministry of Commerce (MOFCOM); details of steps taken to ensure the relevant tribunal is independent of the authorities.	Written <sup>a</sup>		<p>Judicial review and administrative review are stipulated in the Administrative Proceedings Law and Administrative Review Law. Article 53 of the AD Regulations provides for administrative review and judicial review for AD investigations. Judicial review of AD determination was further clarified by the Supreme People's Court in its judicial interpretation. Such reviews also apply to Customs enforcement. (Verbal<sup>c</sup>)</p>
Unclear role of the State Council Tariff Commission in China's anti-dumping proceedings; Tariff Commission's amendment of MOFCOM determination	Written, <sup>a</sup> Verbal <sup>c</sup>		<p>According to Article 38 of AD Regulations, it makes decisions on the level of tariff duties on the proposal of MOFCOM. So far, it has not modified any such proposal by</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
in proceeding; criteria applied in amendment; stage at which Tariff Commission is consulted; public available actions taken by Tariff Commission in proceedings.			MOFCOM. (Verbal <sup>c</sup> )
Procedures to ensure that the General Customs Administration properly assesses and collects the anti-dumping duties imposed by MOFCOM; procedures for importers when seeking redress if the General Customs Administration makes an error in duty collection or product classification.	Written <sup>a</sup>		With regard to such complaints, judicial review and administrative review were possible and could be resorted to by the relevant parties. China also had special laws and regulations governing the enforcement and the levying of customs duties by the General Customs Administration. (Verbal <sup>c</sup> )
Notification of implementing rules for expiration reviews to Committee.	Written <sup>a</sup>		Chapter 5 of China's AD Regulations focuses on the time-limits and review of AD duties and price undertakings. The provisions were formulated in compliance with the WTO Anti-Dumping Agreement (ADA). The expiration reviews will be conducted in strict conformity with the AD Regulations and the WTO ADA. (Verbal <sup>c</sup> )
Relevant agency that China notified about the initiation of the investigation instead of directly notifying the exporters or producers in the following countries; some investigations initiated without notification to the responding party.		Japan – Verbal <sup>c</sup>	In practice, what the authorities did in China was to send the notification prior to the public notice of initiation to the diplomatic mission of the country of those companies whose products were subject to the investigation. So, in the particular cases referred to in the question posed by Japan, that diplomatic mission should be the Japanese Embassy in Beijing. The view that this was compliance with Article 6.1.3 of the WTO ADA. (Verbal <sup>c</sup> )
China's notification to the Committee the relevant portions of law and regulation that dictate how Customs Administration applies anti-dumping duties, collects anti-dumping duties and provides for judicial review.	Verbal <sup>c</sup>		In regard to the request to notify relevant laws and regulations, China would of course consider it, and try to see if this was actually required by WTO in accordance with China's obligations. One additional note—even now, if someone was interested in gaining access to the information on injury they could directly approach the Ministry of Commerce for such information if they could not find such information in the public reading room. (Verbal <sup>c</sup> )
In response to China's notification of initiation of investigation to the Japanese Embassy, the Japanese Government has no obligation to notify the initiation of the investigation to the Japanese company. In accordance with the AD Agreement, it was the investigating authority that was obliged to notify the companies that are subject to the investigation.		Japan – Verbal <sup>c</sup>	The delegate of China had checked the WTO ADA. Article 6.1.3 of the ADA, at footnote 16, read "it being understood that where the number of exporters involved is particularly high the full text of the written application is to be provided only to the authorities of the exporting member or the relevant trade association". This might not apply in all dimensions to the fact that China was only notifying the Japanese diplomatic mission in China. He had quoted it just to indicate the difficulty the investigating authority may have in notifying all the interested parties, because the parties have to be known to the investigating authority. This was a practical difficulty and he did not think there was any specific or very clear direct requirement set

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			forth in the ADA. (Verbal <sup>c</sup> )
<b>Chinese cases against coated paper, Phthalic Anhydride (PA), Styrene Butadiene Rubber (SBR), Polyvinyl Chloride (PVC), Toluidine Di Isocyanate (TDI), and Phenol</b>			
Application of "facts available" to determine anti-dumping measures against Japanese "all other" companies without serving a notice of initiation or questionnaires to companies.		Japan – Written <sup>b</sup>	In these investigations, Chinese authorities published all anti-dumping investigations to be initiated and notified them to relevant agencies of the countries (regions) concerned before making the public notices. The notice of initiation of investigations leaves all parties sufficient time to register and respond. In addition, Chinese competent authorities issued questionnaires to all registered respondent companies, thereby allowing them to furnish information and evidence. At the request of interested parties, hearings were organized in some cases to allow interested parties to further express their opinions. The Chinese investigation authority has in all the investigations provided companies with adequate opportunity to access the relevant information via either public channels or their diplomatic missions in China. Therefore, the above anti-dumping determinations made by China are consistent with the requirements of Article 6.8 of the ADA and its Annex II. It is proper that the Chinese Authority applied facts available to determine AD measures against "all other" companies of a country that failed to respond and were unknown to the Chinese authority or if the information is not provided within a reasonable period. All of these measures adopted by the Chinese Authorities are fully consistent with the AD Agreement. (Verbal <sup>c</sup> )
Determinations in investigations did not meet requirements of "positive evidence" and "objective examinations"; considerations of data accuracy, evaluation of injury factors not in an unbiased manner, evaluation of all economic factors, causal relationships in terms of price and between dumping and injury to domestic industry.		Japan – Written <sup>b</sup>	While establishing industry injuries and the causal links between other factors, Chinese authorities strictly abide by the WTO ADA and the Chinese legislations in the following aspects: conducting a full and comprehensive analysis and assessment of all indicators determining injury as recognized by WTO; demonstrating by positive evidence that the volume of imports from each country is not negligible and conducting an analysis of competition conditions between imported products and between imported products and domestic like products while cumulatively assessing the effects of imports from more than one country, conducting an analysis of other causes of industry injuries and clarify in the Notice of Determination; and so on. (Verbal <sup>c</sup> )
Insufficient data disclosure in determining injury and dumping margins in investigations; adequate remedies.		Japan – Written <sup>b</sup>	In all the anti-dumping investigations in which preliminary determinations have been made, the Chinese authorities expounded in Notices of Determination on the data and facts based on which the injury

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			determinations were made, to facilitate the comments by interested parties on the determinations to protect their own interests. (Verbal <sup>c</sup> )
Inadequate examination of physical characters and uses of products for determination of "like products."		Japan – Written <sup>b</sup>	On the examination of physical characteristics and uses of the products for determinations of "like products" in the anti-dumping investigations of Coated Paper, SBR and TDI. The Chinese Authority took full account of the physical characteristics, chemical characteristics, uses and means of distribution of the products and other factors according to Article 2.6 of the ADA in the determination of "like product" in its investigations of coated paper, SBR and TDI. All the determinations are available in the public notice of preliminary or final determinations. This practice is in full conformity with the ADA. (Verbal <sup>c</sup> )

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: G/ADP/W/436; dated 10/22/03.

<sup>b</sup>Communication from Japan: G/ADP/W/434; dated 9/30/03.

<sup>c</sup>Committee report detailing verbal statements made during meeting: G/ADP/12; meeting dated 10/23/03–10/24/03.

Enclosure III

Committee on Balance-of-Payments Restrictions

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Restrictions</b>			
China's intention to lift restrictions on retention of foreign exchange earnings and settlement of current account transactions.		Chinese Taipei – Written <sup>a</sup>	As it is known to all, the convertibility of current account is, according to the Article VIII of International Monetary Fund (IMF) Agreements, not to impose restrictions on the payment and transfer of the current international transactions (in China, current transactions with Hong Kong, Macao and Chinese Taipei are also included). It is for the purpose of bona fide test, anti-money laundering, and curbing hot money to require the relevant documents for payment in and purchase of foreign exchange under current account. (Verbal <sup>b</sup> )
Rationale behind Regulation Governing Small Value Trade between Chinese Taipei and China stipulating that the only means allowed for settlement of small value bilateral trade transaction is convertible currencies.		Chinese Taipei – Written <sup>a</sup>	
National treatment of foreign-invested enterprise in allowing foreign exchange deposit accounts to open in a place other than place of registration.		Chinese Taipei – Written <sup>a</sup>	According to the Notice to State Administration of Foreign Exchange (SAFE) Regarding the Related Issues of the Further Adjustment of the Foreign Exchange Account for Current International Transactions (Huiifa (2002) No. 87), the qualifications for opening foreign exchange account for current international transactions of foreign-invested enterprises (FIEs) and Chinese enterprises have been converged. (Verbal <sup>b</sup> )
Plans to simplify foreign-invested enterprise's qualification procedure in respect of outward remittance of earnings or dividends.		Chinese Taipei – Written <sup>a</sup>	The principle of convertibility of the current account has been strictly followed by China. The earnings and dividends of the foreign investor of the FIEs are allowed to be remitted out. The relevant documents to the authorized banks are required for the bona fide test of the earnings by the foreign partners, and it is also a regulatory requirement for normal and legitimate operation of the FIEs under the legal framework including the Law of China on Foreign Invested Enterprises. (Verbal <sup>b</sup> )

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from Chinese Taipei: WT/BOP/W/25; dated 10/31/03.

<sup>b</sup>Committee report detailing verbal statements made during meeting: WT/BOP/R/71; meeting dated 11/13/03.

Enclosure IV

Committee on Customs Valuation

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>China's responses to WTO checklist</b>			
China consideration of a transaction involving related parties (as defined in the Agreement on Customs Valuation, CVA) to be prima facie grounds for determining that the price has been influenced by the relationship.	Written <sup>a</sup>		On the use of the transaction value among related parties, Article 3.6 and 42 of <i>The Rules of General Administration of Customs of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods</i> set forth guidelines on the issue, which was in conformity with WTO rules. (Verbal <sup>d</sup> )
Availability of revisions to Customs Law and Regulations for WTO member review, including status of Regulations on Import and Export Tariff of the People's Republic of China," relating to CVA.	Written <sup>a</sup>	Chinese Taipei – Written <sup>b</sup>	Fulfilling the commitments it made upon accession to the WTO and to meet the requirement of Article 12 the Customs Valuation Agreement, China published the Customs Law and the Rules Regarding Determination on Customs Value of Imported and Exported Goods. Besides, an official journal, "Gazette of China Customs" is also to be established in the near future. Interested parties may also visit the web site of the General Administration of Customs of China for information ( <a href="http://www.customs.gov.cn">http://www.customs.gov.cn</a> ). (Written <sup>c</sup> )
<b>Notification of China's implementing law</b>			
Discrepancy between Decree and WTO Agreement's definition of transaction value.	Written <sup>a</sup>		Article 55 of the <i>Customs Law of the People's Republic of China</i> definitely stipulates that the customs value of either the imported or exported goods will be examined and determined on the basis of the transaction value of the goods being valued. There could be found corresponding provisions for this in the <i>Regulations on Import and Export Tariff of the People's Republic of China</i> (hereinafter referred to as <i>Tariff Regulations</i> ), and in <i>The Rules of General Administration of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods</i> (hereinafter referred to as <i>Rules for Valuation</i> ). The entire Chinese Customs valuation law framework has been set up in line with the principle of respecting trade reality and based on the transaction value. The minimum value or reference prices have definitely been banned. (Written <sup>c</sup> )
Request for China to incorporate WTO CVA definition of "price actually paid or payable," different from definition in Decree No. 95, into all relevant laws and regulations.	Written <sup>a</sup>		After China entered the WTO, the Chinese Customs Administration made an overall revision to the valuation laws and regulations, and also abided by the stipulations of the WTO Valuation Agreement in the aspect of valuation methods, the adjustments for the price paid or payable, and the rights and interests of the interested parties. It is clearly stipulated in the <i>Rules for Valuation</i> that if the transaction value cannot be determined, the customs value for the goods should be

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			determined, in turn on the basis of the transaction value of the identical goods, the transaction value of the similar goods, and the method of deduction (Article 7) and so on, all of which are quite in line with the stipulations of the WTO Valuation Agreement. (Written <sup>c</sup> )
Clarification of customs administration calculation of freight, insurance, and other charges by fixed percentage.		Chinese Taipei – Written <sup>b</sup>	In accordance with Article 8.2 of the Agreement, Article 3 of The Rules of General Administration of Customs of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods stated explicitly that "The customs value of the imported goods, including the charges associated with the transport of imported goods and the cost of insurance and associated costs incurred prior to unloading of the goods at the port within the customs territory of the People's Republic of China." Chapter V of The Rules of General Administration of Customs Regarding Determination on Customs Value of Imported and Exported Goods provided that the cost of freight and insurance for goods imported shall be determined in accordance with the charges actually paid. This was a fundamental principle, which applied broadly to the calculation of freight, insurance and other charges in the customs value of imported and exported goods. Article 26 and 28 of the Rules set forth that if the freight or insurance for imported goods could not be determined or did not occur, the customs administration shall calculate the custom value on a percentage basis. The condition for this calculation method was that the freight or insurance for imported goods could not be determined or did not occur, which was rarely the case in the course of trade. In the drafting of these provisions, the practice and standards for transportation and insurance industry had been taken into adequate consideration. The percentage basis calculation was the result of broad experience and statistics. Generally, these designated percentages were lower than prices in actual trading practice. In line with the market situation, however, the level of the percentage was a variant rather than a constant figure. (Verbal <sup>d</sup> )
Information that importer is required to submit when requesting change to sequential order of application of deductive method and computed method.		Chinese Taipei – Written <sup>b</sup>	With regard to the application of the computed value method and the deductive value method, China was committed to fully applying the Agreement and refrained from any reservations. According to the Agreement, the computed value shall include the cost or value of materials and processing, profit, general expenses and other expenses like freight and insurance. Chinese legislation required importers to provide the necessary information for the application of the



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			computed value. In the absence of the information, the request to use the computed value could only be objected by the custom authority. (Verbal <sup>d</sup> )
Clarification about whether China made a reservation to Article 4 of CVA.		Chinese Taipei – Written <sup>b</sup>	
<b>Related parties–circumstances of sales test</b>			
Decree No. 95's lack of reference to and application of Circumstances of Sales Test.	Written <sup>a</sup>		
Discrepancy between Decree and WTO CVA's method used to determine customs value if imported goods cannot be determined under provision.	Written <sup>a</sup>		After China entered the WTO, the Chinese Customs Administration made an overall revision to the valuation laws and regulations, and also abided by the stipulations of the WTO Valuation Agreement in the aspect of valuation methods, the adjustments for the price paid or payable, and the rights and interests of the interested parties. It is clearly stipulated in the <i>Rules for Valuation</i> that if the transaction value cannot be determined, the customs value for the goods should be determined, in turn on the basis of the transaction value of the identical goods, the transaction value of the similar goods, and the method of deduction (Article 7) and so on, all of which are quite in line with the stipulations of the WTO Valuation Agreement. In order to maintain the transparency of the Customs laws and Regulations, any rules and regulations concerning customs valuation are duly issued in the form of Customs Decrees or Gazettes. (Written <sup>c</sup> )
Discrepancy between Decree and CVA's scope of "identical goods" and "similar goods."	Written <sup>a</sup>		
Discrepancy between Decree and CVA's deductions for commissions, profit, and general expenses.	Written <sup>a</sup>		
Request for China to add provision that deduction for profit and general expenses be taken as a whole and determined on the basis of information supplied by the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of the imported goods of the same class or kind.	Written <sup>a</sup>		
Chinese law lacking provision that the amount for profit and general expenses is to be taken as a whole and determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those "usually reflected in sales of the goods of the same class or kind."	Written <sup>a</sup>		
Decree's lack of information about currency conversion.	Written <sup>a</sup>		Currently, the U.S. Dollar, the Japanese Yen, the Hong Kong Dollar and the Euro were four fully exchangeable currencies used for most international transactions. The SAFE published the exchange rates against

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			renminbi (RMB) of these currencies, which constituted the basis for transfers. Given the stability of the U.S. Dollar's exchange rate versus the RMB, this rate was generally taken by SAFE as the basis in the determination of the exchange rate for other foreign currencies versus the RMB. In the calculation, the exchange rate of the currency against the U.S. Dollar at the time of the transaction (could be specified by the date) in the international currency market was taken as the reference and its rate against RMB could be determined. Authorities were convinced that the exchange rate through this approach was a reliable and WTO-consistent basis for the calculation of the value of foreign currencies. (Verbal <sup>d</sup> )
Availability of information on "relevant regulations" citing requirements needed for importer/exporter to request goods to be released from customs custody.	Written <sup>a</sup>		Provisions in Chinese law for withdrawal of goods under guarantee, in accordance with Article 13 of the Agreement, was a basic custom practice to speed up customs clearance. As a condition for this provision, the required guarantee was only requested when the custom value was difficult to determine. The guarantee should cover the ultimate payment of custom duties for which the goods might be liable. In that spirit, it was rational for the sum of the guarantee to be larger than the declared value. Given the variety of imported goods, determining the guarantee differed under the specific circumstances. (Verbal <sup>d</sup> )
Information on "sufficient guarantees" and its legal obligations for Customs to release goods to importer/exporter.	Written <sup>a</sup>		
Incorporation of Interpretative Notes to CVA into Chinese laws and regulations.	Written <sup>a</sup>		
Absence of CVA's definition of goods of the same class or kind in Decree.	Written <sup>a</sup>		
Explanation and application of Decree's Article 19.	Written <sup>a</sup>		
<b>China's submission on information required under Annex 1A</b>			
Availability of "Rules of General Administration of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods."	Written <sup>a</sup>		Fulfilling the commitments it made upon accession to the WTO and to meet the requirement of Article 12 the Customs Valuation Agreement, China published the Customs Law and the Rules Regarding Determination on Customs Value of Imported and Exported Goods. Besides, an official journal, "Gazette of China Customs" is also to be established in the near future. Interested parties may also visit the web site of the General Administration of Customs of China for information ( <a href="http://www.customs.gov.cn">http://www.customs.gov.cn</a> ). (Written <sup>c</sup> )
Legal steps planned to implement provisions of the WTO Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods.	Written <sup>a</sup>	Chinese Taipei – Written <sup>b</sup>	China committed itself to the full application of the WTO Agreement on Customs Valuation, including valuation methodologies set forth in Articles 1 through 8 thereof, upon its

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Legal steps planned to implement provisions of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment.	Written <sup>a</sup>	Chinese Taipei – Written <sup>b</sup>	accession. In addition, China would apply the provisions of the two Decisions taken by the Committee on Customs Valuation concerning the treatment of interest charges in the customs value of imported goods and valuation of carrier media bearing software for data processing equipment as soon as practicable, but in any event no later than two years from the date of accession, as referred to in paragraph 143 of the Working Party Report on Accession of China. (Written <sup>c</sup> )

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: G/VAL/W/127; dated 10/3/03.

<sup>b</sup>Communication from Chinese Taipei: G/VAL/W/126/Rev.1; dated 9/25/03.

<sup>c</sup>Communication from China: G/VAL/W/125; dated 9/22/03.

<sup>d</sup>Committee report detailing verbal statements made during meeting: G/VAL/M/36; meeting dated 10/6/03.

Enclosure V

Committee on Import Licensing

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Inspection permits</b>			
Enforcement by China's State General Administration of Quality Supervision and Inspection and Quarantine Procedures (AQSIQ) to control the pace and quantity of agricultural imports.	Written, <sup>a</sup> Verbal <sup>e</sup>		The procedures concerning import inspection permits were established on the basis of the Law of the People's Republic of China on the Entry and Exit of Animal and Plant Quarantine, adopted on 1 April 1992, and its Implementing Regulation adopted on 1 January 1997 (which had been notified to the WTO in documents G/SPS/N/CHN/P/4 and G/SPS/N/CHN/P/5, respectively). The said procedures were not newly developed, and applied equally to all countries exporting animals and plants as well as their products to China, not aimed at a certain country. China wanted to make it clear that the import permit regime concerned SPS measures and was not related to import licensing procedures applied to control the quantity in trade. (Verbal <sup>e</sup> )
Steps to ensure fair treatment of import process for agricultural products.	Written <sup>a</sup>		The import permit procedures were neutral in application and administered in a fair and equitable manner in conformity with Article 1.3 of the Agreement on Import Licensing Procedures. (Verbal <sup>e</sup> )
Steps to ensure that the administration of import process is not having trade-restricting effects.	Written, <sup>a</sup> Verbal <sup>e</sup>		This regime was also set up in line with Article 2.2 of the Agreement and did not have trade-restricting effects. (Verbal <sup>e</sup> )
Reason for 90-day valid period for import inspection permits.	Written <sup>a</sup>		All applications would be accepted and approved within nine to 30 days by AQSIQ, as long as they were in conformity with the provisions of the quarantine law and its implementation rules as well as AQSIQ Decree No. 25. This ensured that China's import permit regime was fair and just. (Verbal <sup>e</sup> )
Duplicative requirements for facilities inspections of an enterprise that processes agricultural commodities by AQSIQ and State Administration of Industry and Commerce.	Written <sup>a</sup>		
Reason for requirement for importers to re-apply for a new import inspection permit rather than permit extension.	Written <sup>a</sup>		
Reason for requirement for importer to specify commodity weight, country of origin, and port of entry before entering into an import contract; reapplication for license if any of the elements listed above change by more than 10 percent.	Written <sup>a</sup>		
Conflicting import requirements for genetically modified organism (GMO) products: (1) requirement for an Interim Safety Certificate, which requires an existing contract, to obtain an import inspection permit and (2) requirement for an inspection permit before entering	Written, <sup>a</sup> Verbal <sup>e</sup>		The import permit procedures related to entry of animal and plant quarantine did not come under automatic registration procedures, given the differences in the epidemic situation of the source nations and the relevant preventive and treatment measures, as well as the risk and management thereof concerning disease

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
into a contract with supplier.			introduction. However, importers qualified to apply for import permits could submit applications to AQSIQ on an equitable basis. Concerning the questions on import requirements for GMO products, the Ministry of Agriculture of China had decided to extend Circular No. 222 to 20 April 2004, wherein contents concerning application requirements and approval procedures for genetically modified (GM) products remained unchanged. The Ministry of Agriculture had entertained the idea of indicating on an Interim Safety Certificate the names of importers whose applications were submitted after 20 September. However, when they found that such a measure, were it to be implemented, would contradict that adopted by AQSIQ, they had not in fact carried out this idea. Therefore to reply to the question, China had not promulgated such a policy as had been mentioned in the questions presented, namely a policy which required the provision of the importer's name upon application of the Interim Certificate for GMO products; therefore the alleged contradiction contained in the questions had not actually taken place. (Verbal <sup>e</sup> )
Reason for requirement for inspections of facilities that import processed agricultural goods but not for domestic processing enterprises.	Written <sup>a</sup>		
<b>Trading rights</b>			
Applicability of Provisional Rules on Establishment of Sino-Foreign Foreign Trade Companies to all joint ventures with minority share foreign-investment.		European Communities (EC) – Written <sup>b</sup>	The liberalization of distribution rights would be executed in accordance with the Schedule of Specific Commitments on Services. Currently, enterprises in China with foreign investment had the right to import equipment, technology, raw material and other goods for self-use, and export their products, while for the importation of goods and technology other than the above-listed, enterprises should change the scope of their business as required by relevant legislation. <i>The Foreign Trade Law of the People's Republic of China</i> was being revised to reflect that specific requirement. In January 2003, the former Ministry of Foreign Trade and Economic Cooperation (MOFTEC) promulgated the <i>Interim Rules for Establishing Sino-Foreign Trade Joint Ventures</i> , endowing legally incorporated Sino-foreign joint ventures with the right of import and export for the goods, technology and services within the approved scope, and the right to conduct domestic wholesale of the goods imported by the joint ventures themselves. With distribution also included, the scope of the rights granted by the Interim Rules went beyond what China had committed to in the Protocol. In that spirit, the Interim Rules had

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			prescribed some requirements on experiences and registered capital for both Chinese and foreign parties of the joint venture. In addition, "Sino-foreign joint venture" referred to in the Interim Rules included joint ventures solely engaged in import and export business and wholesale of imported products, as well as other types of enterprises, which applied for the operation of such businesses and satisfied the requirements of the Interim Rules. (Verbal <sup>e</sup> )
Elimination of the requirement for prior experience and minimum capital when granting trading rights.		EC – Written <sup>b</sup>	According to China's commitments upon accession, China would eliminate the system of examination and approval of trading rights within three years from accession. At that time, China would permit all domestic and foreign enterprises and individuals, including sole proprietorships of other WTO Members, to export and import all goods (with the exception of products listed in Annex 2A of the Protocol reserved for importation and exportation by state trading enterprises) throughout the customs territory of China. Trading right in this context only referred to the right for importation and exportation, not including the right of distribution in China. (Verbal <sup>e</sup> )
Time frame for adopting definitive legislation and information on its scope.		EC – Written <sup>b</sup>	
<b>Quotas and tariff-rate quotas</b>			
Large parts of automobile and fertilizer quotas not allocated to genuine importers but to other parties not involved in import activities.		EC – Written <sup>b</sup>	With regard to the alleged problem of license trade, i.e. selling quota for profit, such practice was against the Chinese law and subject to severe punishment. China hoped that Members would provide relevant information and evidence on this illegal trade. His authorities would deal with the offenders according to the law and slashing their quotas for the next year. (Verbal <sup>e</sup> )
Transparency issue—assurance that full quantity of auto and fertilizer quotas and tariff-rate quotas are allocated to genuine importers.		EC – Written <sup>b</sup>	In strict accordance with their commitments upon accession and the <i>Regulations on the Administration of Import and Export of Goods of the People's Republic of China</i> , his

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Publication of criteria applied for the allocation of the licenses for automobile and fertilizer quotas and tariff-rate quotas.		EC – Written <sup>b</sup>	<p>authorities had promptly published the total volume and allocation criteria of 2003 import TRQs for fertilizers, distributed 2003 fertilizer TRQs in full quantity, and allocated TRQs for state trading and non-state trading enterprises directly to importers in line with specified proportions. The allocation process had been administered in a fair and transparent manner. Enterprises went about the importation of fertilizers according to the market situation, either for themselves or as an agent, and their business activities were free from any government interference. (Verbal<sup>e</sup>)</p> <p>Paragraph 130 of the Working Party Report stated that in allocating quotas for imported products for wholesale or retail distribution, China would consider historical performance, experience and ability in servicing, as well as the qualifications of importers required by the Agreement on Import Licensing Procedures. The allocation criteria for quotas of automobiles imported for sale were as follows: first, verify the importer's qualification to conduct automobile trade in China; second, check the operational ability of the importer (i.e. the venue for sale and maintenance); and third, examine the business performances of the importer. The Chinese Government would not allocate quotas for sale to importers without sale qualification and operational ability. Importers with prominent operational ability and historical performance would receive more quotas. Importers might decide the composition of products for their quotas at their own discretion, i.e. they could themselves determine the type, specification and model of automobiles of their choice. The Chinese Government would grant import quotas in light of their selections. (Verbal<sup>e</sup>)</p>
Interchangeability of import licenses between different types of models.		EC – Written <sup>b</sup>	
Specific measures to ensure that quota-holders are able to obtain necessary import license.		Chinese Taipei – Written <sup>d</sup>	
<b>Automobile</b>			
Actual auto imports significantly lower than import quota.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	<p>The volume of import quotas was not necessarily equal to actual import volume, and the fill rate of quotas depended on actual demand for imported automobiles on the Chinese market. Over recent years, automobiles produced by Chinese enterprises (including joint ventures) had satisfied the needs of Chinese consumers with enhanced quality, diversified models and lower prices. Therefore, although the need for automobiles on the Chinese market had considerably increased, the need for imported high-price automobiles was still limited. In particular,</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			<p>given the fast growth in production of automobiles below 2000 cubic centimeters (cc) and their relative low prices compared with imported cars of the same class, Chinese importers had voluntarily increased the proportion of automobiles above 2000 cc in their applications for import quotas, so as to avoid competition with Chinese auto manufacturers. (Verbal<sup>e</sup>)</p> <p>In accordance with Table One and Table Two of Annex 3 of China's Protocol of Accession, there were 65 Harmonized System (HS) codes covered in the sector of automobiles and their key parts which were subject to quota administration. Based on these 65 HS codes, China had committed US\$ 6 billion worth of quota for automobiles and their key parts and had made a commitment to increase this by 15 percent annually during the transition period. In 2003, the total amount of US\$ 9.125 billion should also be based on these 65 HS codes. According to the timetable on the elimination of non-tariff measures committed by China, in the years 2001, 2002 and 2003 China had consecutively eliminated its quota administrative measures on some automobiles and key parts, but these parts of the products which had been imported should also be included in the import statistics for 2003, or else it would be unfair to China. As concerned the substantial disparity alleged by Japan concerning the committed volume and the actual volume of imports, the Chinese representative offered the following explanation: in the statistics provided by Japan, the period covered extended from April 2002 to March 2003. The committed volume was not the actual volume of imports, because the actual amount of imports would depend solely on the market for automobiles in the Chinese market. (Verbal<sup>e</sup>)</p> <p>Concerning the period covered by these statistics, the first quarter of 2002 also used quotas allocated for the whole year, because in order to meet the requirements of Chinese domestic manufacturers and some importers, before April 2002 the Chinese Government had already arranged for the import quotas for 2002, or else all the domestic automobile manufacturers in China would have to stop their production. Therefore the period covered by the statistics should extend from January 2002 to March 2003. (Verbal<sup>e</sup>)</p> <p>China had noted that in Japan's statistics, auto knock-down kits, or CKD and SKD, which were imported for assembly in China, were not</p>



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			included, because in the past two years in the initial period of production of new car models by Chinese domestic manufacturers, they had to import a considerable amount of knock-down kits for assembly production; for the import of these parts they had to be granted certain quotas; however, as regarded customs statistics, because these parts arrived at the customs in the form of component parts, they had not been incorporated in the statistics for complete automobiles. The final aspect could be attributed to the restrictions placed by certain suppliers in Japan. According to their information, some manufacturers and suppliers in Japan had placed restrictions on the number of Chinese importers, mainly limiting the number of Chinese importers who could sign contracts with suppliers in Japan. According to their understanding from these importers, Japanese suppliers had also placed restrictions on the amount of automobiles to be exported to China on a monthly basis. (Verbal <sup>e</sup> )
Disparity between reported Customs-cleared auto imports and nominal quota for 2003; measures to improve implementation of quota.		Japan – Written <sup>c</sup>	
Confirmation from China that no items are subject to import quotas other than 44 items under complete vehicles and one item—bodies—under auto parts.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	According to China's understanding, the automobiles and key parts covered by the quota administration should be 65 HS codes instead of 45. (Verbal <sup>e</sup> )
Actual quotas for 2003 by item and by country of origin.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Number of quota holders to whom China applied provision for quota holders not having imported their full allocation would receive a proportional reduction in their quota allocation in the subsequent year unless the quantity is returned for allocation by 1 September; total reduction in quota.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	With regard to punitive measures against importers failing to return unused quotas, <i>Regulations on Import and Export of Goods of People's Republic of China</i> specified that in the event that an importer did not use all quotas in its possession for the year, he should return remaining quotas to the administrative authority for import quotas before 1 September of the current year; if he failed to do so and failed to use the remaining quotas by the end of that year, the quota authority would reduce his quotas for the next year accordingly. Considering that import quotas of 2002 could be extended to 31 March 2003, there were no quotas returned in 2002. If a quota holder failed to use all quotas in his possession by the end of 2003 and failed to return the unfilled quotas within the specified time limit, the Chinese authorities would reduce his quotas for the next year. (Verbal <sup>e</sup> )
Concern with method that Chinese government controls the number of auto import licenses to be granted by category; licenses not granted impartially.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	Regarding the alleged control by the Chinese Government of granting import licenses for automobiles below 2000 cc displacement, the Chinese delegate said that according to China's WTO commitments importers had the

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			discretion to choose the types, specifications and models of some automobiles to be imported, and the relevant authorities in China, by deriving from their needs and choices, issued the relevant licenses. In fact, given the quick growth of the production of automobiles below 2000 cc and the relative low prices compared with imported cars, Chinese importers had voluntarily increased the proportion of automobiles above 2000 cc in their applications for import quotas, so as to avoid competition with Chinese auto manufacturers. (Verbal <sup>e</sup> )
<b>Measures for administration of licenses for import of goods</b>			
Reason for requirement that one license be used at one customs office that appears to place restrictions on traders going against the principle of trade facilitation.		Chinese Taipei – Written <sup>d</sup>	
Circumstances in which license for multiple entries is granted.		Chinese Taipei – Written <sup>d</sup>	
Laws protecting license applicant's right of appeal or review if application is not approved.		Chinese Taipei – Written <sup>d</sup>	
<b>Measures on the administration of automatic import licensing of goods</b>			
Requirement to submit an import contract in the case of automatic import licensing.		Chinese Taipei – Written <sup>d</sup>	
Requirement of other necessary documents specified in China's Measures on the Administration of Automatic Import Licensing of Goods.		Chinese Taipei – Written <sup>d</sup>	
Justification for article stipulating that the entire application be made over again if automatic import licenses need to be extended or changed.		Chinese Taipei – Written <sup>d</sup>	

Source: GAO analysis of WTO documents.

Note: An additional document source is a communication from China: G/LIC/W/20; dated 9/23/03.

<sup>a</sup>Communication from U.S.: G/LIC/Q/CHN/9; dated 9/25/03.

<sup>b</sup>Communication from European Communities: G/LIC/Q/CHN/5; dated 8/14/03.

<sup>c</sup>Communication from Japan: G/LIC/Q/CHN/6; dated 9/1/03.

<sup>d</sup>Communication from Chinese Taipei: G/LIC/Q/CHN/7; dated 9/19/03.

<sup>e</sup>Committee report detailing verbal statements made during meeting: G/LIC/11; meeting dated 10/2/03.

Enclosure VI

Committee on Market Access

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Trading rights</b>			
Measures governing trading rights of foreign-invested enterprises.	Written <sup>a</sup>		According to China's commitments upon accession, China would eliminate the system of examination and approval of trading rights within three years from accession. At that time, China would permit all domestic and foreign enterprises and individuals, including sole traders from WTO Member countries, to export and import all goods with the exception of products outlined in Annex 2A of the Protocol reserved for importation and exportation by state run enterprises throughout the custom territory of China. Trading rights in this context only referred to the right of importation and exportation, and did not include the right of distribution in China. The liberalization of distribution rights would be exacted in accordance with the schedule of specific commitments on services at the time enterprises in China with foreign investment had the right to import equipment, technology, raw material and other goods for self use and to export their products. For the importation of goods and technology other than those just listed, enterprises should change their scope of the business as required by the relevant legislation. The foreign trade law of the People's Republic of China was being revised to reflect the specific requirements on that. (Verbal <sup>e</sup> )  China had already responded to questions in relation to trading rights, automobile quotas and fertilizer TRQs in a meeting held under the Committee on Import Licensing Procedures and the statement by the head of the Chinese Delegation had been provided to the Secretariat. (Verbal <sup>e</sup> )
Conditions required to be fulfilled by foreign-invested enterprise to obtain trading rights, relating to minimum registered capital, past import and export levels and prior experience.	Written <sup>a</sup>	EC – Written <sup>d</sup>	
Time schedule for China to implement automatic availability of trading rights to all enterprises in China and foreign enterprises and individuals, including sole proprietorships, by 11 December 2004.	Written <sup>a</sup>		
Applicability of "Provisional Rules on the Establishment of Sino-Foreign Foreign Trade Companies" to all joint ventures with minority share foreign-investment, "trading" joint ventures, and Sino-foreign joint venture companies that were already established in China when rules were implemented.		EC – Written <sup>d</sup> Verbal <sup>e</sup>	
Time schedule and scope for adoption of "Provisional Rules on the Establishment of Sino-Foreign Foreign Trade Companies."		EC – Written <sup>d</sup>	
Time schedule and reason for delay of revision of the Foreign Trade Law of China related to phase-in commitments on trading rights for joint-venture enterprises with minority share of foreign investment.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Time schedule and implementation procedures for phase-in commitment on trading rights of joint-venture enterprises with majority share of foreign investment.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
<b>Value-added tax</b>			
Reason for differential treatment of reduced value-added tax (VAT) applied to integrated circuits designed or manufactured in China and full VAT on imported integrated circuits; status of review of measures by Chinese ministries and agencies.	Written, <sup>a</sup> Verbal <sup>e</sup>		China implemented "VAT drawback upon Levy" measures on ordinary VAT payers producing and selling integrated circuits. The refunded tax represented the part of total tax levied in excess of three percent of the taxable value. This measure was a part of China's policies on the integrated circuits industry, and did not violate WTO national treatment principle. A 17 percent VAT was imposed on both imported and domestically produced integrated circuit products when they entered the market. No extra VAT was levied on imported products directly or indirectly. Thus this policy was consistent with Article III.2 of General Agreement on Tariffs and Trade

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			<p>(GATT) 1994. Based on such understanding, the rebate was a kind of subsidy paid to domestic producers allowed by Article III.8(b) of GATT. (Verbal<sup>e</sup>)</p> <p>Work was underway on a further study of the issue, but according to preliminary conclusions, the policy of rebate upon collection adopted by the Chinese government was a subsidies payment to its national products and was allowed under Article XIII. B of GATT which stated that the provisions of that article should not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers which were derived from the proceeds of internal taxes or charges applied consistently with the provisions of the article and the subsidies effected through governmental purchases of domestic products. In accordance with that provision, China believed that its VAT policy with regard to integrated circuits was not in violation of the national treatment principle of GATT. (Verbal<sup>e</sup>)</p>
<p>Reason for differential treatment of diammonium phosphate (DAP) produced in the United States, which competes with similar phosphate fertilizers produced in China, such as monoammonium phosphate (MAP).</p>	<p>Written,<sup>a</sup> Verbal<sup>e</sup></p>		<p>China had adjusted its policies in relation to the fertilizer VAT, including the differential policies on monoammonium phosphate (MAP) and diammonium phosphate (DAP) in 2001, to bring them into conformity with the national treatment principle contained in Article III of GATT 1994. After the adjustment, China began to implement the same VAT policies on imported and domestic fertilizers. However, it continued to exempt MAP from VAT while imposing VAT on DAP. Different VAT measures on these two were adopted based on the agricultural production requirements and fertilizer products of China. MAP and DAP were two different products with different uses and users. Although the reserves of Chinese phosphorite mines were quite abundant, most of them were lean ores, so the cost of ore concentration was quite high. As a result, in order to fully apply phosphate resources and protect the environment, China implemented VAT exemption measures encouraging the production of MAP directly from relatively lean ores. Producers were also encouraged to produce compound fertilizers. (Verbal<sup>e</sup>)</p> <p>Article III of GATT 1994 stated that same duties should be levied on identical or similar, mutually substitutable and directly competitive products. However, MAP and DAP were goods of a different nature and were not directly competitive nor substitutable products in China. They were not identical or similar goods due to their different natures. They were not substitutable products due to their</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			different use. In China, DAP was directly applied in manufacturing, while MAP was mainly used to produce compound or special fertilizers. They were not competitive products. China had been producing DAP since 1965. Currently, VAT was levied on both imported and domestically-produced DAP. In 2001, prima facie consumption of DAP was 4,970,000 tons, including 3,290,000 tons of imports which represented a 66 percent of total consumption. These statistics showed that production and consumption of DAP in China had increased instead of having decreased as a consequence of a tax exemption measure on MAP. There was no comparative relation between the two kinds of products. Consequently, VAT measures on these two kinds of products were not in violation of Article III of GATT 1994. (Verbal <sup>e</sup> )
Information on VAT regime applied to copper raw materials.		EC – Written <sup>b</sup>	
<b>Automobile (non-quota issues)</b>			
Status and implementation of new automobile industrial policy “Guidelines for Current Development of Automobile Industry” that may discourage the importation of auto parts.	Written, <sup>a</sup> Verbal <sup>e</sup>		With regard to questions in relation to new automobile policies, the Chinese delegation had clarified the issue in the Trade Review Mechanism (TRM) under the TRIMS Committee. Given that issues in relation to automobile financing and the separate operation network for new automobiles would be discussed under the Council for Trade in Services they would not address those issues here. (Verbal <sup>e</sup> )
Information on China's new automotive policy and clarification on the policy's WTO compatibility.		EC – Written <sup>b</sup>	
Implementation of new automobile industrial policy seeking to restrict imports of CKDs.	Written <sup>a</sup>		
Possible establishment of a dual distribution network for domestically produced and imported vehicles; China's plan to establish a “Law Controlling the Monopolization of Automobile Brands” to prohibit dealers from selling both imported and domestic cars.	Written <sup>a</sup>	EC – Written, <sup>b</sup> Verbal <sup>e</sup>  Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Time schedule for legislation on car financing and confirmation that China will not impose any performance rule or excessive capital requirements.		EC – Written <sup>b</sup>	
<b>Tariff-rate quotas (TRQ) and quotas</b>			
Information on the total quantity of each fertilizer TRQ for 2003 that was allocated for importation through state trading enterprises and quantity allocated for importation through non-state trading entities.	Written <sup>a</sup>		In 2003, the volume of non-state trading quotas for urea was 180,000 tons, while that of state trading quotas was 1,620,000; the volume of DAP non-state trading quotas was 1,190,000 tons while that of state trading quotas was 4,760,000 tons; the volume of non-state trading quotas for compound fertilizers was 600,000 tons while that for state trading was 2,380,000 tons. (Verbal <sup>e</sup> )
China's implementation of its commitments regarding reallocation of 2003 TRQ on fertilizer and wool tops.	Written <sup>a</sup>		On 27 August 2003, MOFCOM published the notice on application for reallocation of 2003 fertilizer TRQ through some media, requiring importing entities to return unfilled quotas

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			before September 15 of that year, and stating that applications for reallocation would be accepted from September 15 to September 30 and that reallocation would be completed before 15 October 2003. On October 14, MOFCOM circulated the public notice for fertilizer TRQs reallocation as of the year 2003, amongst which the volume for compound fertilizers was 350,000 tons, that for DAP was 12,000 tons and for urea, 20,000 tons. (Verbal <sup>e</sup> )
Confirmation that China has fully allocated DAP TRQs for 2003 and has not sought to control the level of DAP imports through administrative means.	Written <sup>a</sup>		On 10 October 2003, MOFCOM made public the total volume, the principles of allocation and the application procedures of TRQs for fertilizer import as of the year 2004. The competent Chinese authorities had already distributed all 5,950,000 tons of DAP for 2003, and had not adopted import controlling measures. Enterprises could, at their own discretion, decide on the time and import volume in light of market demands, without government interference. (Verbal <sup>e</sup> )
Information on 2003 quota allocation for autos and other products: total quantity of quotas applied for; number of requests for quotas denied; total quantity of quotas allocated to end-users; minimum size of individual quota allocation; fill rates for the quotas; total quantity of quotas allocated to entities that had not previously been allocated quotas; and total quantity of quotas allocated to enterprises with foreign ownership.	Written <sup>a</sup>		<p>Quantity of Import TRQ made available for 2003, number of enterprises/applicants filed and granted for TRQ reallocation, quantity of TRQs for allocation or reallocation rejected, fill rates for quota or TRQ, amount of any goods entered at the over quota rate, time taken to grant a quota or TRQ allocation – specified for wheat, maize, rice, soybean oil, rape seed oil, palm oil, sugar, cotton, wool, wool top, urea, diammonium phosphate, nitrogen, phosphorous, potassium (NPK). (Written<sup>d</sup>)</p> <p>With regard to TRQ allocation for automobiles in 2003, in accordance with China's WTO commitments, China had fully allocated the US\$ 9.125 billion worth of quotas for automobiles. No return quotas had been received before 10 September 2003 and therefore the government authority in charge of quota administration did not exercise any reallocation in this regard. (Verbal<sup>e</sup>)</p> <p>In accordance with Public Notice No. 58 issued by the former MOFTEC in 2002, China eliminated import quota administration for motorcycles and crane lorries ahead of schedule, while automobiles and its key parts remained under quota administration in 2003. In line with its accession commitments, the Chinese government had already distributed US \$9.1 billion worth of quotas. Given that they had not come to the end of 2003, it would be impossible to calculate the filled rate of quotas at the present stage. (Verbal<sup>e</sup>)</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Large parts of the quotas for automobile and fertilizer not allocated to the genuine importers (state-owned or not) but to other parties not involved in import activities, from which the genuine importers have to "buy" the licenses.		EC – Written <sup>d</sup>	The process for tariff quota rates, publishing the total volume of TRQs for fertilizers in 2003 and 2004 and also publishing conditions for enterprises applying for the allocation of such quotas was transparent and fair. With regard to the reselling of quotas, according to Chinese legislation this was an illegal act and one to be combated seriously. The Chinese government firmly cracked down on all kinds of reselling activities and they requested that the European Communities provide them with any relevant information they may have concerning reselling so that the Chinese authorities could deal with it. (Verbal <sup>e</sup> )
Quotas officially announced as issued conform to China's commitments but quantities actually allocated are smaller, including import quotas on automobiles.		EC – Written <sup>d</sup> Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Request for China to publish the criteria applied for the allocation of the licenses for quotas and tariff-rate quotas for automobile and fertilizer.		EC – Written <sup>d</sup>	
Interchangeability of import licenses between different types of models (e.g., engine specifications) with regard to automobiles.		EC – Written <sup>d</sup>	The administration of imported automobiles, with regard to the disparity existing between the actual and the committed volume, from April 2002 to March 2003, namely in the first year of China's administration of quotas for automobiles; the administration of the import quota for 2003; the transparency of distribution procedures and the criteria for distribution. (Verbal <sup>e</sup> )  China had already made detailed and specific explanations in the Import Licensing Committee on 2 October 2003. In particular, they had highlighted the disparity issue. (Verbal <sup>e</sup> )
Confirmation that no other items subject to automobile import quotas for 2003 other than 44 items under complete vehicles and one item under auto parts.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Status of China's quota allocation and reallocation for 2003 in light of ensuring a transparent system; actual quotas for 2003, not only item by item, but also by country of origin.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Provision that quota holders not having imported their full allocation would receive a proportional reduction in their quota allocation in the subsequent year unless the quantity is returned for reallocation by 1 September; number of quota holders to whom this provision applied in China's allocation of import quotas in fiscal year (FY) 2003; total number of reductions in quotas.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Method for granting import licenses that China uses to control the number of import licenses granted by category.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	China had already made detailed and specific explanations in the Import Licensing Committee on 2 October 2003. In particular, they had highlighted the disparity issue. (Verbal <sup>e</sup> )

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Consumption tax</b>			
Reason for different and higher tax base used to compute consumption tax for imported and domestic goods.	Written <sup>a</sup>		In China, taxable value for the purpose of imposing consumption tax included a consumption tax factor, i.e.: taxable value = (cost + profit)/(1 - consumption tax rate). Such a calculation method applied to both imported goods and domestic goods. The consumption tax factor was put into the taxable value while calculating and levying consumption tax on either imported or domestic products. Due to such a method, the consumption tax factor was taken into account when the selling price of domestic products was being determined. Thus, since the taxable value of domestic products already included a consumption tax factor, the corresponding consumption tax was the taxable value multiplied by the tax rate. Since the import value of imported goods did not include a consumption tax factor, such a value was converted into a taxable value that contained a consumption tax factor. The consumption tax was then worked out based on the converted taxable value. Otherwise, the value of imported goods would not contain a consumption tax factor, while that of domestic goods would, which would lead to unfair treatment in relation to tax imposition on imported and domestic products. (Verbal <sup>e</sup> )
<b>Tariffs</b>			
Reason for specific duties using excessive tariff rates imposed on photographic products instead of ad valorem duties.		Japan – Written <sup>c</sup>	The relevant WTO Agreement did not stipulate the types of duties that should be levied by WTO Members, nor did it require WTO Members to implement the same types of duties as those contained in the schedule of concessions. The agreement only required that the duties be imposed at a level no higher than the committed duty rates. This had been recognized in previous WTO Understanding on Dispute Settlement (DSU) cases by the Appellate Body. Therefore, although China had made commitments in relation to ad valorem duties on the 35 kinds of photographic products, it still had the right to apply specific duties on these products. In 2003, China had lowered the specific duty rates on the 35 kinds of photographic products. Specific duties imposed on these products were within the committed tariff rate level and were therefore not in violation of China's commitments. However, China wished to continue the technical consultations with Japan to ensure that specific duty rates remained at a reasonable level. (Verbal <sup>e</sup> )
Time schedule for tariff amendments to apply China's tariff concessions for 35 items of photographic products.		Japan - Written, <sup>c</sup> Verbal <sup>e</sup>	
<b>Prohibition on sale of imports</b>			
Information about China's plan to limit		Japan -	



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
the scope of "management right to passenger vehicles," required of retail dealers in passenger vehicles, either to domestic cars or imported cars; belief that such regulation should not be introduced.		Written, <sup>c</sup> Verbal <sup>e</sup>	
China's prohibition on used goods, including worn clothing and automobiles; possibility to abolish measures.		Japan - Written, <sup>c</sup> Verbal <sup>e</sup>	<p>With respect to wastes that could be used as raw materials, the former National Environmental Protection Agency, with other governmental departments concerned, jointly issued the "Provisions on Administration of Environmental Protection on Import of Wastes" on March 1, 1996, and a "List of Wastes Used as Raw Materials and Restricted in Import" had also been annexed. Wastes listed in the catalogue could be imported upon examination and approval by the former National Environmental Protection Agency (now called the State Environmental Protection Administration). The import of unlisted wastes was thereby prohibited. Therefore, it could be seen that China did not generally prohibit the importation of all used goods or wastes. (Verbal<sup>e</sup>)</p> <p>China prohibited the importation of used clothing and automobiles in line with the "general exception" principle and health quarantine in international trade. The measures on used clothing and automobiles were implemented on a non-discriminatory basis. Applicable regulatory procedures were transparent and the catalogue of prohibited products was publicly available, fully consistent with WTO rules. In addition, those measures were adopted for the purpose of protecting the life and health of humans, animals and plants; nor had they constituted discrimination or trade restrictions in disguised forms; thus they were in conformity with "general exception" rules enshrined in Article XX(b) of GATT 1994. (Verbal<sup>e</sup>)</p>

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: G/MA/W/51; dated 10/10/03.

<sup>b</sup>Communication from European Communities: G/MA/W/49; dated 8/14/03.

<sup>c</sup>Communication from Japan: G/MA/W/50; dated 9/8/03.

<sup>d</sup>Communication from China: G/MA/W/52; dated 10/15/03.

<sup>e</sup>Committee report detailing verbal statements made during meeting: G/MA/M/35; meeting dated 10/20/03.

Enclosure VII

Committee on Rules of Origin

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Imported goods</b>			
Method of calculating percentage of substantial transformation.		Chinese Taipei – Written <sup>a</sup>	The method applied was that the value-added component was more than 30 percent in the total value of a new product, the calculation of which was that the CIF value of non-original component was 70 percent or less in FOB value of the product after being processed. (Verbal <sup>b</sup> )
Review of origin by judicial, arbitral, or administrative procedures; importer's appeal procedures for ruling on origin; authority that assesses appeal.		Chinese Taipei – Written <sup>a</sup>	In accordance with Article 8 of Announcement No.17, 2001 of the General Administration of Customs, the party dissenting to the decision made by the Customs may apply for administrative review or bring a suit before a people's court. In accordance with Article 6, the review had the right to change or annul specific pre-determination of origin made by the Customs. The application of administrative or judicial review was based on Administrative Review Law of the People's Republic of China, Provisions for the Implementation of Administrative Review Law of the Customs of the People's Republic of China, and Administrative Procedure Law of the People's Republic of China. (Verbal <sup>b</sup> )
Regulations concerning confidentiality of information.		Chinese Taipei – Written <sup>a</sup>	In accordance with Article 9 of Announcement No.17, 2001 of the General Administration of Customs, the Customs would not disclose the information for origin pre-determination without the specific permission of the person concerned, except to the extent that it may be required to be disclosed in the context of judicial proceedings. (Verbal <sup>b</sup> )
Punishment for import of products whose origin is falsely reported or counterfeited; published records of punishment.		Chinese Taipei – Written <sup>a</sup>	Actions such as false declaring of country or faking certificate of origin were dealt with by Customs according to relevant stipulations of Customs Law of the People's Republic of China and the Rules of Administrative Penalties for the Implementation of the Customs Law. (Verbal <sup>b</sup> )
<b>Exported goods</b>			
Customs list for manufacturing and processes, application of rules, and calculation of assembly ratio.		Chinese Taipei – Written <sup>a</sup>	China's existing non-preferential rules of origin for exports were promulgated on 8 March 1992 and came into effect on May 1, 1992. The rules were applied in issuing Chinese certificate of origin for non-preferential exports upon request of consignee of the export and had no binding on importing side. There was no origin declaration requirement by Customs for exports. (Verbal <sup>b</sup> )

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from Chinese Taipei: G/RO/W/99; dated 9/22/03.

<sup>b</sup>Committee report detailing verbal statements made during meeting: G/RO/56; meeting dated 10/3/03.

Enclosure VIII

Committee on Safeguards

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Measures on steel</b>			
Detailed explanation on legality of provisional and definitive safeguard measures on certain steel products and China's schedule aiming at totally repealing these measures; Chinese measures not in conformity with Safeguards Agreement.		Japan – Written, <sup>a</sup> Verbal <sup>b</sup>	China's safeguard investigation on certain imported steel products had been carried out in full compliance with the WTO Agreement on Safeguards and in strict conformity to China's safeguards laws. Regarding the provisional and definitive safeguard measures on certain imported steel products, China had notified the Committee on Safeguards of the findings with regard to serious injury and the threat thereof caused by increased imports, as well as the authority's decisions to apply such measures, thus having fulfilled its notification obligations under the Agreement on Safeguards. China's investigating authorities also made adequate information disclosures regarding findings of the investigation, and notified disclosed information to Members having a substantial interest, including Japan. Moreover, pursuant to the rules set out in Articles 12.3 and 12.4 of the Agreement on Safeguards, China had held consultations with those Members having substantial interest, including Japan, furnished the relevant information, and exchanged views on the measures. China's safeguard measures on certain imported steel products had been, and would continue to be, applied according to the timetables stipulated in China's Official Bulletin on definitive measures. (Verbal <sup>b</sup> )
Legal basis enabling the Government to retain measures on products that the State Economic and Trade Commission (SETC) determined do not cause injury; immediate repeal or plans of mitigating measures, and schedule aiming at repealing measures to these products.		Japan – Written, <sup>a</sup> Verbal <sup>b</sup>	Article 16 of China's safeguards regulations provided that in a case where a preliminary determination established the existence of an increase in the quantity of an imported product and injury and a causal link between the two, MOFTEC and the State Economic and Trade Commission (SETC) should continue with their investigations and, on the basis of the findings of such investigations, make a final determination which should be published by MOFTEC. Accordingly, a final determination was published by MOFTEC on 19 November 2002. Relevant information could be found in the Official Notice published by the Ministry of Foreign Trade and Economic Cooperation, now the Ministry of Commerce. (Verbal <sup>b</sup> )
Inconsistencies in China's measures; possibility that China might review its measures before their three-year expiry and China's consideration of a review in the event that the U.S. and E.C. steel safeguard measures were revoked in the coming months.		EC – Verbal <sup>b</sup>	The EC questions concerning the review of China's safeguard measures would be referred to capital for further consideration. (Verbal <sup>b</sup> )
<b>General safeguard measures</b>			
Delay in China notifying rules to the	Verbal <sup>b</sup>		Concerning any delay in the submission of

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
WTO in light of China having undertaken a safeguard investigation before all the necessary rules had been issued and notified.			China's legislative notifications, that was attributable to government restructuring which China has been engaged in starting from March or April 2003. China considered that it was only appropriate for it to make the necessary modifications and changes to the original legislations because of the restructuring of the Chinese government departments. (Verbal <sup>b</sup> )
Lack of transparency in China's decision-making process for the safeguard measures (e.g. unclear process for allocating quotas).	Verbal <sup>b</sup>		
Criteria China had used in determining which WTO Members would be accorded the status of a developing country or region for purposes of Article 9.1 of the Agreement (provision requiring non-application of safeguard measures to developing country WTO Members where import share criteria were met), and whether those criteria were clear and transparent.	Verbal <sup>b</sup>		With regard to the specific issues raised by the United States, such as the standards or criteria that China had used for defining developing countries, at least for the purpose of China's safeguard investigations, and other issues such as the treatment of non-WTO Members, these were already covered by China's written replies to written questions. (Verbal <sup>b</sup> )
China's treatment of non-WTO Members under Article 9.1, given that it did not provide for the exclusion of countries that were not WTO Members.	Verbal <sup>b</sup>		
Protection of confidential data submitted during the course of a safeguard investigation, especially when outside experts were employed.	Verbal <sup>b</sup>		
Access to non-confidential information from safeguard investigations by interested parties and by the general public, in terms of the procedural requirements for and limitations on such access.	Verbal <sup>b</sup>		
Refunding of safeguard duties collected pursuant to provisional measures when definitive measures were not imposed on the relevant products.	Verbal <sup>b</sup>		
Terms and conditions covering China's extension of safeguard measures.	Verbal <sup>b</sup>		

Source: GAO analysis of WTO documents.

Note: An additional document source is a communication from China: G/SG/W/195; dated 10/17/03.

<sup>a</sup>Communication from Japan: G/SG/Q2/CHN/2; dated 9/19/03.

<sup>b</sup>Committee report detailing verbal statements made during meeting: G/SG/66; meeting dated 10/20/03.

Enclosure IX

Committee on Sanitary and Phytosanitary Measures

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Notification of measures/transparency</b>			
Role of State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) in monitoring the development and implementation of China's regulatory controls for seafood, including Decree 31, Certification Requirements for Fresh/Chilled, Frozen and Processed Aquatic Products.	Written <sup>a</sup>		
Time schedule for AQSIQ to notify Decree 31.	Written <sup>a</sup>		
Explanation of how comments were taken into account when China notifies changes in SPS measures after the proposed date of entry into force of the legislation.		EC – Written <sup>b</sup>	
Explanation of steps taken to ensure that other Member Countries are given a realistic opportunity to comment on notified measures in advance of their application.		EC – Written <sup>b</sup>	China's WTO Notification and Enquiry Center in the Ministry of Commerce is responsible for SPS notifications. The SPS Enquiry Point is established in the State General Administration for Quality Supervision and Quarantine (AQSIQ). All SPS notifications undergo the technical review of the SPS Enquiry Point and then are notified to WTO through China's WTO Notification and Enquiry Center. (Verbal <sup>d</sup> )  To date in 2003, China has made 24 SPS notifications. Some of these were specific detailed implementation rules corresponding to laws or regulations that had been previously notified to WTO. The regulations enacted and revised under the auspices of the Ministry of Health are national food safety standards at the draft stage. The first 17 drafts have been notified to the WTO, for comments from Members. (Verbal <sup>d</sup> )
Full list of products subject to mandatory health certification.		EC – Written <sup>b</sup>	
<b>Science-based measures</b>			
Results of risk assessments conducted for China's plans to suspend soybean imports from companies in U.S., Argentina and Brazil, based on detections of <i>Phytophthora sojae</i> in shipments of soybeans.	Written <sup>a</sup>		On the issue of soybean quarantine measures, China had provided the necessary clarifications during the transitional review by the Committee on Agriculture. No single foreign company's soybeans were suspended or prohibited from being imported into China on SPS grounds. (Verbal <sup>d</sup> )
Risks that Decree 31 is endeavoring to mitigate.	Written <sup>a</sup>		
Scientific justification for Decree 31 certification requirement.	Written <sup>a</sup>		
Role of AQSIQ in monitoring the development, implementation, and notification of laws and regulations covering food, forestry and fishery	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
products published by Ministry of Health (MOH).			
Risk assessments completed on the products for which standards and tolerances are established at levels more restrictive than the relevant international standards regarding MOH's new draft regulations on food, forestry, and fishery products.	Written <sup>a</sup>		
Concern that the notification MOH draft regulations would compel the initiation of an immense set of complex testing, grading and risk assessment reviews, which may unjustifiably deny imports of products, such as grain, processed foods, dairy, meat and poultry into China.	Written <sup>a</sup>		
Measures to ensure that sanitary and phytosanitary measures are based on scientific principles and are not maintained without scientific evidence.		EC – Written <sup>b</sup>	China fully respects the principles identified in the SPS Agreement, especially the principle of a scientific basis, in the process of developing and implementing its SPS measures. China's SPS measures are all based on risk assessments. In December 2002, China published Regulatory Measures on Import Risk Analysis for Animals and Animal Products (AQSIQ Decree No. 40) and Regulatory Measures on Import Risk Analysis for Plants and Plant Products (AQSIQ Decree No. 41), which were notified to WTO. (Verbal <sup>d</sup> )
China's implementation of European and Chinese experts' scientific assessment applied to cosmetics, including finding that substances banned in China, or those subject to specific import measures, were actually safe.		EC – Written <sup>b</sup>	Chinese experts have received and are now studying the experts' report on cosmetics which was drafted by the EC panel. China pays great attention to the work done by Chinese and European experts. China will consider the revision of the control measure if the experts from both sides can achieve consensus on the scientific basis and technical issues. (Verbal <sup>d</sup> )
<b>National treatment</b>			
Equal application of MOH's new regulations covering food, forestry, and fishery products between domestic and imported products.	Written <sup>a</sup>		China respects the principle of non-discrimination in the course of developing and implementing SPS measures. For products with identical risks, China's SPS measures, especially end product criteria, are applied equally to domestic and imported products. The recent standards revised or developed by the Ministry of Health, in which some Members are interested, will also apply equally to domestic and imported products once they are approved. (Verbal <sup>d</sup> )  China is a centralized country, and all the SPS measures (including national standards related to SPS) developed by the central government are enforced nation-wide. The Constitution of China and the current legal and standards framework can effectively ensure the uniform implementation of SPS measures across the country. (Verbal <sup>d</sup> )

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Risk assessment supporting differing treatment under AQSIQ's Decree 44, Certification Requirements for Live Aquatic Products, which mandates different practices for imports.	Written <sup>a</sup>		
Concern that certain meat and poultry standards are significantly stricter than those set by Codex and are blocking the entry of imports; standards for domestically produced meat and poultry; scientific rationale and risk assessments for standards for imported products.	Written <sup>a</sup>		The standards applied to domestic meat and poultry products are the same as those applied to imported ones. These standards are all established on the basis of relevant international standards. The standards for poultry meat were notified to the Technical Barriers to Trade (TBT) Committee in 2002 and modification to them is underway in accordance with the comments made by Members. (Verbal <sup>d</sup> )
Extent to which China has unified sanitary and phytosanitary measures applied to domestic and imported products.		EC – Written <sup>b</sup>	China respects the principle of non-discrimination in the course of developing and implementing SPS measures. For products with identical risks, China's SPS measures, especially end product criteria, are applied equally to domestic and imported products. (Verbal <sup>d</sup> )
Steps taken to ensure that the principle of non-discrimination with regard to expanded list of products subject to health certification system is fully respected.		EC – Written <sup>b</sup>	The recent standards revised or developed by the Ministry of Health, in which some Members are interested, will also apply equally to domestic and imported products once they are approved. (Verbal <sup>d</sup> )
Steps taken to eliminate multiple or duplicative control procedures and to avoid imposing requirements exclusively on imported products subject to health certification system.		EC – Written <sup>b</sup>	
Steps taken to ensure that the same conformity assessment procedures apply to both imported and domestic products subject to health certification system.		EC – Written <sup>b</sup>	
<b>Inspection and approval procedures</b>			
Description of the steps to ensure that Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff, and Administrative Measures for Entry Animal and Plant Quarantine, comply with its obligations of the Agreement on the Application of Sanitary and Phytosanitary Measures.	Written <sup>a</sup>		<p>The procedures set forth in two decrees, namely, AQSIQ Decree No. 7, <i>Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuffs</i>, as well as AQSIQ Decree No. 25, <i>Administrative Measures for Import Permit for Entry of Animal and Plant Quarantine</i>, apply equally to all countries exporting animals and plants as well as their products to China. (Verbal<sup>d</sup>)</p> <p>The procedures and processing periods for the application and issuance of import permits are clearly specified in Decree No. 7 and Decree No. 25, that also stipulate that all importers are equally eligible to submit application as long as they fulfill the requirements of applying for import permits. All the applications will be accepted and approved within 9 to 30 working days by AQSIQ if they are in conformity with the regulations identified in the Quarantine Law</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			and its Regulation of Implementation as well as AQSIQ Decree No. 25. To facilitate the application for the import permit, since 1 September 2003, AQSIQ has introduced on-line application whereby importers may file the application through internet access from their own office. This practice has remarkably reduced the cost of application and improved the efficiency of approvals. This makes the issuance of import permit conform to the regulations identified in Article 8 and Annex C of the SPS Agreement. (Verbal <sup>d</sup> )
Information on the content of Administrative Regulations on the Review and Permission for Entry of Quarantined Imported Animal and Plant Products and compliance both with China's accession commitments and with the SPS Agreement.		Chinese Taipei - Written <sup>c</sup>	
<b>International standards and consistency</b>			
Policy and schedule to align Chinese sanitary and phytosanitary measures with relevant international standards where appropriate.		EC – Written <sup>b</sup>	The Government of China attaches great importance to the principle that SPS measures shall be based on international standards. In December 2001, AQSIQ issued "Regulatory Measures Governing the Adoption of International Standards" (AQSIQ Decree No. 10), which stipulates clearly the principles and procedures for adopting international standards. (Verbal <sup>d</sup> )
Risk assessment as basis for sanitary and phytosanitary measures when measures do not conform to international standard guidelines or recommendations.		EC – Written <sup>b</sup>	
Measures to ensure consistent and uniform application of China's sanitary and phytosanitary measures throughout the country, avoiding unnecessary additional regional/local regulations and standards imposed by regional/local authorities.		EC – Written <sup>b</sup>	China is a centralized country, and all the SPS measures (including national standards related to SPS) developed by the central government are enforced nation-wide. The Constitution of China and the current legal and standards framework can effectively ensure the uniform implementation of SPS measures across the country. (Verbal <sup>d</sup> )
<b>Less trade restrictive measures</b>			
Consideration of other less trade restrictive means to achieve the objective of consumer protection and information for food and cosmetics.		EC – Written <sup>b</sup>	
Consideration of relevant international standards by the Codex Alimentarius and International Office of Epizooties/Office International de Epizooties (OIE).		EC – Written <sup>b</sup>	
Consideration for steps to improve the coordination of the different administrations that have a regulatory competence in the SPS field (which are, <i>inter alia</i> , AQSIQ, the Ministry of Agriculture, the Ministry of Health and		EC – Written <sup>b</sup>	



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
the State Food and Drug Administration).			
Consideration for adopting measures rationalizing the repartition of competence between the different administrations that have an overlapping role in SPS issues.		EC – Written <sup>b</sup>	
<b>Bovine Spongiform Encephalopathy (BSE) related measures</b>			
China's belief that the internationally recognized standards (WHO and OIE) in connection with ingredients derived from cattle and sheep tissues coming from countries and regions affected by BSE do not fulfill the level of protection set up by China.		EC – Written <sup>b</sup>	In March 2002, to protect the health and life security of the people of China, the Ministry of Health and AQSIQ issued a joint decree which prohibits the import and sale of cosmetics containing ingredients derived from cattle and sheep tissues coming from countries and regions affected by BSE. At the same time, China classified the raw materials with BSE risks and takes different measures on those with lower risk, thus reducing the burden on cosmetics importers to some extent. (Verbal <sup>d</sup> )
Scientific basis for deviating from the existing international standards, as required in Article 2 of the SPS Agreement, for measures introduced which relate to import restricting on a range of products related to BSE.		EC – Written <sup>b</sup>	
Level of protection and scientific justification applied by China to the imports in comparison with the level of protection applied to national production.		EC – Written <sup>b</sup>	
Consideration of other less trade restrictive alternatives on BSE related measures.		EC – Written <sup>b</sup>	
<b>Proportionality of measures</b>			
Steps to ensure that proportional response in accordance with Article 5 of the SPS Agreement is adapted to risk, including a measure restricting imports on all foodstuffs of animal origin from another member country as a response to a single positive interception of a veterinary drug residue in a single consignment of casings and with no positive interceptions having been reported in other food products before the measure was introduced.		EC – Written <sup>b</sup>	As expressed in the notification, the measures taken in AQSIQ Notice No. 36 are based on the fact that chloramphenicol residues were detected not only in milk powder and veal from the Netherlands by France and Germany, but also in salted casings from the Netherlands by China at a later stage. It is a provisional emergency measure taken following unsuccessful consultations with the Netherlands. Even after the measure came into force, China still detected chloramphenicol in animal products originating from the Netherlands in a number of cases. In addition, some other Members have also identified chloramphenicol in poultry meat and aquatic products imported from the Netherlands. According to the explanation by the Netherlands, the reason for the existence of chloramphenicol in casings exported to China is that there is chloramphenicol in feedstuffs imported from Eastern European countries. (Verbal <sup>d</sup> )

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			On the basis of relevant information and promises provided by the Netherlands, China has revoked the restriction on some products and conditionally lifted the import ban on dairy products and casings. At the moment, Chinese experts are studying the investigation report on the residue control system of the Netherlands and coming to a final appraisal on the basis of the study. The administrative decision by AQSIQ will be made as soon as possible in line with the professional findings. (Verbal <sup>d</sup> )
China's citation of Article 5.7 when defending proportional response measure.		EC – Written <sup>b</sup>	
<b>Application of the principle of regionalization</b>			
Justification for non-application of measures in line with Article 6 of the SPS Agreement (the application of the principle of regionalization) when China introduced a measure restricting imports of porcine origin from France due to Classical Swine Fever; circumstance under which provisions related to principle of regionalization would be applied.		EC – Written <sup>b</sup>	China respects and follows the principle of regionalization provided for in Article 6 of the SPS Agreement and treats animal and plant diseases on the basis of this principle. China encourages Members to submit applications for regionalization in written form and provide the necessary documents to prove their status as indicated in Article 6.3 of the SPS Agreement. China will make the decisions after evaluation and inspection tours to the applicant's territory in a timely manner. (Verbal <sup>d</sup> )

Source: GAO analysis of WTO documents.

Note: An additional document source is a committee report detailing verbal statements made during meeting: G/SPS/R/31; meeting dated 10/29/03–10/30/03.

<sup>a</sup>Communication from U.S.: G/SPS/W/139; dated 10/3/03.

<sup>b</sup>Communication from European Communities: G/SPS/W/137; dated 9/30/03.

<sup>c</sup>Communication from Chinese Taipei: G/SPS/W/138; dated 10/1/03.

<sup>d</sup>Communication from China (verbal statement): G/SPS/GEN/452; dated 10/29/03–10/30/03.

Committee on Subsidies and Countervailing Measures (SCM)

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Subsidies notification</b>			
Status of China's collection of information for its subsidy notification, and submission of its subsidy notification.	Written, <sup>a</sup> Verbal <sup>d</sup>	EC –Written, <sup>b</sup> Verbal <sup>d</sup>	China attached great importance to making such notifications because it was their view, and they believed that it was also the view shared by many, that making such notifications was conducive to the sharing of information and also for improving the transparency of the domestic processes of different countries. China wished to reaffirm its commitment to fulfilling its notification obligation. (Verbal <sup>d</sup> )  Concerning the notification obligation of China, China stated that it was very serious about fulfilling its notification obligations and that it was in the process of improving its notification system so as to be up to the standard set by the WTO. (Verbal <sup>d</sup> )
Description of problems preventing China from making its notification under Article 25.1 of the Agreement.	Written <sup>a</sup>		
Type of information China relies upon to assemble its notification.	Written <sup>a</sup>		
<b>General</b>			
Details on subsidies available in the textile industry for manufacture with raw materials, financing of mill establishments and purchase of raw materials—type of subsidy, timeline of the program and recipients, role the China National Textile Industry Council plays to support subsidy programs for the textile industry.	Written <sup>a</sup>		China had terminated all export subsidies. For example, at present, China maintained no subsidies or subsidy schemes in the textile industry, which was in conformity with China's accession commitments. The China National Textile Industry Council referred to in the questions had not engaged in any work related to subsidy schemes. The delegate of China stressed that the reports were not true. Since accession to the WTO, China had embarked upon extensive efforts in the collection of subsidy information. A number of difficulties had been encountered during the process, including the partial understanding of the WTO notification requirements by local officials, under-performance of the domestic information collection system and varied criteria on statistics. Measures were being taken to address these issues, both on the national and sub-national level, for example, the strengthening of the communications between ranks of officials, briefings by WTO experts, and the translation of the technical cooperation handbook on WTO notification requirements. China was vigorously pushing forward work but that they were not in a position to give a specific time frame for the completion of it. (Verbal <sup>d</sup> )
List and explanation of all subsidies granted at the national and sub-national level to enterprises in the following sectors: leather and footwear; textiles and clothing; electric and electronic products; iron and steel; chemical; automotive industry.		Mexico – Written <sup>c</sup>	
Information on VAT rebate program granted for imports of scrap copper in accordance with required subsidy notification format, including the recipients of the rebate, the amount of the rebate and how the administering	Written <sup>a</sup>	EC – Written, <sup>b</sup> Verbal <sup>d</sup>  Japan – Verbal <sup>d</sup>	Questions in this regard had already been addressed in the TRM of the Committee on Market Access on 20 October 2003. China felt it preferable not to repeat those responses in the SCM Committee meeting due to the limited time. (Verbal <sup>d</sup> )

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
authorities ensure that rebates granted are not in excess of rebates paid.			
Status of elimination of "subsidies provided to certain state-owned enterprises which are running at a loss"; decree or government document that ended subsidies.	Written, <sup>a</sup> Verbal <sup>d</sup>		It was established policy to eliminate such subsidies provided to state-owned enterprises running at a loss. Allegations had been made in the U.S. statement that, according to some recent Chinese press reports, the Government was still in the process of eliminating this program instead of terminating the whole program by the year 2002. Request made for the U.S. delegation to provide China with more detailed information with regard to these press reports, such as the source of the reports, the time when the reports had been published and the sectors, industries or enterprises which were involved in such reports, so as to facilitate China's efforts in making appropriate responses to the question. (Verbal <sup>d</sup> )
Identification items reduced from or added to the list of products or services subject to price controls, and explanation of extraordinary circumstances supporting each added product or service.	Written <sup>a</sup>		China had reduced the scope of products and services and the government price control and that vegetable oil had been lifted from the list of Annex 4 of China's Accession Protocol in 2001. China had not, and did not, plan to expand the scope of products in services subject to state pricing or guidance pricing and that any changes to the scope of these products and services would be published in the China Foreign Trade and Economic Cooperation Gazette. (Verbal <sup>d</sup> )
Information on measures granted to companies to fulfill export requirements stated on the Shanghai Foreign Investment Center website; explanation of how measures for companies fulfilling export requirements are compatible with obligations.		EC – Written <sup>b</sup>	The web site of the so-called Shanghai Foreign Investment Centre was not a government web site and information it posted was not authoritative and did not have binding power. Members could get access to the relevant laws and regulations through the government designated journal: the China Foreign Trade and Economic Cooperation Gazette. (Verbal <sup>d</sup> )
Implication on the Shanghai Foreign Investment Center website that state owned companies enjoy preferential supply of water, electricity, transport and telecommunication		EC – Written <sup>b</sup>	There was no such practice as different pricing for energy, water, power, transportation and telecommunications between state-owned enterprises and other types of enterprises. The practice of multiple pricing for one commodity or service had been entirely eliminated in China. State pricing and government guidance pricing only applied to goods and services, regardless of the ownership of the enterprises. Enterprises of all types, including state-owned enterprises, foreign investment enterprises and foreign enterprises in China were treated on an equal footing in the process of determining government pricing and guidance pricing. (Verbal <sup>d</sup> )
Requirements for a company to be considered a foreign direct invested		Mexico – Written <sup>c</sup>	Article 3 of the Law of the People's Republic of China (PRC) on Wholly Foreign-owned

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<p>enterprise devoted to exports; availability of income tax exemptions or rebates, and availability of additional exemptions and rebates granted to such companies set up in the special economic zones; relation between rebates and export results.</p>			<p>Enterprises stipulated that the establishment of a wholly foreign-owned enterprise shall be conducive to the development of China's national economy. The State encouraged the establishment of wholly foreign-owned enterprises with export orientation and adoption of advanced technology. Article 17 stipulated that wholly foreign-owned enterprises shall pay taxes in accordance with relevant state regulations and may enjoy preferential treatment of tax reduction or redemption. Paragraphs 7 and 8 of Article 75 of the Rules of Implementation of the Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises stipulated that after expiration of the period of income tax exemption and the reduction the foreign investment enterprises whose export volume for a year exceeded 7 percent of their production for the same year were entitled to a 50 percent rebate of the normal rate of income tax as provided by tax law. The enterprises located in special economic zones, or economic and technology development zones, or any other exporting enterprises that already enjoyed an income tax rate of 15 percent, would pay income tax at the rate of 10 percent if they also met the above requirements. The consistency of this provision with the SCM Agreement was currently being reviewed. (Verbal<sup>d</sup>)</p>
<p>Explanation of stipulation in the Foreign Investment Enterprise Law, which appear to require enterprises with foreign capital to export a percentage of their production in order to be eligible for tax breaks.</p>		<p>Mexico – Written<sup>c</sup></p>	<p>There were three laws governing foreign investment enterprises, namely the Law on Chinese Foreign Equity Joint Ventures, the Law on Chinese Foreign Contractual Joint Ventures, and the Law on Wholly Foreign-Owned Enterprises. Among these three laws, only the Law on Wholly Foreign-Owned Enterprises used to contain the requirement on export performance. As part of the preparations for joining the WTO in October 2000, Article 3.1 of the Law on Wholly Foreign-Owned Enterprises was amended as follows: the establishment of a wholly foreign-owned enterprise shall be conducive to the development of China's national economy. The State encouraged the establishment of wholly foreign-owned enterprises with export orientation and adoption of advanced technology. The original provision, that the establishment of a foreign invested enterprise must adopt advanced technology or export all or most of its products, had been replaced. (Verbal<sup>d</sup>)</p>
<p><b>Countervailing Duty Laws (CVD)</b></p>			
<p>Gaps in CVD legal structure, including in the areas of interim and expiration reviews, rules and procedures on</p>	<p>Verbal<sup>d</sup></p>		<p>So far, China had not initiated any countervailing investigations but that China was, however, in the process of making such</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
access to non-confidential information, and undertakings.			legislation just in case such an investigation might be initiated in the future. That delegates could be reassured that China would honor its commitments in the WTO and continue to bring its legislation in line with WTO rules, including in the field of countervailing investigations. (Verbal <sup>d</sup> )
Notification of all laws and regulations that had a bearing on countervailing duty investigations and reviews.	Verbal <sup>d</sup>		The delegate of China noted that there was another procedural request contained in the last paragraph of the statement by the U.S., namely to reflect China's CVD laws and regulations on Chinese subsidy practices which had not yet been notified in the TRM report of the Committee to the Council for Trade in Goods, as well as that the relevant minutes, Members' questions and China's responses be appended or referenced in that report. The delegate of China stated that he wished to consult his colleagues from the U.S. as to the legal basis for such a request before China made appropriate responses to this request. (Verbal <sup>d</sup> )
Clarification of the oversight role of the State Council Tariff Commission, including when it may exercise discretion in the course of an investigation; encouragement for China to establish procedures for publicizing the Tariff Commission's decisions in countervailing duty actions.	Verbal <sup>d</sup>		This question had been repeated a number of times both in the Committee on Safeguards and in the Committee on Anti-Dumping Practices. The role of the Tariff Commission was quite clear, as referred to, or provided for, in the three regulations that China had so far promulgated, namely the regulations on anti-dumping investigations, the regulations on countervailing investigations and the regulation on safeguards. The role, to put it simply, was for the Tariff Commission to make determinations on the rates of the anti-dumping, countervailing or safeguards duty on the proposal of the former MOFTEC, now MOFCOM. The duty rates that it decided would not exceed the proposed rate of MOFCOM. This had already been made quite clear by China. (Verbal <sup>d</sup> )

Source: GAO analysis of WTO documents.

Note: An additional document source is a communication from China: G/SCM/N/104; dated 10/24/03.

<sup>a</sup>Communication from U.S.: G/SCM/Q2/CHN/6; dated 10/27/03.

<sup>b</sup>Communication from European Communities: G/SCM/Q2/CHN/5; dated 9/30/03.

<sup>c</sup>Communication from Mexico: G/SCM/Q2/CHN/4; dated 10/31/02.

<sup>d</sup>Committee report detailing verbal statements made during meeting: G/SCM/111; meeting dated 10/28/03.

Enclosure XI

Committee on Technical Barriers to Trade (TBT)

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Notifications</b>			
Steps to ensure China notifies all regulations meeting TBT Agreement criteria, not just those issued by China's State Administration of Quality, Supervision, Inspection, and Quarantine (AQSIQ).	Written, <sup>a</sup> Verbal <sup>e</sup>		The content of mandatory standards in China conforms to the definition of technical regulations under the TBT Agreement and forms a main component of Chinese technical regulations. Since accession to the WTO, China has notified 19 mandatory standards to the WTO Secretariat under Article 2 of the TBT Agreement. Relevant terms are also used according to the TBT Agreement in the modification of existing measures. (Written <sup>d</sup> )
Notification of changes to the Chinese Compulsory Certification System (CCC) Mark certification scheme, which permit applicants to conduct factory self-inspection and to proceed with CCC Mark issuance on an interim basis while awaiting a full factory inspection by designated certification bodies; request for catalogue of products subject to CCC certification.	Written <sup>a</sup>		
Notification of proposals under TBT Agreement.	Verbal <sup>e</sup>		As to transparency and coordination among domestic agencies involved in TBT notifications, the Chinese representative informed the Committee that on 30 October 2003, China had replied to the same question during the SPS Annual Transitional Review (TRM). (Verbal <sup>e</sup> )
<b>International standards</b>			
Plans to address China's limited definition of international standards to those promulgated by the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC) and International Telecommunications Union (ITU); reason for limiting options to only three standardizing bodies.	Written <sup>a</sup>		China recognized the importance of adopting international standards, which had been used as a basis for the development of its technical regulations, standards and conformity assessment procedures (CAPs). A publication of AQSIQ had recognized as international the standards issued by 42 international organizations. (Verbal <sup>e</sup> )
<b>Conformity assessment procedures</b>			
Status of China's work with conformity assessment bodies to implement commitments to undertake conformity assessments for imported and domestic products.	Written, <sup>a</sup> Verbal <sup>e</sup>		The same technical regulations, standards and conformity assessment procedures are applied to both imported and domestic products. For imported and domestic products, all bodies and agencies shall issue the mark and charge the same fee, and provide the same processing periods and complaint procedures. The choice of the conformity assessment bodies is at the discretion of the applicant. (Written <sup>d</sup> )
Updated list of domestic and foreign conformity assessment bodies that are recognized by China.	Written <sup>a</sup>		China Quality Certification Center, China Certification Center for Electromagnetic Compatibility, China Certification Center for Security and Protection, China Certification Center for Agricultural Machinery, China Certification Center for Safety Glazing, Beijing

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			Zhong Hua Combination Quality Certification Co. Ltd., Certification Center for Fire Products, Ministry of Public Security, China Certification Center for Automotive Products, Center of Boiler and Pressure Vessel Inspection and Research, the National Institute for the Control of Pharmaceutical and Biological Products, the Maritime Administration of the People's Republic of China and Register of Shipping at all levels, Register of Fishing Vessels of the People's Republic of China and Local Register of Fishing Vessels. (Written <sup>d</sup> )
Steps taken and planned to eliminate duplicative conformity assessment requirements, such as between the CCC Mark requirements and those of the Ministry of Information Industry, or Health/ Food and Drug Administration.	Written <sup>a</sup>		There was no discrimination, nor multiplication or duplication of CAPs between imported and domestic products. (Verbal <sup>e</sup> )
<b>Chinese Compulsory Certification (CCC) system</b>			
Emphasis that National Treatment should be ensured in the implementation of the new Compulsory Certification system.		EC – Written <sup>b</sup>	
Request for China to grant spare parts and components an exemption, following a procedure as clear and easy as possible.		EC – Written <sup>b</sup>	The spare parts and components to which the CCC system applied and that were listed in the First Catalogue of Products were exempted from a separate certification; but if those goods were imported and sold separately, they would require a separate mandatory certification. Those goods, whether produced domestically or imported, for maintenance, end-use, or the maintenance of products that were no longer manufactured, were exempted from the mandatory certification. (Verbal <sup>e</sup> )
Concern with the issue of spare parts and components, especially when spare parts were supplied separately for the purposes of repair or maintenance, or when components were assembled in China.		EC – Verbal <sup>e</sup>	
Request for China to avoid subjecting end products and their components to separate certification.		EC – Written <sup>b</sup>	
Request for China to make clear with which authority the ultimate decision lies as to whether or not the mandatory certification is required, in cases of uncertainty.		EC – Written <sup>b</sup>	
Clarification whether fixed fees and conformity assessment fees reflect the real cost of certification and do not discriminate between domestic and imported products.		EC – Written <sup>b</sup>	Specific conditions were set out to apply for an exemption from the CCC system; a unified fee scheme applied to both imported or domestic goods, and any difference in fees was due to the different testing costs. (Verbal <sup>e</sup> )
Concern with the issue of fees for conformity assessment that were rather expensive; there appeared to be variations according to the specific product under question that could lead to discrimination between the fees applied to domestic and to importing producers.		EC – Verbal <sup>e</sup>	
Specification if and when so-called factory inspections included in conformity assessment procedures are		EC – Written <sup>b</sup>	



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
compulsory.			
Request for China to ensure local manufacturer of like products are subject to similar treatments and conditions.		EC – Written <sup>b</sup>	
Procedures implemented to ensure that confidentiality of technical information about products is dealt in a manner that legitimate commercial interests are protected at both national and local levels.		EC – Written <sup>b</sup>	The certification bodies were obliged to protect the confidentiality and non-disclosure of the technical information and trade secrets that were required to obtain certificates. Mutual recognition of results should be based on bilateral or multilateral agreements between governments or organizations duly authorized by the government. China supported the recognition of certification/testing results on an equal basis; in this sense China had joined the International Electrotechnical Commission for Electrical Equipment (IECEE); and, therefore, recognized the CB certificates issued in the context of the IECEE system. (Verbal <sup>e</sup> )
Concern with the issue of confidentiality of the detailed technical documentation support to be supplied by manufacturers.		EC – Verbal <sup>e</sup>	
Confirmation about whether products already certified according to the previous regime (for instance, Law on Import and Export Commodity Inspection (CCIB) certification) need to undergo the new certification system.		EC – Written <sup>b</sup>	
Concern with the issue of the recognition of different conformity assessment procedures, particularly where products had already been certified according to the previous system.		EC – Verbal <sup>e</sup>	
Explanation of how far foreign conformity assessment will be taken into consideration in the Chinese procedures, notably in sectors where similar requirements apply.		EC – Written <sup>b</sup>	
<b>Automobile</b>			
Hurdles caused by the repetition of tests for several parts and/or components; China's willingness to accept the results of foreign conformity assessment procedures based on practically the same standards.		EC – Written <sup>b</sup>	
Concern that the approval marks for automobiles - while it seemed that China did not accept United Nations Economic Commission's (UNECE) approval marks, China's standards were basically the same standards as UNECE—could lead to a repetition of tests for several parts, and to different certificates for identical products when produced in different plants.		EC – Verbal <sup>e</sup>	
Trade obstacle created by China's Unit Classification Guidelines, which deviate from international practices; recommendation that China accede to the 1958 United Nations Economic Commission for Europe (UNECE)		EC – Written <sup>b</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Agreement and sign up to the majority of the existing Geneva regulations.			
<b>Pharmaceuticals</b>			
Implementation of newly enacted rules in conformity with the requirements stemming from the WTO-TBT Agreement rather than requiring higher quality standards on imported drugs compared to domestic products standards and international standards.		EC – Written <sup>b</sup>	The import registration for pharmaceutical products exported to China required those products to meet both the Chinese and the national standards of the country of origin. Therefore, domestic and foreign pharmaceutical producers were treated equally. (Verbal <sup>e</sup> )
Consistency of standards used for active pharmaceutical ingredients (API) in the import drug license registration (IDL) requirements and request for China to respect transparency obligations.		EC – Written <sup>b</sup>	
Concern on the so-called "active pharmaceutical ingredients," given the hurdles encountered by EC producers when exporting to China, and the import drug license registration that was required, the specifications of which had been the subject of frequent changes without external communication or consultation.		EC – Verbal <sup>e</sup>	
<b>Cosmetics</b>			
Discrimination of importers required to file an application to the Ministry of Health to obtain a pre-market registration, which is lengthy and onerous and requires the disclosure of confidential data, whereas domestic producers notify the local authorities two months after the launch of the product.		EC – Written <sup>b</sup>	Imported cosmetics were subject to an assessment and approval of their safety and hygiene qualities and to a labeling approval. (Verbal <sup>e</sup> )
Concern that the pre-market registration for cosmetics, performed by the Ministry of Health, was lengthy and onerous, and appeared to be different from the one required for domestic producers. There was another pre-import registration for imported cosmetics, required by AQSIQ, which apparently established a double registration system for imported products.		EC – Verbal <sup>e</sup>	
Request for China to phase out current expensive and time-consuming double registration system by AQSIQ, before import and repeated at local level, for imported cosmetics.		EC – Written <sup>b</sup>	
Request for China to reconsider its legislation on labeling and advertising in order to achieve transparency, compliance with global practice and a rule-based system.		EC – Written <sup>b</sup>	
Request for the Chinese authorities to formally endorse the important achievements in de facto removal of BSE-related trade impediments.		EC – Written <sup>b</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Food labeling</b>			
Request for China to ensure that registration procedure for a label be no more time-consuming than necessary (currently, it takes more than 90 days).		EC – Written <sup>b</sup>	The approval of food labels had been regularly completed within the time limits set out in the pertinent regulations. (Verbal <sup>e</sup> )
Request for China to apply transparent criteria for the approval of labels. In particular, the best before indication for wines and spirits should follow international practice.		EC – Written <sup>b</sup>	The Chinese regulations on food labeling applied to all pre-packaged food to be sold in China, including wines and spirits; and the information to be provided was not discretionary, since it had to meet the pertinent regulations. (Verbal <sup>e</sup> )
Request for China to allow economic operators to decide how to present the required Chinese-language information on the product label(s) as long as the objective of consumer information is met.		EC – Written <sup>b</sup>	Food labels for imported food products were subject to approval in the Chinese language. (Verbal <sup>e</sup> )
Request for China to accept that approved labels are attached after the goods enter China, but before the AQSIQ inspection takes place.		EC – Written <sup>b</sup>	Under Chinese regulation that food labels for imported food products are subject to approval in the Chinese language, there is a requirement to accompany the request with the sales certificate of the country of production. (Verbal <sup>e</sup> )
Request for China to clarify the labeling requirements for products in “large-scale” or bulk packaging.		EC – Written <sup>b</sup>	Imports of bulk products for food processing did not require a label. (Verbal <sup>e</sup> )
Request for China to guarantee that only the trademark owner/producer could apply for the label, in order to protect products against counterfeiting.		EC – Written <sup>b</sup>	
<b>Chemicals and environment</b>			
Reason why China did not submit WTO notification regarding Provisions on the Environmental Administration of New Chemical Substances.		Japan – Written <sup>c</sup>	
Reason why China will not accept ecotoxicological data of new chemical substance data obtained by reliable laboratories in other countries which conduct the same tests as those in China.		Japan – Written <sup>c</sup>	The data testing of foreign certification bodies was accepted in China, provided that these bodies had been accredited by the competent national institution. The ecological and toxicological information on those products should include the information and data obtained from tests carried out in China. (Verbal <sup>e</sup> )
Detailed time schedule, including the time for the compilation of the accurate inventory of existing chemicals, the establishment of detailed administrative rules, and the time for the Chinese authority to start receiving the notification under this law.		Japan – Written <sup>c</sup>	The inventory of existing chemical substances consisted of the chemical substances produced, sold, utilized in or imported into China from 1 January 1992 to 30 April 2003. Foreign chemical companies could access the inventory through the Internet. (Verbal <sup>e</sup> )
Progress made in consideration of comments from interested parties on draft Import and Export Registration Regulations of Dangerous Chemicals; request for China to take necessary procedures with regard to the regulation in question, including WTO notification.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	Currently, the General Administration of Environment Protection is revising the Regulatory Provisions on Initial Imports of Chemical Products and Import and Export Environmental Requirements on Hazardous Chemical Products. At present, this draft is publicly available so as to invite comments from related parties and is in full compliance with the WTO national treatment principle and

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			relevant international practice on regulatory provisions. (Written <sup>d</sup> )  As to hazardous chemicals, China was in the process of revising a final text. (Verbal <sup>e</sup> )

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: G/TBT/W/231; dated 10/20/03.

<sup>b</sup>Communication from European Communities: G/TBT/W/227; dated 10/6/03.

<sup>c</sup>Communication from Japan: G/TBT/W/229; dated 10/15/03.

<sup>d</sup>Communication from China: G/TBT/W/235; dated 11/6/03.

<sup>e</sup>Committee report detailing verbal statements made during meeting: G/TBT/M/31; meeting dated 11/7/03.

Committee on Trade in Financial Services

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Insurance</b>			
Geographic restriction of foreign non-life firms as branches to be lifted 3 years after accession; foreign-invested insurance firms' ability to expand geographically.	Written, <sup>a</sup> Verbal <sup>f</sup>	Canada – Written <sup>e</sup> Australia – Verbal <sup>f</sup> Japan – Verbal <sup>f</sup>	Three years after China's accession (i.e. starting from 11 December 2004), there will be no geographic restrictions on foreign insurance companies anymore. By that time, foreign insurance companies meeting certain qualifications will be allowed to apply for the establishment of operational institutions nationwide. However, they must approach China Insurance Regulatory Commission (CIRC) for approval. This approval procedure was based on the prudential supervision of the regulatory body over insurance enterprises and applied to both foreign and domestic insurers, thus granting national treatment to all foreign insurance companies. Furthermore, three years after China's accession to the WTO, when geographic restrictions are lifted, provincial branches of foreign insurance companies will be allowed to conduct insurance business in any city or area within the province pursuant to relevant regulations of CIRC. (Verbal <sup>f</sup> )
Ability of domestic insurers to apply to be licensed at the city level or the provincial level, and a provincial license allows a firm to offer services to any city or area within the province.		Canada – Written <sup>e</sup>	
Limited number of foreign insurance branches that can open at one time and in the types of geographic licenses granted; justification for differential treatment.	Written <sup>a</sup>		
Reduction of requirement for registered capital for low risk insurance models, with the RMB 200 million registered capital requirement becoming a ceiling rather than a uniform requirement.	Written <sup>a</sup>		
High minimum capital requirements for foreign insurance companies.		Canada – Written <sup>e</sup>	The minimum capital requirements of an insurance company, be it domestic or foreign-invested, were set out in the "Insurance Law", which was adopted by the National People's Congress of China. These requirements were integral parts of the prudential regulatory framework and applied to both domestic and foreign insurers. The determination of minimum capital requirements was a legitimate right of a WTO Member's regulatory authorities and went beyond the scope of General Agreement on Trade in Services (GATS) rules and China's accession commitments in the insurance sector. Therefore, it was not appropriate to discuss it under the Transitional Review Mechanism. (Verbal <sup>f</sup> )
Concern about extremely high level of minimum capital requirement.	Verbal <sup>f</sup>		
Confirmation of minimum capital requirement.		Japan – Verbal <sup>f</sup>	
Elimination of the redundant RMB 20 million capital requirement for branching.	Written <sup>a</sup>		Regarding the capital requirement for the establishment of new branches, China was currently drafting the detailed rules of the

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Time schedule for China's issuance of Regulations on the Administration of Foreign-Invested Insurance Companies.	Written <sup>a</sup>		Administrative Regulation on Foreign-Invested Insurance Companies and working on the revision of the Administrative Regulation on Insurance companies, where consideration was being given to the possible relaxation of capital requirements for the establishment of new branches. However, this capital requirement was aimed at prudential regulation and was irrelevant to China's accession commitments. (Verbal <sup>f</sup> )
Allowance of geographic expansion of joint venture insurers with more than 50 percent foreign ownership in the current ownership structure.	Written, <sup>a</sup> Verbal <sup>f</sup>		The representative of China referred to the question by the United States—whether a joint venture with foreign ownership exceeding 50 percent would be allowed to set up branches. He replied in the affirmative, and added that after geographical restrictions had been lifted three years after accession, according to relevant laws and regulations, all joint venture insurance companies would be allowed to establish branches. (Verbal <sup>f</sup> )
China's implementation of its commitment to open its pension market to international participation by 11 December 2004.	Written, <sup>a</sup> Verbal <sup>f</sup>	Australia – Verbal <sup>f</sup>	Concerning future liberalization of insurance services, China had made enormous efforts to comply with the broad and substantive commitments in this sector. For the phase-in commitments in the insurance sector (e.g. elimination of geographical restrictions and the opening of pension services), China would implement its commitments in due time. It was not appropriate to discuss future liberalization in the context of the TRM. (Verbal <sup>f</sup> )
Foreign life operations' ability to receive several branch licenses at one time or on a "one application for one city" basis, unlike domestic companies.		EC – Written, <sup>b</sup> Verbal <sup>f</sup>	With regard to the so-called national treatment for the approval of the number of branches of foreign insurers, it was not appropriate to set up a compulsory number of licenses to be issued to foreign insurers by CIRC at one time. Licenses were issued on the basis of prudential principle. China did not agree that the national treatment meant that CIRC had to issue licenses to branches of foreign insurers as many as their domestic counterpart. And there was not such a commitment in China's schedule. (Verbal <sup>f</sup> )
Application of contemplated reduction in minimum capital requirements to reinsurance branches.		EC – Written, <sup>b</sup> Verbal <sup>f</sup>	
Permission for licensed foreign-invested insurers in Shanghai, Guangzhou, Dalian, Shenzhen and Foshan to provide services nationally based on existing licenses.		Japan – Written <sup>c</sup>	
Relationship between different capital and license requirements; relationship between regional and national licenses under Insurance Company Administrative Measures and Rules of Regulations on Administration of Foreign-Funded Insurance Companies.		Japan – Written <sup>c</sup>	
Permission of all joint-venture insurers to issue insurance contracts		Japan – Written, <sup>c</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
denominated by foreign currency; reason for regulation that foreign-denominated insurance contracts are prohibited, and on specific criteria upon which approval is based.		Verbal <sup>f</sup>	
Consistency between (1) a regulation prohibiting foreign-invested insurers to engage in cross-border reinsurance with their associated enterprises unless they are otherwise approved by CIRC, and (2) a regulation requiring a simple approval from CIRC to engage in this line of service, with China's commitments that licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary; justification for prohibition and criteria CIRC uses to base consideration.		Japan – Written <sup>c</sup>	Regarding insurance, China said that several questions related to CIRC's daily regulatory work over foreign-invested insurance companies. For example, the questions raised by Australia and Canada on approval requirements and procedures for new life insurance products, on reserving requirements for life insurance products, on outward and inward cross-border insurance with associated enterprises, and on the management of foreign exchange control of insurance business. These regulatory measures were based on prudential principles and were legitimate. CIRC applied these measures to both foreign and domestic insurers on an equal basis. The regulatory rights of CIRC should be respected. Besides, the regulations governing the above-mentioned issues were all published and publicly available. (Verbal <sup>f</sup> )
Approval requirements and procedures for new life insurance products for foreign-invested firms and domestic firms; requirement for prior approval by CIRC for each new life insurance product; requirement for product's re-approval for sale in each separate city that a foreign-invested life insurance firm operates in; differences in actual approval times for foreign-invested and domestic firm.		Canada – Written <sup>e</sup>	
Reason for recent changes introducing stricter reserving requirements for life insurance products; request for overview of recent changes to reserving requirements; request for information on further revisions to its life insurance reserving regulations and whether China has ensured that it is complying with its national treatment commitments in the design and implementation of these new reserve requirements.		Canada – Written <sup>e</sup>	
Rationale behind regulations such as multiple product requirements for the same insurance product; reasons for the reserving requirement for life insurance products.		Canada – Verbal <sup>f</sup>	
Complex multi-stage approval process for foreign establishment at new locations in the insurance sector.		Canada – Written <sup>e</sup>	
Streamline of insurance product approval process to avoid multiple approvals for insurance product in separate areas.		Australia – Verbal <sup>f</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Ability of Chinese owned vessel to buy insurance directly from an insurance company not incorporated or present in China; taxes applicable to such cross-border business; restrictions on the ability of a Chinese company to obtain foreign exchange to buy direct non-life insurance from insurance companies not incorporated or present in China.		Norway – Verbal <sup>f</sup>	
Requirement that an insurance company must have senior management personnel for the branch office who speak Chinese; criteria used to assess this qualification.		Canada – Written <sup>e</sup>	Regarding the questions on language requirements for senior management personnel of foreign-invested insurance companies, China said that CIRC had already changed the related qualification requirements contained in the measures governing the qualifications of senior management personnel of insurance companies. The language requirement was no longer in force. (Verbal <sup>f</sup> )
Requirement that foreign-invested firms obtain special written permission from the regulator before they can negotiate contractual deposits with local banks.		Canada – Written <sup>e</sup>	
<b>Banking</b>			
High minimum working capital requirements for direct branches of foreign banks.	Written, <sup>a</sup> Verbal <sup>f</sup>	EC – Written <sup>b</sup> Japan – Verbal <sup>f</sup> Chinese Taipei – Written, <sup>d</sup> Verbal <sup>f</sup> Canada – Verbal <sup>e</sup> Australia – Verbal <sup>f</sup>	China believed that a WTO Member was entitled to set its own minimum working capital requirements for branches of foreign banks. Some other WTO Members also had different working capital requirements for branches of foreign banks, although levels might differ. Secondly, China's minimum working capital requirement was a prudential requirement, which was set up according to the development level of its financial sector and the regulatory capacity of the financial authority. The requirement also tried to cater for the demands of foreign bank branches in terms of their business operation. Thirdly, along the same line, China also had working capital requirements for branches of domestic banks. However, with the improvement of the risk management system of foreign banks and the development of China's regulatory framework, China Banking Regulatory Commission (CBRC) would relax the minimum capital requirement for foreign banks accordingly. Finally, the Chinese representative reiterated that the determination of the minimum capital requirements was a legitimate right of a Member to regulate, and it was irrelevant to GATS rules and China's accession commitments. He expressed the hope that future TRM processes would not be bothered by such irrelevant questions. (Verbal <sup>f</sup> )
Requirements for minimum working capital and capital adequacy ratios required for each direct branch in China from the same bank.		EC – Written, <sup>b</sup> Verbal <sup>f</sup> Canada – Written <sup>e</sup>	
Draft regulation that would limit inter-bank financing to 40 percent of RMB liabilities of a bank.		EC – Written <sup>b</sup> Japan – Written, <sup>c</sup> Verbal <sup>f</sup> Canada –	With regard to the 40 percent limitation on interbank borrowing, the Chinese representative said that at present there was no such regulation for foreign banks. The requirement did not exist at this moment. China



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
		Written <sup>e</sup>	was of the view that future liberalization should not be discussed in the context of TRM. (Verbal <sup>f</sup> )
Requirement for 30 percent of the working capital of foreign branches to be deposited at a local bank listed by Chinese authorities or used to buy Government bonds.		EC – Written <sup>b</sup>	Some of the questions raised were related to CBRC's prudential regulation and administration of foreign invested banks (e.g., the requirement to deposit 30 percent of working capital of foreign banks at a local bank). These measures were for the purpose of regulating the operations of foreign banks, and were based on prudential principles. The objective was to keep away financial risks arising from the operation of foreign banks. These prudential regulations to prevent financial risks should also be respected. (Verbal <sup>f</sup> )
Reason for limited opening of foreign banks to one new branch per year, unlike Chinese banks; prudent restrictions in its licensing regime.		EC – Written, <sup>b</sup> Verbal <sup>f</sup> Japan – Verbal <sup>f</sup> Canada – Written, <sup>e</sup> Verbal <sup>f</sup> Australia – Verbal <sup>f</sup>	
Procedures and criteria used in determining the extent of local currency services that a foreign financial institution is allowed to engage in.		Japan – Written <sup>c</sup>	On the questions concerning the commitment to permit foreign financial institutions to provide local currency business to Chinese enterprises two years after accession. In that regard, China would implement those commitments in due time according to what was stated in the schedule. (Verbal <sup>f</sup> )
Multi-stage licensing process for banks as trade barrier for market access.		Chinese Taipei – Written, <sup>d</sup> Verbal <sup>f</sup> Canada – Written, <sup>e</sup> Verbal <sup>f</sup>	The licensing procedure for foreign banks was a domestic regulation issue in nature, based on the need of prudential regulation and in conformity with the internal working formality of China's regulatory body. This licensing procedure applied equally to foreign-invested banks and domestic banks. Secondly, according to China's research, many WTO Members had similar requirements with regard to licensing procedures for the approval of foreign banks. Certain developed-country Members also required a "preliminary review" or "pre-review" stage before final approval. Thirdly, at present, Members were engaged in discussions on a possible multilateral discipline on licensing procedures, and therefore it was inappropriate for the Committee to review China's licensing procedures before any possible discipline in the future. (Verbal <sup>f</sup> )
Plan and time schedule to introduce more flexibility into China's capital rules to help smaller firms compete on a more even footing.		Canada – Written <sup>e</sup>	
Reason for requirement that the value of a foreign bank's foreign currency deposits received within China shall not		Canada – Written <sup>e</sup>	There was one question on the requirement that the value of foreign banks' foreign currency deposits within China should not

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
exceed 70 percent of the value of its foreign currency assets within China; request for any details of China's plans to remove restrictions.			exceed 70 percent of the value of the banks' foreign currency assets within China. In reply, the representative of China said that prior to his country's accession, the ratio was 40 percent. After accession, the ratio was increased substantially, up to 70 percent. China would further relax this ratio during the five-year phase-in period mentioned in the schedule. (Verbal <sup>f</sup> )
<b>Motor vehicle financing</b>			
Plans to expedite applications submitted to obtain motor vehicle financing licenses.	Written <sup>a</sup>		
Deregulation of interest rate charged by motor vehicle financing entities.	Written, <sup>a</sup> Verbal <sup>f</sup>		
Condition that direct branching from abroad is not allowed.		EC – Written <sup>b</sup>	Auto financing regulation did not permit direct branching from abroad. The reasons for not allowing direct branching from abroad were the following. Firstly, auto-financing institutions belonged to non-banking financial institutions under China's regulatory system, the administration of which was conducted by CBRC pursuant to relevant regulations governing financial institutions. However, companies engaging in the auto financing business were regulated by different regulatory authorities in other Members. Therefore, China could not establish effective communication with foreign regulatory authorities. As a result CBRC's found it extremely difficult to exchange information with foreign regulatory bodies and to regulate. Secondly, this requirement applied to both domestic and foreign companies. For the purpose of prudential regulation, domestic auto financing enterprises were also not permitted to establish branches. (Verbal <sup>f</sup> )
Requirements that a shareholder of an auto-financing company must meet for certain level of total assets, revenues, and profitability.		EC – Written <sup>b</sup>	On the issue of the requirements imposed on auto-financing institutions (e.g. minimum capital requirements and others), the representative of China said that they were of a prudential nature, based on the fact that the auto-financing market in China was just at a beginning stage. The regulatory body had insufficient risk control capacity and lacked supervision experience. Besides, all these requirements, including minimum capital requirements, were non-discriminatory and applied to both foreign and domestic auto-financing companies. (Verbal <sup>f</sup> )
Conditions imposed on car financing institutions in order to be eligible to get a license, such as restrictions on total assets.		EC – Verbal <sup>f</sup>	
Condition of high minimum capital requirements.	Written, <sup>a</sup> Verbal <sup>f</sup>	EC – Written, <sup>b</sup> Verbal <sup>f</sup>	
Condition that auto-finance companies are not allowed to set up internal branches or subsidiaries.		EC – Written <sup>b</sup>	
Condition that deposit-taking from local car manufacturers does not seem to be allowed.		EC – Written <sup>b</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Condition that activities of an auto-finance company may be stopped if it loses in one year more than 50 percent of the capital or accumulates losses over three years representing more than 10 percent of the capital.		EC – Written <sup>b</sup>	
<b>Securities</b>			
Limitation that securities fund management companies manage assets of retail investors but are not allowed to manage assets of institutional investors.		EC – Written <sup>b</sup>	In accordance with China's existing laws and regulations, a fund management company, whether domestically-owned or joint-venture, was not allowed to manage assets for institutional investors because this service did not exist in China due to the special situation of the Chinese securities market. In other words, this service for institutional investors was a new service in China, and was therefore not covered by China's commitments. (Verbal <sup>f</sup> )
Limitation that only domestic securities, fund management or investment trust companies may hold the highest capital contribution, limiting the choice of partners for foreign investors in joint ventures.		EC – Written, <sup>b</sup> Verbal <sup>f</sup>	The questions on minimum capital requirements and licensing procedures, which were similar to the ones raised with regard to banking and insurance services, had already been answered. (Verbal <sup>f</sup> )
Complex multi-stage approval process for establishment of new locations for foreign participation in the fund management sector.		Canada – Written <sup>e</sup>	

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: S/FIN/W/35; dated 11/24/03.

<sup>b</sup>Communication from European Communities: S/FIN/W/32; dated 11/12/03.

<sup>c</sup>Communication from Japan: S/FIN/W/30; dated 9/29/03.

<sup>d</sup>Communication from Chinese Taipei: S/FIN/W/34; dated 11/19/03.

<sup>e</sup>Communication from Canada: S/FIN/W/33; dated 11/12/03.

<sup>f</sup>Committee report detailing verbal statements made during meeting: S/FIN/M/43; meeting dated 12/1/03.

Committee on Trade-Related Investment Measures (TRIMS)

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Automotive sector</b>			
Status of China's research and study to issue new automobile industrial policy and issuance of new Guidelines for Current Development of Automobile Industry.	Written <sup>a</sup>	Japan – Verbal <sup>d</sup>	Upon join the WTO, China has eliminated or ceased to implement the provisions like foreign currency balancing requirement, local content and etc., which were contained in the 1994 Automobile Industrial Policy. The newly drafted Policy on the Development of Auto Industry is now with the State Council for approval. During the process of enactment, we published the draft of new policy on the website for the opinions from all walks of the society. General Motors, Association of Automobile Industry in Japan and some companies in the European Union (EU) are among those who submitted comments. Afterwards, we have sent the draft directly to the companies in the industry, the research institute and scholars alike for their inputs, and explicitly require the Chinese parties of joint ventures to solicit the opinions of their foreign partners. Beside that, extensive and in-depth exchanges of ideas, discussions and consensus building have been conducted with many foreign auto makers on a number of specific issues. (Verbal <sup>d</sup> )
Legal steps to completely remove all restrictions on the categories, types or models of motor vehicles permitted for production.	Written <sup>a</sup>		According to Paragraph 205 of the Working Party Report on the Accession of China, the category authorizations by the Chinese Government could continue to distinguish between trucks and buses, light commercial vehicles and passenger cars. In the Policy on the Development of Automobile Industry, which is in the process of revision, the measures restricting the production under each category will be eliminated. The new Policy is now waiting for the approval from the State Council and will be enforced as soon as the legislative procedures are completed. (Written <sup>c</sup> )
Legal steps to raise the limit within which investments in motor vehicle manufacturing could be approved at the provincial level.	Written <sup>a</sup>		The draft of the upcoming development policy on automobile industry is characterized by its provisions on deregulation and transfer of approval authority to governments at provincial levels. After the issuance of the new Policy, the invest limits on auto manufacturing that could be approved at provincial level will be increased as required in the Working Party Report. (Written <sup>c</sup> )
<b>General</b>			
Revisions to investment guidelines in conformity with the WTO Agreement, especially as regards the status of the Catalogue on Investment and the categorization of restricted; permitted; and encouraged investments, and requirements relating to transfer of technology.		EC – Written <sup>b</sup>	Before accession to the WTO, China had already modified three basic laws in respect of foreign direct investment – Law of People's Republic of China on Sino-Foreign Equity Joint Ventures, Law of People's Republic of China on Sino-Foreign Cooperative Joint Ventures and Law of People's Republic of China on Foreign-invested Enterprises as well as their implementing rules. The revised legislation has eliminated or ceased

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			<p>the implementation of provisions on foreign currency balancing, local content, export performance requirement and mandatory technology transfer. (Written<sup>c</sup>)</p> <p>On February 11, 2002, State Council of China promulgated newly-amended the Regulation on Guiding the Foreign Investments. Afterwards, strictly according to WTO rules and commitments upon accession to WTO, China amended the original Guiding Industrial Catalogue for Foreign Investment in a comprehensive manner. It was made effective as of April 1, 2002. The Catalogue lists 371 industries and divides them into three categories including "encouraged," "restricted" and "prohibited" for foreign investment, of which 262 are encouraged, 75 restricted and 34 prohibited. All the industries not listed in the Catalogue are considered as permitted. The contents in relation to liberalization committed by China upon accession are listed in the Attachment to the Catalogue. In addition, requirement for technology transfer has been eliminated in approving the foreign investment. (Verbal<sup>d</sup>)</p>
<p>Amendment of contractual arrangements that contain TRIMs-incompatible commitments and obligations in such a way that they will contain obligations which are fully compatible with the TRIMs Agreement; indication of how China might institute such amendments.</p>		<p>EC – Written<sup>b</sup></p>	<p>China has revised the <i>Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture</i>; <i>Law on Chinese-Foreign Contractual Joint Venture</i>; and <i>Law on Wholly Foreign Owned Enterprises</i> and their respective implementing regulations. The revision includes the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance, compulsory technology transfer, and etc. This revision has got extensive media coverage. Chinese government respects freedom of contract. If the articles of association or contract of enterprises with foreign investment approved before amendment of the relevant laws contain the terms on foreign exchange balance, local contents, and export performance, and the investors on both sides can reach an agreement, they may file the application to relevant authorities to alter or nullify those terms. The application will be processed timely and in a manner consistent with TRIMs agreement. (Verbal<sup>d</sup>)</p>
<p>Contracts which may contain TRIMs incompatible commitments and obligations will not be enforced before domestic law courts or other administrative tribunals or bodies and that the TRIMs-incompatible commitments and obligations are to be considered null and void.</p>		<p>EC - Written<sup>b</sup></p>	<p>China has revised the <i>Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture</i>; <i>Law on Chinese-Foreign Contractual Joint Venture</i>; and <i>Law on Wholly Foreign Owned Enterprises</i> and their respective implementing regulations. The revision includes the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance, compulsory technology transfer, and etc. This revision has got extensive media coverage. Chinese government respects freedom of contract. If the articles of association or contract of enterprises with foreign investment approved before amendment of the relevant laws contain the terms on foreign exchange balance, local contents, and export performance, and the investors on both sides can reach an agreement, they may file the application to relevant authorities to alter or nullify those terms. The application will be processed timely and in a manner consistent with TRIMs agreement. (Verbal<sup>d</sup>)</p>

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: G/TRIMS/W/32; dated 9/23/03.

<sup>b</sup>Communication from European Communities: G/TRIMS/W/31; dated 8/14/03.

<sup>c</sup>Communication from China: G/TRIMS/W/34; dated 10/1/03.

<sup>d</sup>Committee report detailing verbal statements made during meeting: G/L/648; meeting dated 10/3/03.

Council for Trade in Goods

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Trading rights</b>			
<p>Measures governing trading rights of foreign-invested enterprise; China's limited availability of trading rights for foreign-invested enterprises by imposing conditions on the eligibility of those enterprises.</p>	<p>Written<sup>a</sup> Verbal<sup>d</sup></p>		<p>According to China's commitments upon accession, China would progressively liberalize the availability and scope of the right to trade so that within three years after accession all domestic enterprises and foreign enterprises and individuals, including sole proprietorships of other WTO Members, would have the right to export and import all goods (with the exception of products listed in Annex 2A of the Protocol reserved for importation and exportation by state trading enterprises) throughout the custom territory of China. The point that the trading rights in this context only referred to the right of importation and exportation, not including the right of distribution in China. The liberalization of distribution rights would be executed in accordance with the Schedule of Specific Commitments on Services and governing regulations in China. (Verbal<sup>d</sup>)</p> <p>Given the above-mentioned commitments and relevant laws and regulations governing foreign-invested enterprises, the enterprises in China with foreign investment had the right to import equipment, technology, raw material and other goods for self-use, and export their products. While for the importation and domestic distribution of the goods other than the above listed, the enterprises should apply for the expansion of its business scope of distribution in accordance with China's timetable regarding distribution in the Schedule of Specific Commitments on Services and other relevant regulations in China. Furthermore, the Chinese Government also allowed foreign-invested enterprises to engage in import and export, domestic purchase and distribution in China through the establishment of specific trading company, holding company, logistics company, distribution enterprises, procurement centre, etc. (Verbal<sup>d</sup>)</p> <p>Trading rights only referred to import and export, not distribution. In this regard, foreign invested enterprises with majority or minority ownership should follow the relevant provisions of the regulations with regard to foreign invested enterprises. These enterprises could import goods, services and technologies for their own use, and if those enterprises imported goods and services to be</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			distributed within Chinese territory they needed firstly to file the application for changing their business scope and after doing that they could undertake distribution business in China. (Verbal <sup>d</sup> )
Explanation of how conditions of foreign-invested enterprises relate to minimum registered capital, past import and export levels, and prior experience, consistent with China's commitments to provide full rights to trade to foreign-invested enterprises.	Written <sup>a</sup>	EC – Written, <sup>b</sup> Verbal <sup>d</sup>	With regard to the capital requirements of trading companies set up by foreign investment, one was referring to foreign trade companies only. Regarding the question raised by the U.S. about holding companies, their functions were much more than trading, and China imposed capital requirements on those companies. With regard to logistics companies set up by foreign investment, these companies were actually involved in distribution, purchasing and a series of other activities. So with this expanded business scope China had to impose capital requirements for these companies. China was now revising its foreign trade law. According to the draft of the foreign trade law China would further specify the trading rights and their availability to foreign invested companies. (Verbal <sup>d</sup> )
Exclusion of conditions relating to minimum registered capital, past import and export levels and prior experience in the draft revisions to the Foreign Trade Law.	Written <sup>a</sup>		At present, the <i>Foreign Trade Law of China</i> was being revised. The current draft of the <i>Foreign Trade Law</i> did not contain the requirements on minimum registered capital, import or export performance and history experience. (Verbal <sup>d</sup> )
Distinction between so-called “trading joint ventures (JVs)” and “manufacturing” JVs.		EC – Written, <sup>b</sup> Verbal <sup>d</sup>	
<b>Value-added tax policies</b>			
Measure that implements the policy for rebates of the VAT on imported copper.	Written <sup>a</sup>		China currently applied 17 percent VAT on both domestic and imported goods, which was fair and non-discriminatory in terms of the value of goods. The current VAT rebate policy was consistent with the national treatment rule under Article III of GATT 1994. (Verbal <sup>d</sup> )
Explanation of VAT rebate program works, i.e. amount of VAT originally paid, entity that pays VAT, entity to which VAT rebate is paid, amount of a rebate received by entity, availability of rebate upon the exportation of finished or semi-finished products copper products, application and differences in application of VAT rebate to imported scrap or domestically sourced copper scrap.	Written, <sup>a</sup> Verbal <sup>d</sup>		In China, customs imposed duties and VAT for the importation of copper scraps, copper ore concentrates and raw copper by copper-smelting enterprises reaching a certain production scale. After paying the duty and tax, a company could apply for the drawback of 30 percent VAT on presentation of duty-paid proofs. The refunded tax should be applied to the technological innovations of the enterprise. VAT rebate policy on copper materials applied to all enterprises reaching certain production scale, and was not conditioned on ownership of the enterprise or local content. Copper-smelting enterprises had to pay VAT while importing copper materials. The amount of VAT should be the total sum of dutiable value and tariff multiplied

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			<p>by VAT rate for copper materials. According to relevant policy and provisions, the government would refund 30 percent of the paid VAT to the enterprise. (Verbal<sup>d</sup>)</p> <p>After payment of duties, enterprises could apply for a drawback of VAT on presentation of duty paid proofs. This policy only applied to exporters of finished products and semi-finished products. This tax rebate system was equally applied to all enterprises reaching a certain production level regardless of the ownership of the enterprise. (Verbal<sup>d</sup>)</p>
Measures similar to VAT rebate programs on imported products other than copper scrap.	Written <sup>a</sup>		The VAT rebate policy only applied to imported copper scraps, copper ore concentrates and raw copper and did not apply to other products. China did not implement any similar policy on other products or adopt any other preferential policies on copper-processing enterprises. (Verbal <sup>d</sup> )
Preferential policies benefiting copper scrap, copper or semi-fabricated products such as flat-rolled products, long products and pipe and tube, whether those policies involve the VAT, other taxes, duty drawback or tariffs.	Written <sup>a</sup>		The VAT rebate policy only applied to imported copper scraps, copper ore concentrates and raw copper and did not apply to other products. China did not implement any similar policy on other products or adopt any other preferential policies on copper-processing enterprises. (Verbal <sup>d</sup> )
Preferential policies benefiting copper scrap, copper or semi-fabricated products conditioned on domestic production or ownership, or on domestic or foreign content.	Written <sup>a</sup>		VAT rebate policy on copper materials applied to all enterprises reaching certain production scale, and was not conditioned on ownership of the enterprise or local content. (Verbal <sup>d</sup> )
<b>Export restrictions</b>			
WTO justification for the export quota on fluorspar.	Written <sup>a</sup>	Japan – Written <sup>c</sup>	<p>Fluorspar was a kind of non-regenerative resource under the protection of the Chinese Government. The mining of fluorspar had a significantly negative impact on the environment. China had been attaching great importance to the exploitation, processing and consumption of exhaustible resources. From the 1970s, China had begun to impose export quotas on fluorspar while restricting the domestic mining and production of fluorspar. Pursuant to China's <i>Foreign Trade Law</i>, the <i>Regulations on the Administration of Import and Export of Goods</i> and China's commitments upon accession, China still imposed export quota administration on fluorspar. Due to the depleting of fluorspar resources and its shrinking production, the domestic consumption and export of fluorspar had, in turn, gradually decreased. China's export quota administrative measure on fluorspar was consistent with the "general exceptions" provided in Article XX of GATT 1994 – "<i>nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: including those relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.</i>" Furthermore, according to the WTO rules, the general</p>



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			abolition of quantitative restrictions set forth by the Article XI did not preclude the various exemptions as contained in Articles XII to XXI of GATT 1994. During recent years, domestic and foreign prices of fluorspar had risen to various degrees. This rise in price was determined by the rules of market rather than the export quotas by the Chinese Government. (Verbal <sup>d</sup> )
Justification for export license fee on fluorspar; requirement for exporters to pay fees which range from 85 percent to more than 150 percent of the fluorspar cost.	Written, <sup>a</sup> Verbal <sup>d</sup>		With regard to the export license, only 20 RMB was collected for the cost of the license itself. No other fees were charged. Secondly, fluorspar was a scarce resource with great market demand. Production was falling in recent years in China, where the costs of exploitation and transportation were constantly rising, which resulted in a surge of demand and shortage in supply. It was this gap between the supply and the demand that was the cause of the rise in price and was not the result of quota restrictions imposed by the Chinese Government. (Verbal <sup>d</sup> )
Detailed information on the restriction of domestic fluorspar production and consumption.		Japan – Written, <sup>c</sup> Verbal <sup>d</sup>	In recent years the production of fluorspar had been constantly decreasing. Exports, together with domestic consumption, had also been decreasing significantly. (Verbal <sup>d</sup> )
<b>Border trade</b>			
List of products taken off the list of imports from border areas that can benefit from preferential treatment in the form of reduced import duties and/or VAT, and measure that ended preferential treatment.	Written, <sup>a</sup> Verbal <sup>d</sup>		According to Bulletin No. 27 and No. 39 issued by the State General Customs Administration on 1 May 2003 and 11 June 2003 respectively, China had removed boric acid and 19 other products from the list of products subject to border trade import duties policy. (Verbal <sup>d</sup> )
List of the products that continue to receive preferential border area treatment; explanation of products' benefits from reduced import duties, reduced VAT, or both.	Written <sup>a</sup>		The border trade policy of China was in line with the MFN principle of GATT 1994. The list of preferential treatment for border trade was published by the Ministry of Finance with approval by the State Council and the executive agency was the general customs administration in China. The list was published in several batches and up until now there had been no complete and uniform document containing all products subject to preferential treatment for border trade. (Verbal <sup>d</sup> )
China's plans to eliminate preferential border treatment for products.	Written <sup>a</sup>		The WTO did not provide for the specific definition, forms and territorial scope of border trade, and only set forth a fundamental provision that "the provisions of this Agreement shall not be construed to prevent advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic." Therefore, special preferential treatments for border trade were allowed by the WTO, and advantages and conveniences accorded by a contracting party to adjacent countries were not inconsistent with the basic principle of the WTO, i.e. Most Favored

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			Nation (MFN). China had committed in its accession protocol to apply WTO Agreements and the protocol across the whole customs territory including border trade areas, and would develop and implement laws, regulations and other measures in relation to trade in goods in a uniform, impartial and rational manner. Border trade policies had been uniformly implemented and enforced in the provinces and regions in border areas of China as an important part of China's foreign trade policies. (Verbal <sup>d</sup> )
<b>Transparency</b>			
Time schedule to circulate draft of several trade-related laws, regulations, and measures, including amendments to the foreign trade law, amendments to commercial banking law, regulations on rules of origin for imports and exports, import and export tariff regulations, construction engineering design regulations and intellectual property rights customs protection regulations.	Written <sup>a</sup>		In line with China's reform and opening up process, and to implement the commitments upon its accession, China was now, according to its arrangement of legislative plan, revising relevant laws and regulations mentioned by some Members in their questions. Amendments to these laws and regulations would be open for public comment pursuant to provisions of the <i>Legislation Law</i> and <i>Regulations on the Drafting Procedure of Administrative Regulation</i> . In addition, China would also notify those laws and regulations to the WTO. Above all, China would fully fulfill its commitments on transparency made upon its accession to WTO. (Verbal <sup>d</sup> )
Lack of transparency in China's approach to TRQ and quota allocation for certain products, particularly agricultural commodities.		Canada – Verbal <sup>d</sup>	
<b>Government procurement</b>			
Timetable for issuing the Measures on the Administration of Bidding of Government-Procured Goods and Services in final form.	Written <sup>a</sup>		Opinions had been solicited extensively concerning the <i>Administrative Measures on Tendering and Bidding for Goods and Services under Government Procurement</i> , which was due to be promulgated in December 2003. (Verbal <sup>d</sup> )
Timetable for circulating and issuing sets of implementing rules, including measures relating to the administration of government software procurement, the administration of bidding for goods and services in government procurement, the administration of government procurement information, the examination of centralized government procurement institutions, the administration of complaints by suppliers, and the administration of government procurement experts.	Written <sup>a</sup>		<i>Administrative Measures on Information Publication of Government Procurement</i> and <i>Measures on Complaints by the Suppliers</i> would be promulgated together with the <i>Administrative Measures on Tendering and Bidding for Goods and Services under Government Procurement</i> . <i>Administrative Measures on Software Procurement by the Government</i> , <i>Administrative Measures on Expert Recruitment for Government Procurement</i> and <i>Examination Measures on Institutions of Government Collective Procurement</i> were to be promulgated at the end of 2003. Comments on these measures had also been solicited. The Ministry of Finance had made the accession to the
Timetable for establishment and information on completion of the Government Procurement Agreement (GPA) working group.	Written <sup>a</sup>		Government Procurement Agreement (GPA)

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Timetable intended for China to start negotiations to join the GPA.	Verbal <sup>d</sup>	EC – Written, <sup>b</sup> Verbal <sup>d</sup> Japan – Written <sup>c</sup>	one of its research subjects in 2003. The establishment and composition of the panel of experts would be further decided based upon the results from the preliminary study, while the timetable for the launch of negotiations would be set in the same manner. (Verbal <sup>d</sup> )
All government procurement procedures are conducted in a transparent manner and that the MFN principle is applied to all foreign suppliers in practice.		Japan – Written <sup>c</sup> EC – Verbal <sup>d</sup>	Since became a Member, China had been actively laying the ground work for the full implementation of the commitments relating to government procurement contained in its accession protocol, and these efforts had yielded remarkable results in many ways. China's first <i>Government Procurement Law</i> was published in 2001 and was followed by the enactment of a series of supplementary rules. The implementing regulation to the Law was also being drafted. Since the <i>Government Procurement Law</i> took force, purchase activity falling under the provisions of the State Council had to follow government procurement procedures, which had to be made transparent. According to the existing regulations of Ministry of Finance, procurement from foreign suppliers had to go under international public tendering. Information relating to the bidding and winner had to be made public via the media designated by the Ministry of Finance. Up till now, no complaints from foreign suppliers had been filed to the Ministry. (Verbal <sup>d</sup> )
<b>Customs valuation</b>			
Timetable for China's response on U.S. questions to China raised in connection with the transitional review before Committee on Customs Valuation.	Written <sup>a</sup>		With regard to the questions posed by Members concerning customs valuation, China had provided responses in the context of TRM held by the Committee of Customs Valuation on 6 October 2003. If Members had further questions to China's responses during TRM, they could raise these questions under the appropriate agenda item in the meeting of the Committee with the mandate, to which China would provide answers according to due procedures. (Verbal <sup>d</sup> )
<b>Automobiles</b>			
China's intention to reconsider a measure to establish a dual distribution network for domestically produced and imported automobiles; the legislative process for its adoption; timetable for notification to the WTO; concerns about its WTO compatibility.		EC – Written, <sup>b</sup> Verbal <sup>d</sup>	A new automobile development policy was in the process of being drafted. During the drafting process China had extensively solicited the opinions from various parties, including U.S. and EU manufacturers. The final solution of this problem would have to wait until the final text of this new policy was ready and published. (Verbal <sup>d</sup> )

Source: GAO analysis of WTO documents.

Note: An additional document source is a communication from China: G/C/W/474; dated 11/21/03.

<sup>a</sup>Communication from U.S.: G/C/W/473; dated 11/17/03.

<sup>b</sup>Communication from EC: G/C/W/476; dated 11/26/03.

<sup>c</sup>Communication from Japan: G/C/W/471; dated 11/29/03.

<sup>d</sup>Committee report detailing verbal statements made during meeting: G/L/664; meeting dated 11/26/03.

Enclosure XV

Council for Trade in Services

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Distribution services</b>			
Elimination of national treatment and market access restrictions on foreign enterprises providing distribution services by 11 Dec 2004.	Written <sup>a</sup>		
Status and timetable of regulation to implement commitment on elimination of national treatment and market access restrictions on foreign enterprises providing distribution services.	Written <sup>a</sup>		
Measures governing the provision of wholesaling services and commission agents' services by foreign-invested enterprises.	Written, <sup>a</sup> Verbal <sup>g</sup>		The current regulation governing this sector was the <i>Pilot Measures on the Foreign-Invested Merchandising Enterprises</i> and that China was drafting a new distribution regulation governing wholesaling and retailing services. China was starting to solicit opinions from industries. (Verbal <sup>g</sup> )
Explanation of conditions relating to registered capital, assets, past import and export levels, prior experience requirement on joint ventures with foreign minority ownership to engage in wholesaling services.	Written, <sup>a</sup> Verbal <sup>g</sup>		
Measures governing the provision of retailing services by foreign-invested enterprises.	Written <sup>a</sup>		The current regulation governing this sector was the <i>Pilot Measures on the Foreign-Invested Merchandising Enterprises</i> and that China was drafting a new distribution regulation governing wholesaling and retailing services. China was starting to solicit opinions from industries. (Verbal <sup>g</sup> )
Explanation of conditions relating to registered capital, assets, past import and export levels, prior experience requirement on joint ventures with foreign minority ownership to supply retail services.	Written <sup>a</sup>		
Status and time frame for issuance of new regulations may severely impact the ability of U.S. and other foreign retailers to expand their presence in China; concern about national treatment.	Written <sup>a</sup>		
Reason for delay and time schedule in implementing revision of the Regulations on Investment of Foreign Distribution Business Enterprises for wholesale trade services (foreign minority ownership).		Japan – Written <sup>c</sup>	
Schedule to implement commitments on wholesale (foreign majority ownership, no geographical or quantitative restrictions) and retailing services (foreign majority control, easing of		Japan – Written <sup>c</sup>	The "Pilot Measures on the Foreign-Invested Merchandising Enterprises," promulgated in 1999, had given foreign service suppliers the opportunity to possess majority ownership in the joint-venture wholesaling enterprises,

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
geographical restrictions), especially for motor vehicles.			which was consistent with the China's commitment in market access. The drafting of the new distribution regulation governing wholesaling and retailing services was on-going, and that it would provide more detailed rules on the opening-up of the distribution market in accordance with the phase-in commitments of China. China had started to solicit opinions on this draft from industries, including foreign-invested distribution enterprises. The actual market access had never been negatively affected. 35 foreign-invested distribution enterprises had been approved with 347 outlets. Carrefour and Wal-Mart had respectively established more than 30 chain stores in China. (Verbal <sup>9</sup> )
Schedule to implement commitment of full liberalization of wholesale and retail services on processed and crude oil.		Japan – Written <sup>c</sup>	China would implement its commitments in accordance with the phase-in period set out in its Schedule. (Verbal <sup>9</sup> )
China's plan to establish a "Law Controlling the Monopolization of Automobile Brands" to prohibit dealers from selling both imported and domestic cars.		Japan – Written <sup>c</sup>	This policy did not violate WTO rules or China's commitments and that foreign and domestic investors would be treated equally in establishing automobile distribution enterprises selling either imported cars or domestically produced cars. (Verbal <sup>9</sup> )
China's plans to limit the scope of the management right of retail dealers in passenger vehicles either to domestic or imported cars with acquisition of the "Management Right to Passenger Vehicles" and publication of criterion for granting the right.		Japan – Written <sup>c</sup>	
<b>Express delivery services</b>			
Explanation for creation of a China Post monopoly on the delivery of letters under 500 grams in China's draft amendment to its Postal Service Law.	Written, <sup>a</sup> Verbal <sup>9</sup>		Regarding monopoly and exclusive rights, the Chinese representative recalled China's reservation in its commitments, which stated "except for those currently specifically reserved to Chinese postal authorities by law". (Verbal <sup>9</sup> )
Explanation for China's consideration of 500 gram restriction after it withdrew a similar restriction with the issuance of the Supplement Notice on the Engagement in Postal and Delivery Services for Cross-border Letters and Materials of Letters in Nature.	Written <sup>a</sup>		
Timetable for issuing China's draft amendment to its Postal Service Law.	Written <sup>a</sup>		China took a positive attitude towards Members' keen interest. Enacting a new law and revising existing ones, even if they aimed at implementing obligations under international treaties, were the legitimate rights of a Member and that the TRM was not the right context in which to address these issues. (Verbal <sup>9</sup> )
China's plans for separating China Post's regulatory and operational functions.	Written, <sup>a</sup> Verbal <sup>9</sup>		The Chinese representative referred to paragraph 309 of the Working Party Report, which stated "the representative of China confirmed that for services included in China's Schedule of Specific Commitments, relevant

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			regulatory authorities would be separated from, and not accountable, to any service suppliers they regulated, except for courier and railway transportation services." (Verbal <sup>g</sup> )
Provision in the draft amendments that required express delivery companies to pay 4 percent of their revenues into a universal service fund.	Verbal <sup>g</sup>		
Relevant text on entrustment procedures.		EC – Written <sup>b</sup>	The issue of an entrustment requirement for express delivery services had been discussed at the previous review. In the past calendar year, 167 qualified international freight forwarding enterprises and 362 branches had obtained entrustment and had been operating quite well in China. China would assure the same procedure of entrustment for international courier agencies as for Chinese operators. (Verbal <sup>g</sup> )
Step-by-step procedure to get entrustment.		EC – Written <sup>b</sup>	
One-time only or repeated action of entrustment; duration of the entrustment.		EC – Written <sup>b</sup>	
Centralization or fulfillment at Sub-State level of entrustment procedure.		EC – Written <sup>b</sup>	
Obligations imposed on the entrusted operators.		EC – Written <sup>b</sup>	
Number of operators applying for and number of operators obtaining entrustment.		EC – Written <sup>b</sup>	
Submission of Chinese operators to the same entrustment procedure as foreign operators.		EC – Written <sup>b</sup>	
Relevant text defining regulator of express delivery services and its powers.		EC – Written <sup>b</sup>	
Extent to which Central Post Office, local post offices, MOFTEC, Ministry of Information Industry (MII) are granted regulatory powers over express delivery operators; power and conditions to conduct on-site inspections in facilities owned by express delivery operators.		EC – Written <sup>b</sup>	
Definition of scope of postal monopoly.		EC – Written, <sup>b</sup> Verbal <sup>g</sup>	
Definition of scope of universal service.		EC – Written, <sup>b</sup> Verbal <sup>g</sup>	
Independence of the regulator from operators.		EC – Written, <sup>b</sup> Verbal <sup>g</sup>	
Information about current postal reform.		EC – Written <sup>b</sup>	
<b>Telecommunications services</b>			
Explanation of China's plans to establish an independent regulator in the telecommunications sector.	Written, <sup>a</sup> Verbal <sup>g</sup>		China had separated the regulatory body from the operational business by establishing the MII in 1998. The MII had given up all its management functions to China Telecom. MII could regulate in an impartial, fair and transparent manner and acted as an independent regulator. MII had always followed the principle of transparency and impartiality in order to promote the orderly development of China's telecom industry. (Verbal <sup>g</sup> )

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Rationale for reclassification of several telecommunications services from the value-added category to the basic category, contrary to widely accepted international practice.	Written, <sup>a</sup> Verbal <sup>g</sup>		Regarding the classification of telecommunication services, the Chinese representative noted that it was a complicated issue not only for China, but also for other WTO Members, especially given the rapid development of contemporary science and technology. He further noted that Members had their own classifications based on the different level of development in telecom industries, unique domestic situations and different approaches to regulate the market. He indicated that the MII had adjusted part of the previous categories and had republished the revised Catalogue of classification in April 2003 in response to new developments. According to the new catalogue, some basic telecommunications services would be managed as value-added services. The operator qualifications and daily management of these basic telecommunications services would be administered with reference to relevant requirements for value-added services. (Verbal <sup>g</sup> )
Explanation of the practice that certain basic telecom services will be managed as value added services under the new Telecom Catalogue of Business Categories.		EC – Written <sup>d</sup>	
Request for relevant text on Ministry of Finance's management of State participation in existing companies.		EC – Written <sup>d</sup>	
Timetable to revise the Regulation on the Administration of Foreign Invested Telecom Companies to allow foreign operators to choose partners in other sectors.		EC – Written, <sup>b</sup> Verbal <sup>g</sup>	
Rationale for foreign investors to meet minimum capital and experience requirements; different requirements for operator owned only by Chinese nationals.		EC – Written <sup>d</sup>	Due to the need for complicated expertise and the new services emerging in the telecom industry, this regulation required that the major Chinese investor in a foreign-invested enterprise should have technical personnel suitable for the operation of the enterprise in order to better protect the interest of investors and consumers and to ensure the sound development of the telecom industry. This requirement also applied to domestic enterprises, which was in line with the national treatment principle. This regulation required that the major Chinese investor should invest at least 30 percent of the total capital shared by all the Chinese investors in order to protect the interests of the Chinese and foreign-invested telecom enterprises. These requirements increased the liability of the Chinese investors and therefore alleviated the risks on the part of foreign investors. (Verbal <sup>g</sup> )
Treatment of existing operators under the regulation on foreign-invested enterprises.		EC – Written <sup>d</sup>	
Government organizations that will issue measures to determinate geographical scope in which foreign-invested telecom enterprises may		EC – Written, <sup>b</sup> Chinese Taipei –	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
operate.		Written <sup>d</sup>	
Timetable to issue measures to determinate geographical scope in which foreign-invested telecom enterprises may operate.		EC – Written <sup>b</sup>	
Prudential and special requirements set by the administrative department for information industry of the State Council referred to in the regulation on foreign-invested enterprises.		EC – Written <sup>b</sup>	
Publication of licensing terms of existing operators.		EC – Written <sup>b</sup>	
Requirement applicable to the agent (an entity or individual that a licensed telecom operator can entrust to provide telecommunication services directly to customers) under the Administrative Measures on Telecom Business Operation Licenses.		EC – Written <sup>b</sup>	
Regulation of resale of a service like the corresponding service or under a separate framework.		EC – Written <sup>b</sup>	
Issuance of regulation regarding the public bidding for licenses of basic telecom.		EC – Written <sup>b</sup>	
Procedures for granting frequencies as part of China's commitment to allocate the use of scarce resources in an objective, timely, transparent and non-discriminatory manner.		EC – Written <sup>b</sup>	
Details on the identification of leading telecom operators, subject to interconnection obligations.		EC – Written <sup>b</sup>	
Time schedule for the enactment of a Telecommunications Act and information on its provisions.		Japan – Written, <sup>c</sup> Verbal <sup>g</sup>	
List and criteria for identified Leading Telecommunications Services Providers.		Japan – Written, <sup>c</sup> Verbal <sup>g</sup>	"Leading telecommunication services providers" were those providers who possessed necessary basic telecom facilities, whose fixed local telephone business represented greater than 50 percent shares of the market within local networks, and who had a substantial impact on the market access of other telecom operators. To date, the operators meeting these requirements were China Telecom and China Netcom. Given the actual situation of the telecom market and the rapid growth of mobile telecom business, the MII was considering including more leading telecom operators. (Verbal <sup>g</sup> )
Calculation formula for interconnection fees and revisions of formula decided by the Ministry in the State Council in charge of information industry.		Japan – Written, <sup>c</sup> Verbal <sup>g</sup>	The Chinese representative referred to the relevant regulations, such as <i>Regulations on the Methods for the Settlement of Inter-network Call Charge</i> , and <i>Administrative Measures on Licensing for Operation of Telecommunication Services</i> . These regulations, published on the website of MII ( <a href="http://www.mii.gov.cn">www.mii.gov.cn</a> ), were domestic regulation that applied to all suppliers equally. (Verbal <sup>g</sup> )



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Clarification on whether the inclusion of categories of services other than "the Telecommunication Services Classification List" are fully consistent with its accession commitments on respective other services.		Japan – Written, <sup>c</sup> Verbal <sup>9</sup>	It was a complicated issue not only for China, but also for other WTO Members, especially given the rapid development of contemporary science and technology. Members had their own classifications based on the different level of development in telecom industries, unique domestic situations and different approaches to regulate the market. MII was in the process of considering and developing detailed rules on qualifications and procedures on recording new services, and that it was expected that these would be adopted in the near future. (Verbal <sup>9</sup> )
Information on how future new services are administratively allowed before a revision of the List.		Japan – Written <sup>c</sup>	The Chinese representative referred to Article 9 of the <i>Regulation on Telecommunications</i> , which stipulated that "New types of telecom services other than those in the Catalogue of Telecom Service Classifications that are carried out on a experimental basis using new technologies should be submitted to telecom regulatory authorities at the provincial level for record". (Verbal <sup>9</sup> )
Confirmation that the List covers supply of services on commercial basis, as well as that a notification or simple reporting will suffice to enable a licensed service supplier to launch such services.		Japan – Written <sup>c</sup>	
Plans for the Ministry of Information Industry to develop a guideline for application or a market entry manual to service providers.		Japan – Written <sup>c</sup>	
China's plans to implement the Reference Paper on Basic Telecommunications through the Telecommunications Law.		Chinese Taipei – Written <sup>d</sup>	The Chinese representative referred to the <i>Regulation on Telecommunications of PRC</i> and the <i>Regulation on Interconnection Between Public Telecommunication Networks</i> . According to these regulations, leading telecom operators should develop rules on interconnection and report them to the MII for approval prior to implementation. Leading telecom operators should provide interconnections within the specified time limits. They were neither allowed to deny request for interconnection from other telecom operators and private network operators nor permitted to freely restrict the right of users to chose the telecom services provided by other operators. As well, in offering inter-network connections to other telecom operators, the service quality of leading operators should be as good as that of like services within their own networks or that of like services supplied to subsidiaries or branches. Leading telecom operators had an obligation to coordinate with users acquiring telecom network code number resources in order to realize the function of the resources, with necessary technical measures. (Verbal <sup>9</sup> )
Number of the Foreign-Invested Telecommunications Enterprises (FITE)		Australia – Written, <sup>e</sup>	Number provided for licensing applications of foreign service supplier approved, pending,

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
applications lodged, approved, issued with a Telecom Business Operational Permit, and determined unsuccessful since implementing regulation.		Verbal <sup>g</sup>	and rejected cited for various sectors, including telecommunications. (Written <sup>f</sup> )  Regarding how many FITE applications had been approved, the Chinese delegate suggested that Australia refer to the communication his delegation had recently presented pursuant to Annex 1A to the Accession Protocol. (Verbal <sup>g</sup> )
Reasons for applications falling short of requirements.		Australia – Written <sup>e</sup>	
Whether FITEs can only be licensed to supply those services listed in the “translation table,” or permitted to supply all services listed as value added services in the Telecommunications Service Classification Catalogue.		Australia – Written, <sup>e</sup> Verbal <sup>g</sup>	
China's intention to hold consultations on the drafting of the Telecommunications Law with interested foreign parties		Australia – Written, <sup>5</sup> Verbal <sup>g</sup>	China took a positive attitude towards Members' keen interest. Enacting a new law and revising existing ones, even if they aimed at implementing obligations under international treaties, were the legitimate rights of a Member and that the TRM was not the right context in which to address these issues. (Verbal <sup>g</sup> )
Method to ensure that, subject to geographic phasing of market access commitments, regulatory arrangements will apply consistently across China with China's implementation of the Telecommunications Reference Paper.		Australia – Written <sup>e</sup>	
Method to ensure that interconnection rates are genuinely related to cost and that access, by competitors, to essential facilities is possible without competitive disadvantage with China's implementation of the Telecommunications Reference Paper.		Australia – Written <sup>e</sup>	
Method to ensure that the domestic body responsible for interconnection dispute is independent and impartial with respect to all market participants with China's implementation of the Telecommunications Reference Paper.		Australia – Written <sup>e</sup>	
<b>Construction, architectural, and engineering services</b>			
China's views on how the new Rules on the Establishment of Foreign-Invested Construction Enterprises are not making the conditions of operation, notably as regards qualification requirements and the scope of activities of foreign construction companies more restrictive than previously.		EC – Written, <sup>b</sup> Verbal <sup>g</sup>	China had provided many explanations and clarifications at the bilateral level during the preceding year in response to the concern of certain Members, and that China's position had been made very clear. First, Decree No. 113 of the Ministry of Construction was in line with the principle of national treatment and China's commitments in the construction and engineering sector, which applied a unified qualification standard to both domestic enterprises and foreign invested construction enterprises. According to this decree, wholly foreign-owned construction enterprises had been allowed to be established as from 1

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			<p>December 2002, which was two years ahead of the time frame set out in China's commitments, and discriminatory requirements against foreign invested construction companies in terms of qualification standard had been abolished. This resulted in a further opening-up of construction market to foreign investors. In order to guarantee commercial interests of foreign enterprises, the stability of transition, and the implementation of the existing contracts already signed by foreign companies, the <i>Implementing Rules on the Qualification Management for Facilitating Foreign Enterprises to Invest in the Construction Sector</i> required that "for all the engineering contracts signed before 1 October 2003, or contracts remaining valid after 1 October 2003, the foreign companies might continue to complete the works". Finally, the Ministry of Construction had promulgated Notice No. 193 in September 2003, which stipulated that those foreign enterprises with Qualifications for Contracting Construction Works might prolong their engineering construction activities in China until 1 April 2004. (Verbal<sup>9</sup>)</p>
Reasons for residence requirements imposed on all architects and engineers to be accounted for in the attribution of a certificate, and qualifications imposed; limitations to National Treatment.		EC – Written <sup>b</sup>	
Policy development for establishment of wholly owned enterprises before the abolition of the Direct Contracting Scheme in accordance with the Regulation on the Administration of Foreign Invested Construction Enterprises.		Japan – Written <sup>c</sup>	
Assurance that four types of construction projects allowed to be undertaken by wholly foreign-owned enterprises are subject to interpretation but scope will not be overly restrictively implemented.		Japan – Written <sup>c</sup>	
Requirement of having a minimum number of engineers in one office for a certain category of construction enterprises constitute as barriers for foreign construction enterprises; compatibility with GATS.		Japan – Written, <sup>c</sup> Verbal <sup>9</sup>	
<b>Legal services</b>			
Information on the conditions applying to the opening of the first and additional offices by foreign and Chinese lawyers; reason for conditions not listed in schedule.		EC – Written <sup>b</sup>	<p>There were no geographic and quantitative restrictions on representative offices of foreign law firms as indicated in China's commitments. China's representative suggested that the concerned Members look at this issue in terms of the actual market access of foreign representative offices. More</p>

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			than 50 representative offices of foreign law firms had been approved in Beijing and Shanghai and that none of them had been subject to a so-called "Economic Needs Test". (Verbal <sup>9</sup> )
Specific activities in which representative offices of foreign lawyers can engage in when providing information on the impact of the Chinese legal environment.		EC – Written <sup>b</sup>	
<b>Tourism</b>			
Plans to align the provision on the economic needs test on new travel agencies in the Regulations on Administration of Travel Agencies.		EC – Written, <sup>b</sup> Verbal <sup>9</sup> Chinese Taipei – Written <sup>d</sup>	The Chinese representative referred to the <i>Administrative Rules on Travel Agencies</i> , which stipulated that the examination and approval of applications for the establishment of travelling agencies must be in line with the development plan of travel industry. This requirement, which applied equally to domestic travel agencies, was to regulate the whole Chinese travel agency market and did not constitute a market access limitation. (Verbal <sup>9</sup> )
<b>Closer Economic Partnership Arrangement between Hong Kong and China (CEPA)</b>			
Notification of the Closer Economic Partnership Arrangement (CEPA).		EC – Written <sup>b</sup>	China would notify the relevant WTO bodies of the CEPA in due time. (Verbal <sup>9</sup> )
China's views on compatibility of Arrangement with conditions set in GATS.		EC – Written <sup>b</sup>	
Information on the services part of the Arrangement, including its sectoral coverage and on the rules of origin of services, including criteria to be identified as "Hong Kong companies."		EC – Written, <sup>b</sup> Japan – Written <sup>c</sup>	
<b>Mergers and acquisitions</b>			
Relationship between the draft Anti-Monopoly Law of China and the Interim Measures on Equity Participation in or Purchase of Assets of Domestic Enterprises by Foreign Investors; foreign investment compliance with one or two overlapping sets of regulations when conducted through mergers or acquisitions.		EC – Written <sup>b</sup>	China had no obligation on this issue in its WTO schedule. The issue of mergers and acquisitions was related to the context of competition policy or investment policy, which was not covered by existing WTO rules. The Doha Round had not concluded, and Members should not show haste in this regard. (Verbal <sup>9</sup> )
Scope of Interim Measures and its establishment of mergers and acquisitions (M&A) controls applicable exclusively to foreign investment.		EC – Written <sup>b</sup>	
Purpose of Interim Measures; grounds for developing merger controls specifically for investment by foreign undertakings.		EC – Written <sup>b</sup>	
Effect of Interim Measures; stricter requirements for foreign investment through M&A than those applicable to domestic M&A activity.		EC – Written <sup>b</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Number of proposed foreign investment operations examined, pending examination, rejected, and grounds for rejection under the Interim Measures.		EC – Written <sup>b</sup>	
<b>Architectural and urban planning services</b>			
Burdensome minimum capital and number-of-engineers requirements for office registration felt by foreign service providers.		Japan – Written <sup>c</sup>	
<b>Computer and related services</b>			
Enhanced transparency in the scope of computer and related services so that service suppliers can be sure to what regulations they are not subject.		Japan – Written <sup>c</sup>	
<b>Transport services</b>			
Schedule to implement the phase-in commitment to permit wholly foreign-owned subsidies for freight forwarding agency services.		Japan – Written <sup>c</sup>	China would implement its commitments in accordance with the phase-in period set out in its Schedule. (Verbal <sup>g</sup> )
Justification for and plans for revising the surety bond paid by a non vessel operating common carrier under the Regulations on International Maritime Transportation.		Japan – Written <sup>c</sup>	The purpose of the payment of 800,000 Yuan as surety bond, as required by the <i>Regulations on International Maritime Transportation</i> , was to protect the lawful interests of cargo owners and to maintain the normal order of the cargo transport market. (Verbal <sup>g</sup> )
Demarcations of scope demarcations and ministry in charge of Regulations on International Maritime Transportation and Regulations concerning Foreign Investment in International Freight Forwarding Operation.		Japan – Written <sup>c</sup>	The regulatory system on non-vessel operating common carriers (NVOCC) was to administrate those carriers which did not physically operate vessels, but issued bills of lading in their names. This system was regulated by the Ministry of Communication, and that by issuing bills of lading and collecting freights, NVOCCs bore the liabilities of carriers. (Verbal <sup>g</sup> )
Reason for the increase in registered capital requirement on foreign enterprises in the Notification on Issues Relating to the Experimental Establishment of Foreign-Invested Logistic Enterprises.		Chinese Taipei – Written <sup>d</sup>	
<b>Trading rights</b>			
Reason for delay and schedule for implementing revisions of laws including “Foreign Trade Law of People’s Republic of China” to grant trading rights to companies with foreign minority ownership.		Japan – Written, <sup>c</sup> Verbal <sup>g</sup>	
Schedule and procedure for implementing the commitment to grant trading rights to companies with foreign majority ownership.		Japan – Written <sup>c</sup>	
<b>Accounting, auditing, and bookkeeping</b>			
Reason for experience, residency, and fixed contact point requirements for foreigner to practice as a Certified Public Accountant (CPA) in China		Chinese Taipei – Written <sup>d</sup>	Any accountant from any other WTO Member who wished to apply for a license to practice as a CPA in China had to have accumulated at least two years’ experience and must have

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
stated in Provisional Rules on Evaluating Registration of Membership by Foreign Accountants.			one year of residency and a fixed residence or fixed contact point within China. This kind of qualification requirement, which related to Articles VI:4 and VI:6 of the GATS, was under discussion by Members in the Working Party on Domestic Regulation. (Verbal <sup>9</sup> )

Source: GAO analysis of WTO documents.

<sup>a</sup>Communication from U.S.: S/C/W/233; dated 11/24/03.

<sup>b</sup>Communication from European Communities: S/C/W/229; dated 11/10/03.

<sup>c</sup>Communication from Japan: S/C/W/228; dated 9/12/03.

<sup>d</sup>Communication from Chinese Taipei: S/C/W/232; dated 11/21/03.

<sup>e</sup>Communication from Australia: S/C/W/231; dated 11/19/03.

<sup>f</sup>Communication from China: S/C/W/234; dated 11/27/03.

<sup>9</sup>Committee report detailing verbal statements made during meeting: S/C/M/69; meeting dated 12/5/03.

Enclosure XVI

Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>General</b>			
Changes due to reorganization of Chinese responsibilities or new efforts at coordinating intellectual property matters on a national or local basis.	Written <sup>a</sup>		There were no changes to the responsibilities of China's Intellectual Property (IP) agencies. The Bureau of Economic Crime Investigation under the Ministry of Public Security was responsible for the investigation of IP crimes. The Division of Economic Crime under the Supreme Procuratorate was responsible for the prosecution of Intellectual Property Rights (IPR) crimes. Number 2 Criminal Tribunal of the Supreme People's Court was in charge of IPR criminal cases. (Verbal <sup>e</sup> )
Relevant divisions in the Ministry of Public Security and Procuratorate that investigate and bring prosecutions for intellectual property crimes.	Written <sup>a</sup>		
Information concerning any specialized prosecutors, police or judiciary for prosecution of intellectual property crimes.	Written <sup>a</sup>		
Consistency of China's administrative enforcement of IPR with TRIPS Agreement.	Written <sup>a</sup>		Administrative responsibility must be imposed in accordance with the Administrative Penalty Law or the special provisions of the separate law. Some administrative remedies, such as an order requiring the suspension of infringing acts, were similar to civil remedies in form, but they were different in nature. In cases in which the form of administrative remedies seemed to be similar to civil remedies, Articles 41 through 48 of the TRIPS Agreement should be applied to administrative remedies. Some civil remedies provided for in Articles 41 through 48, such as an order requiring the payment of damages to right holders, could not apply to administrative cases in China, since neither the Administrative Penalty Law nor the separate law granted such a power to administrative authorities. (Verbal <sup>e</sup> )
Extent that China's administrative system provides for punitive remedies and extent to which such administrative actions comply with the criminal procedures and deterrent penalties of the TRIPS Agreement.	Written <sup>a</sup>		
Timely delivery of new Chinese laws, including local regulations or rules, as well as draft rules available for public comment.	Written <sup>a</sup>		Pursuant to Article 63.2 of the TRIPS Agreement, China had notified ten main dedicated laws relating to the IPRs in full text and a series of laws and regulations in summary, including the Criminal Law, the Anti-Unfair Competition Law, and the Civil Procedure Law. Following the TRIPS Council's decision of 21 November 1995,
Annual and multiyear plans for proposed or pending legislation, regulations, rules, interpretations relevant to IPR.	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
China's intentions to advise on promulgation of all IPR-related ministerial rules as well as local rules to the TRIPS Council.	Written <sup>a</sup>		China had also provided information on its enforcement regime in a notification of its responses to the Checklist of Issues on Enforcement. China's IPR laws and regulations were characterized by their broad coverage and great quantity. A large volume of judicial interpretations and sub-national legislation had added to the complexity. The notification to the WTO and the provision of requested information entailed huge tasks, not the least of which was translation. As a developing Member, however, China would redouble its efforts to further improve the notification process while requesting the necessary assistance on translation according to Article 2.5 of the Agreement between the World Intellectual Property Organization and the World Trade Organization. As a major arm in IP enforcement, the judiciary departments in China were also subjected to the principle of transparency, which was evidenced by the public soliciting of comments for judiciary interpretations. The Supreme People's Court would further broaden the scope of commenting in the course of interpretation. Meanwhile, all the TRIPS-related laws, regulations, and other regulatory documents would be published through the Chinese Foreign Trade and Economic Cooperation Gazette as well as the bulletins and the websites of the relevant government departments. Members could also access the enquiry point set up by the Chinese Government for interesting information. (Verbal <sup>e</sup> )
Changes contemplated in the proposed civil code to IPRs, including any changes in enforcement of IPRs.	Written <sup>a</sup>		The representative of China said that the revision of the Chinese Civil Law was an important task for legislators. The ninth National Congress had enacted and revised a draft code. Due to the rapid social and economic development in China, it was necessary to regulate and rewrite some contents of that draft. China needed to do further research and investigation on this matter. (Verbal <sup>e</sup> )
Copies of any national laws that mandate greater transparency by local authorities in these areas.	Written <sup>a</sup>		China had made every effort to enhance its administrative transparency. This included two main aspects. First, the legislators had



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Legislative development to improve administrative transparency, including enactment of an Administrative Procedure Act.	Written <sup>a</sup>		enacted the Legislation Law, the Regulations on the Drafting Procedure of Administrative Regulations, and the Regulations on the Drafting Procedure of Rules, which standardized the operating procedure of administrative power. Second, the Administrative Permission Law would be enforced in 2004. The Law further regulated the boundary, conditions and procedure of administrative permission. It provided that only laws, regulations and local regulations could establish administrative permission and local laws could establish interim administrative permission. However, the departmental rule of the State Council could not establish administrative permissions. Thanks to these laws and regulations, administrative transparency had been increasing remarkably and the efficiency of administration would be further promoted. (Verbal <sup>e</sup> )
Procedures available under Chinese law to challenge the legality of ministerial rules involving intellectual property rights that may be inconsistent with laws or other ministerial rules or China's WTO obligations.	Written <sup>a</sup>		According to the Legislation Law, the Regulations on the Drafting Procedure of Administrative Regulations and the Regulations on the Drafting Procedure of Rules, the efficacy of laws and regulations was prior to that of local legislation and departmental rules, and the efficacy of local regulations was prior to local administrative rules. While local regulations conflicted with the regulations of the State Council, the National Congress had the authority to review them. When local rules conflicted with the departmental rules of the State Council, the State Council would be responsible for the review. (Verbal <sup>e</sup> )
Interpretation of regulation about the right of communication through information network; time schedule of when China will make the interpretation public.		Japan – Written <sup>c</sup>	<p>Article 47 of the revised Copyright Law had added a provision on legal liability for infringing the right of communication through an information network. The principles of illegal application were the same as the liabilities for various infringing acts, whether on-line or off-line, including Internet Service Provider (ISP) liability. Although the issue concerning ISP liability was not within the framework of the TRIPS Agreement, China was making an active and serious study of the issue. Other countries' relevant legislation, in particular that of the United States and the European Communities, had aroused general concerns in China. (Verbal<sup>e</sup>)</p> <p>A series of activities had been organized to study and prove the necessity and feasibility of the provisions that might be introduced in the regulations on the protection of the right to communication through information networks in respect of specific copyright matters. (Verbal<sup>e</sup>)</p>
<b>Market access and IPR services</b>			
Information on whether foreigners or	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
individuals from outside mainland China may obtain permission to practice professions including law firm attorneys, patent agents, trademark agents, and copyright agents.			
Information on whether licensed professionals from outside mainland China may join U.S. or foreign law firms or consulting companies and continue to provide their services from such a base of operations.	Written <sup>a</sup>		
Information on whether foreigners are restricted in the choice of agents they may hire to those which have a license to represent foreigners, as is indicated by the Amended Draft Regulations on Patent Agency.	Written <sup>a</sup>		
<b>Patents</b>			
State Intellectual Property Office's (SIPO) current application for compulsory licensing regime with respect to any patents registered in China; circumstances of such compulsory licenses.	Written <sup>a</sup>		
Explanation of the consistency of Rules for the Compulsory Licensing of Patents with the patent law provisions restricting compulsory licenses.	Written <sup>a</sup>		
Explanation of consistency of with the relevant provisions of Rules for the Compulsory Licensing of Patents with TRIPS Agreement, regarding Other Use Without Authorization of the Right Holder.	Written <sup>a</sup>		
Current information regarding patent pendency at SIPO, with respect to foreign patent applications and domestic patent applications.	Written <sup>a</sup>		In 2002, SIPO had received 252,631 patent applications, including inventions, utility models and industrial designs, an increase of 49,048 over the previous year. The growth rate was 24.1 percent. 951 international applications had been filed and 697 requests had been made for the international preliminary examination. 738 requests for the international preliminary examination had been completed. (Verbal <sup>e</sup> )
Recent data showing improvement status in the pendency of examination for each technical field; transparency of this data.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Disparity between domestic contract law and the licensing regulations on patents that raise concern to national treatment; proper enforcement by regional authorities of laws and regulations reflecting the relevant revisions at the time of China's accession to the WTO.		Japan – Verbal <sup>e</sup>	
<b>Data exclusivity and trade secret protection</b>			
Forms required for submission of undisclosed clinical data to insure	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
confidentiality of such data pursuant to TRIPS; statistical or other information regarding implementation of data requirement.			
Explanation of whether and how the data exclusivity provisions provided by the State Food and Drug Administration (SFDA) implement requirement to protect undisclosed data pertaining to pharmaceutical products submitted to government authorities for marketing approval from unfair commercial use.	Written <sup>a</sup>		To date, the State Food and Drug Administration (SFDA) had not found any application for drug registration which used undisclosed information. In regard to data exclusivity provided by the SFDA, the Chinese representative referred to the relevant regulations. Pursuant to Article 35.2 of the Rules on Implementation of Drug Law, the SFDA would not render a marketing approval pursuant to an application by taking advantage of other applicants' undisclosed information. Pursuant to Article 14 of the Measures on Regulation of Drug Registration, when putting forward an application for drug registration, the applicant should ensure that all data submitted were obtained independently. Pursuant to Article 21 of the Measures on Regulation of Drug Registration, when putting forward an application for drug registration with foreign data being introduced, the applicant should provide the verification of the legal origin of data. Pursuant to Article 22 of the Measures on Regulation of Drug Registration, the SFDA was entitled to require applicants to repeat the test in order to ensure that the relevant data had been obtained independently. Pursuant to Article 52, during the period of new drug approval, the technical requirements upon a new drug would not be lowered because the drug of the same class had received a marketing approval abroad, that is to say, the situation of documentation dependence did not exist. Pursuant to Article 35.2 of the Rules on Implementation of Drug Law, the SFDA would not render marketing approval to an application taking advantage of other applicants' undisclosed information. The SFDA had the obligation to protect the undisclosed test data obtained independently and other relevant data submitted by the applicant. Those illegally disclosing undisclosed data would be punished. The SFDA would accept a relevant application in accordance with Article 35.3 of the Rules on Implementation of Drug Law under the condition that measures had been taken, as the public interest required, to protect the data against unfair commercial use. Besides Article 120 of the Civil Procedure Law and Article 48 of the Provisions Regarding Evidence in Civil Litigations, the other provisions of the Civil Procedural Law and other laws, such as the Law on Lawyers and the Law for Promotion of Science provided protection for confidential information during civil litigation. (Verbal <sup>e</sup> )
SFDA's protection of data submitted when marketing approval for such data is thereafter denied.	Written <sup>a</sup>		
SFDA's creation of of an obligation of competing drug companies not to obtain or exploit protected data, including the right of an injured party to sue for theft of this information.	Written <sup>a</sup>		
SFDA's establishment of an obligation not to use such data for any purpose other than the marketing approval of the product.	Written <sup>a</sup>		
SFDA's definition of confidential data intended to provide the same private rights for protection of this undisclosed information as those provided by the Law to Counter Unfair Competition.	Written <sup>a</sup>		
Procedures to protect confidential information in intellectual property related litigation.	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<b>Trademarks</b>			
Number of and information on any well-known marks recognized to date, and any statistical data on foreign and domestic marks recognized.	Written <sup>a</sup>	Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	Although it had received some domestic and foreign requests for the determination of well-known marks, the TMO had not yet determined well-known trademarks under the new provisions. (Verbal <sup>e</sup> )
List of 293 marks recognized by the Chinese Trademark Office in calendar year (CY) 2002, and statistical data on foreign and domestic marks recognized as well known marks under prior and new procedures.	Written <sup>a</sup>		
Legal significance and differences among well-known marks, famous marks, provincial famous marks, famous brands, trademarks listed for "enhanced enforcement."	Written <sup>a</sup>		Well-known trademark referred to a mark that was widely known to the relevant sectors of the public and enjoyed a relatively high reputation in China. Relevant sectors of the public should include consumers of the type of goods and/or services to which the mark applied, operators who manufactured the said goods and/or provided the said services, and sellers and other persons involved in the channels of distribution of the type of goods or services to which the mark applied. The Chinese term "Zhuming shangbiao" (famous trademarks) referred to marks which were determined by the administrative authorities for industry and commerce at the provincial, municipal, or autonomous region level, based upon the local legislations, local government regulations or other administrative provisions, having a relatively high reputation and a greater influence within the specific jurisdiction. A provincial famous mark was the same as "Zhuming shangbiao." The Chinese term "You Ping Ming Pai" (famous brands) was not a legal term in the field of trademarks. The Trademark Office (TMO) never used this term. In addition, the TMO had used to have a list of marks for enhanced protection, which had been based upon the frequency and scope of trademark infringement. However, this practice had been abolished. (Verbal <sup>e</sup> )
Foreign marks or brands that have been identified as "famous" in Shanghai or other regions.	Written <sup>a</sup>		With respect to the determination of famous trademarks, the provincial or municipal authorities had the authority to make such decisions, and were not required to report to the TMO. Therefore, the TMO had no such information. (Verbal <sup>e</sup> )
Information on whether Chinese Trademark Office (CTO) has granted any trademarks for three-dimensional marks, color marks, olfactory marks, auditory marks.	Written <sup>a</sup>		By the end of October 2003, the TMO had received 1398 three-dimensional mark applications, among which 343 had been approved for registration. For some technical reasons, the TMO had no statistics on color marks. In addition, smell and sound marks were non-registerable under the Trademark Law. (Verbal <sup>e</sup> )
Standards regarding recognition of well known marks are being adopted by the General Administration of Customs, Ministry of Public Security,	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Supreme People's Procuratorate and Supreme People's Court as a result of the amendments to the Trademark Law or the new well-known (WK) Mark Rules; intention for agencies to rely upon determinations by Chinese Trademark Office for enforcement actions.			
Civil, criminal or administrative procedures and standards are in place to protect against companies that unfairly apply for the trademark of another company, or use such a trademark, by translating the foreign mark into Chinese or transliteration of its sounds.	Written <sup>a</sup>		Transliteration or translation was one of the standards to determine the identity or similarity. Thus, such applications could be refused during the trademark examination. Moreover, interested parties could file the request to the trademark review and arbitration bureau through the opposition or dispute procedure. (Verbal <sup>e</sup> )
Procedures to cancel trademarks applied for by agents or distributors without authorization of their principal.	Written <sup>a</sup>		Article 15 of the Trademark Law provided that where the agent or representative of the owner of a mark applied for the registration in his own name without the owner's authorization and the owner opposed the registration, the application should be refused and the use should be prohibited. This problem could be solved through the opposition or dispute procedure. The interested party could file an application with the TMO or the Trademark Review and Arbitration Bureau (TRAB). By the end of September 2003, the number of pending cases in the TRAB was 31,924. The number of pending opposition cases at the TMO was 16,386. The pending new applications for registration at the TMO were 380,000. (Verbal <sup>e</sup> )
Current information regarding trademark pendency at the CTO as well as the Trademark Review and Adjudication Board.	Written <sup>a</sup>		
Information on whether foreign licensors and/or assignees of trademarks are required to record their assignments or licenses of trademarks; whether such recordation requires government approval of the terms, registration of the complete text or only its significant terms, and precedence over separately negotiated contract or agreement.	Written <sup>a</sup>		No government approval of the terms of a license or assignment was required. However, a trademark license must be reported to the TMO for the record, regardless of whether the trademark owners were Chinese or foreign. The recording was not required for an assignment contract. As for the effect of the recording of a license contract, although there was no express provision in the Trademark Law, the judicial interpretation provided that, where the trademark license contract was not recorded at the TMO, it should not affect its effect, unless otherwise agreed between the interested parties, but an unrecorded license contract should not resist a third party with good faith. In addition, the Trademark Law provided that the assignment of a registered trademark should be published after it was approved. The assignee should enjoy the exclusive right to use the mark from the date of the publication. (Verbal <sup>e</sup> )
Provisions on right of priority added to "Trademark Law" and "Patent Law" are carried out on most-favored-nation basis to all WTO members.		Chinese Taipei – Written <sup>d</sup>	
Definition of specific procedure for		Chinese	China had been protecting foreign well-know

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
requesting that a trademark be considered a well-known mark and time-scaled involved; request for details of the latest status on its revision of the "Rules on the Determination and Protection of Well-Known Marks."		Taipei – Written <sup>d</sup>	marks in the light of international conventions. In line with the Provisions on the Determination and Protection of Well-Known Marks, which had come into force on 1 June 2003, the municipal level administrative authorities for industry and commerce should, within 15 working days from the date of the acceptance of the request of the interested party, report and send all the documents to the provincial administrative authorities for industry and commerce, if the case satisfied the requirements under Article 13 of the Trademark Law. The provincial authorities should, within 15 working days from the date of acceptance of the request of the interested party, report and send all the documents to TMO. The TMO should make its determination within six months from the date of the receipt of the relevant documents. Although it had received some domestic and foreign requests for the determination of well-known marks, the TMO had not yet determined well-know trademarks under the new provisions. (Verbal <sup>e</sup> )
<b>Geographical indications (GI)</b>			
Changes contemplated in the proposed civil code to IPR, including adoption of any additional measures to protect other forms of IPR, such as geographical indications.	Written <sup>a</sup>		The representative of China said that the revision of the Chinese Civil Law was an important task for legislators. The ninth National Congress had enacted and revised a draft code. Due to the rapid social and economic development in China, it was necessary to regulate and rewrite some contents of that draft. China needed to do further research and investigation on this matter. (Verbal <sup>e</sup> )
Number of certification or collective marks for geographical indications granted by the CTO.	Written <sup>a</sup>		To date, the TMO had received 260 GI applications for the registration of certificate marks, 100 of which had been approved. (Verbal <sup>e</sup> )
Standing that a certification mark owner has to challenge for the geographic term in the certification mark on related goods or products that do not come from the place for which the mark is registered.	Written <sup>a</sup>		The registrant of a certificate mark could file a complaint with the local authorities for industry and commerce or might file a lawsuit at the People's Court requesting to stop the infringement. (Verbal <sup>e</sup> )
Use of trademarks or trade names that identify the product as "like" or "style of" or "imitation" in conjunction with a registered geographical indication.	Written <sup>a</sup>		
Co-existence of pre-existing trademark with later established geographical indication under China's Trademark Law that any trademark registered in "good faith" remains valid notwithstanding that it includes a geographic sign.	Written <sup>a</sup>		Every country might encounter the problem of earlier registered trademarks and the GIs. Article 16 of the Trademark Law was substantially in compliance with the exceptions provided for in the TRIPS Agreement. China had acceded to the WTO on 11 December 2001 and the latest amendment of the Trademark Law had come into force on 1 December 2001. Those marks that had

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			obtained registration in good faith would continue to be valid under Article 16 of the Trademark Law, which referred to marks registered before this date rather than after it. (Verbal <sup>e</sup> )
Allowance of China's Trademark Law for continued registration of a trademark where such geographic term is deceptive as to the origin of the goods.	Written <sup>a</sup>		
Administration of a <i>sui generis</i> system for protection of geographic indications by the China's State General Administration of Quality, Supervision, Inspection, and Quarantine (AQSIQ); interaction between the system of GI protection by the AQSIQ and the system of protection provided for the GIs in the trademark system; refused protection for existing mark; foreign owner's standing to challenge recognition; number of recognized domestic and foreign geographic indications; number of enforcement actions taken for violation; bilateral agreement between China and other governments for mutual recognition using AQSIQ system.	Written <sup>a</sup>		The State General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ), in accordance with the Regulation for the Protection of Products with Geographical Indications, carried out the protection of GIs. If a trademark or certificate mark already existed, the AQSIQ would still provide GI protection from different respects and functions according to the Regulations and the related stipulations in the TRIPS Agreement. The following action had been taken against the infringement of GIs: the AQSIQ was the authorized government agency with two major functions, namely comprehensive administration and law enforcement. The agencies of the AQSIQ executed random checks and law enforcement against the infringements of GIs and trademarks in accordance with the Law on Product Quality, the Law on Entry and Exit of Commodities Inspection, Standardization Law of the People's Republic of China, and other relevant laws and regulations. (Verbal <sup>e</sup> )
<b>Copyright</b>			
Steps to enact implementing rules to the Chinese Copyright Law regarding protection of copyright over information networks.	Written <sup>a</sup>		With regard to the legislation on copyright protection of digital networks, the Chinese representative said that there was still much work to be done by the competent authorities in a thorough and careful manner, including the investigation and study of the legislative experiences of other Members. (Verbal <sup>e</sup> )
Request for information on possible developments that have taken place under Chinese law or judicial interpretations to protect temporary copies.	Written <sup>a</sup>		Regarding the protection of temporary copies, such term was used neither in the Berne Convention nor in the TRIPS Agreement. (Verbal <sup>e</sup> )
Information on whether foreign rights holders have had their materials published pursuant to a provision in China's Copyright Law that provides for a mandatory right for republication of material for Chinese textbooks; scope of any such republication undertaken.	Written <sup>a</sup>		In regard to re-publication of materials in Chinese textbooks, to date, the National Copyright Administration of China (NCAC) had not yet obtained any information in this respect from foreign right owners or domestic publishers. (Verbal <sup>e</sup> )
Information on whether the right to a "reasonable" royalty from infringers under Software Protections Rule has been applied by China's courts or administrative agencies; compliance with TRIPS; consistency with	Written <sup>a</sup>		So far no copyright administrative department had dealt with such a case, and there had been no news reported concerning the relevant judicial decision. In addition, under Article 30 of the Regulations, the "holder of copies of a piece of software" was defined as the end user

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Copyright Law.			of software who had performed the reasonable duty for care and had obtained a copy of software in good faith. Accordingly, it could not be inconsistent with Article 13 of the TRIPS Agreement. If the holder of the copy of software used an infringing copy, the person was obliged to prove that he or she never knew nor had reasonable grounds to know that such a copy was an infringing one. (Verbal <sup>e</sup> )
Software regulation's allowance of software use "for the purpose of study and research" without the consent and without remuneration to the copyright owner and its consistency with the Berne Convention as well as TRIPS; permission of software reproduction; consistency with China's Copyright Law, and authority to avoid payment for legitimate copies.	Written <sup>a</sup>		Article 17 contained the same principles as adopted in Article 22 of the Copyright Law concerning fair use. According to Article 21 of the revised Implementing Regulations of the Copyright Law, fair use should not conflict with the normal exploitation of the work and should not unreasonably prejudice the legitimate interests of the right holder. Consequently, Article 17 of the Regulations should be deemed as consistent with Article 13 of the TRIPS Agreement. (Verbal <sup>e</sup> )
Administrative agencies that may take action against an Internet Service Provider that illegally makes content available to the public or downloading it.	Written <sup>a</sup>		In accordance with Article 47 of the Copyright Law, copyright administrative departments had been authorized to take action against an ISP who was illegally making the content available to the public or downloading it. (Verbal <sup>e</sup> )
Developments in China's study of the content of the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty.	Written <sup>a</sup>		A series of activities had been organized to study and prove the necessity and feasibility of the provisions that might be introduced in the regulations on the protection of the right to communication through information networks in respect of specific copyright matters. For example, in October 2002, the State Council had sent a high level delegation to Europe to investigate copyright systems in the digital network environment. In November 2002, the National Copyright Administration of China (NCAC) organized a delegation to visit WIPO and exchange views with the organization in respect of China's accession to the two new treaties. In July 2003, the NCAC had held a forum on the Internet Treaties and copyright protection in digital network environment and listened to the opinions from legal and network circles. In November 2003, the NCAC would invite WIPO experts to China to give touring lectures on the two new treaties. (Verbal <sup>e</sup> )
Information regarding Internet related enforcement activity of the Ministry of Culture pursuant to its Provisional Regulation on the Administration of Cultural Products and Services on the Internet.	Written <sup>a</sup>		
Information on whether the Chinese government has issued any directives regarding proper use of the Internet on university or college campuses, in research and development institutions, government offices or in state-owned corporations.	Written <sup>a</sup>		In China, if an infringement took place on the Internet, the infringer, whether an individual or a legal entity, should bear the corresponding legal liabilities pursuant to the Copyright Law. The NCAC had not issued any directive regarding the proper use of the Internet in universities, government offices or state-owned



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
<p>Information on whether China has undertaken any criminal, administrative or civil prosecutions against individuals or entities based in China hacking into overseas databases for purposes of obtaining unauthorized access to foreign copyrighted materials.</p>	<p>Written<sup>a</sup></p>		<p>corporations. (Verbal<sup>e</sup>)</p> <p>In February of 2002, the copyright administrative department of Zhejiang province had dealt with a case concerning "the U.S. Chemistry Digest Disc Publication" pirated by means of illegal decoding. Two suspects had decoded a lawful copy of the disc, made reproductions and then sold them on the Internet by sending batches of mails. The copyright administrative department had ordered the decoder and the two suspects to cease the infringing acts and confiscated their unlawful income. In addition, the competent department had confiscated the equipment and tools mainly used to make infringing copies, destroyed the infringing copies and imposed a forfeit on the two suspects. (Verbal<sup>e</sup>)</p>
<p>Expansion of the current provision of the Copyright Law, which deem the removal or alteration of any electronic rights management information without authority to be infringement, to include the distribution, import for distribution, broadcast or communication to the public works or copies of works knowing that electronic rights management information has been removed or altered without authority.</p>		<p>Japan – Written<sup>c</sup></p>	<p>Regarding the removal or alteration of electronic rights' management information, this issue was not covered by the TRIPS Agreement but by the WIPO Copyright Treaty (WCT). Nevertheless, the issue was under consideration in China. (Verbal<sup>e</sup>)</p>
<p>Burden of proof on right holders under regulation for copyright administrative punishment.</p>		<p>Japan – Written<sup>c</sup></p>	<p>In respect of the Copyright Law, the Regulations neither decreased nor increased the burden of proof on the right holder. On the other hand, the revised Copyright Law increased the burden of proof on the party against which an action was brought by adopting Article 43.2 of the TRIPS Agreement. The Regulations reflected the legislative purpose of the Copyright Law. According to Article 3.2 of the Regulations, administrative procedures could be initiated not only on the basis of complaints from right holders but also with the removal of cases by other relevant departments, reports from other persons finding out infringements, or initiative investigation by administrative departments. In accordance with the Regulations, the NCAC had to investigate the case with a great influence in the country, which was determined at the NCAC's discretion. In general, an infringement should be dealt with by the local administrative department of the place where the infringement was committed. (Verbal<sup>e</sup>)</p>
<p>Number of administrative procedures started without reports from right holders.</p>		<p>Japan – Written<sup>c</sup></p>	
<p>Criteria in deciding the level of administrative department to deal with a case.</p>		<p>Japan – Written<sup>c</sup></p>	
<p>Definition of "find infringement."</p>		<p>Japan –</p>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Amount of proof right holders should submit as "proof of right holder identification" when they apply to administrative procedures.		Written <sup>c</sup> Japan – Written <sup>c</sup>	The copy of a work with a complainant's name on it might be deemed as a proof of the right holder's identification. A copyright registration was not necessarily required for complainants to apply to administrative procedures. (Verbal <sup>e</sup> )
Concern that provision would force right holders to take much time and cost to identify the infringer's name, and location without legal prosecution power.		Japan – Written <sup>c</sup>	
Possibility that an administrative department refuses to accept the application because the department is not the one in charge.		Japan – Written <sup>c</sup>	An administrative department might not accept an application for administrative procedures if it was not in charge. (Verbal <sup>e</sup> )
Explanation of the person who has a burden of proof and the duration the copyright administrative department specifies.		Japan – Written <sup>c</sup>	The expression "person who has a burden of proof" as mentioned in Article 16 of the Regulations referred to the complaining party but not the right holder. Whether an illegal act was slight or not was determined by the administrative department according to the concrete circumstances of each case. (Verbal <sup>e</sup> )
Definition of "parties" as both right holders and infringers; difficulty for foreign right holders to give statements and submit claims within seven days from the notified day.		Japan – Written <sup>c</sup>	<p>The expression of "parties' names" included not only the name of the right holder but also that of a complaining party. Otherwise, an administrative department could hardly investigate a case or render specific administrative penalties without having obtained sufficient information concerning the complaining party, or without having known the exact complaining party. (Verbal<sup>e</sup>)</p> <p>With respect to the negative prescription of administrative penalty, Article 9 of the Regulations was consistent with Article 29 of the Administrative Penalty Law of China, i.e., where an illegal act was not discovered within two years of its commission, administrative penalties should no longer be imposed, except if otherwise prescribed by the law. The period of time prescribed should be counted from the date the illegal act was committed. If the act was of a continual or continuous nature, it should be counted from the date the act terminated. The prescription of administrative penalty was different from that of a civil action in that the latter was calculated from the date on which the injured party knew or had the reasonable grounds to know that his rights were infringed while the former was calculated from the date on which the illegal act took place or stopped. (Verbal<sup>e</sup>)</p>
Criterion to consider an infringement as illegal activity.		Japan – Written <sup>c</sup>	
Possibility that re-distributed facilities can hamper the deterrent effect of the administrative procedures.		Japan – Written <sup>c</sup>	Regarding the auction or re-selling of facilities used for making infringed goods, the person who bought such facilities must observe the

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			law. Moreover, such facilities could be bought only by factories in lawful operation and with the requisite qualifications. (Verbal <sup>e</sup> )
Stronger administrative measures, including stiffer fines and increased number of seizures, to ensure active and smooth administrative control of problem.		Japan – Verbal <sup>e</sup>	
<b>Semiconductor layout design</b>			
Identification of all rules or regulations, including ministerial rules and local enactments enacted to semiconductor layout design enforcement.	Written <sup>a</sup>		Layout-designs and utility and design patents were protected by China's Patent Law and the relevant regulations. Forging others' patents with serious circumstances would be convicted of the crime of forging others' patents according to Article 216 of the Criminal Law. (Verbal <sup>e</sup> )
Information regarding any civil or criminal actions for infringement of layout designs.	Written <sup>a</sup>		
Deadlines for filing semiconductor layout design applications.	Written <sup>a</sup>		
<b>Enforcement</b>			
Statistical information available on the number of Administrative enforcement cases for CY 2002 and partial year 2003 reports.	Written <sup>a</sup>		
Number of civil intellectual property cases heard by Chinese courts, cases requesting and/or granted preliminary relief whether or not <i>inaudita altera parte</i> ; length of time from case initiation to adjudication for trial and appellate levels.	Written <sup>a</sup>		With regard to the trial term, Chinese courts would strictly follow the Regulations on Civil Procedure Law and judicial interpretation. (Verbal <sup>e</sup> )
Opportunities for review or appeal of judicial determinations in China's court process.	Written <sup>a</sup>		According to Article 147 of the Civil Procedure Law, the parties who could not accept a judgment or decision might lodge an appeal. According to Article 178 of the Civil Procedure Law, the parties could apply for another trial to the same court or the superior court for those cases that had been effective. Besides, the court or the procuratorate could start supervising procedures. (Verbal <sup>e</sup> )
Number of administrative intellectual property appeals heard by Chinese courts.	Written <sup>a</sup>		
Standards under Chinese law for determining that an agency decision was illegal, or should be reconsidered; special efforts made by court to better understand the handling of intellectual property appeals.	Written <sup>a</sup>		As to standards for IPR crimes, two laws applied at the central and local levels, that is, the Interpretation on Specific Application of Law on Several Questions of Trial for Illegal Publication Criminal Cases by the Supreme People's Court and the Regulations on Standards for Initiating Cases In Economic Crimes by the Supreme People's Procuratorate and the Ministry of Public Security. (Verbal <sup>e</sup> )
Rate of reversal of CTO and SIPO administrative agency decisions noted above on appeal to the court indicated above.	Written <sup>a</sup>		
Number of criminal IPR investigations	Written <sup>a</sup>		Regarding the number of criminal cases of

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
initiated, cases filed, convictions, length of sentence, amount of fine, compensation to rights holder.			intellectual property rights infringement, there had been 301 persons and 128 cases in 1998, 379 persons and 248 cases in 2000, and 702 persons and 408 cases in 2002. A total of 1,273 criminal cases relating to intellectual property rights had been closed within the five years, and 2,104 persons had been sentenced. At present, the Supreme People's Court was drafting the judicial interpretation on the application of law in criminal cases of intellectual property rights' infringement, which would include the criteria for conviction and imposing penalties. The interpretation would be adopted and published by the Supreme People's Court after strict examination. (Verbal <sup>e</sup> )
Number of criminal cases for export of counterfeit goods, hacking or circumvention of copyright technological protection measures, hacking of copyright rights management information, trafficking in technological protection measures, software end-user piracy, commercial sale or replication of pirated semiconductor layout designs, patent infringement of utility or design patents.	Written <sup>a</sup>		In the year 2002, the Chinese customs had seized a total of 573 cases worthy of RMB 95.62 million, including four worth RMB 230,000 and 569 cases worth RMB 95.39 million. (Verbal <sup>e</sup> )
Number and relevant circumstances of criminal IPR cases that were privately initiated (zisu).	Written <sup>a</sup>		Statistics of privately initiated criminal cases accepted by the Chinese courts from January to September of 2003 were the following: one on copyright, one on commercial secrets, two on selling infringing reproductions, 18 on producing and selling counterfeit products. (Verbal <sup>e</sup> )
New interpretations, standards, regulations or guidelines by the courts, procuratorate or other agencies regarding the circumstances in which investigations should be initiated by the procuratorate.	Written <sup>a</sup>		There were two main regulations concerning the circumstances in which investigations should be initiated by the procuratorate or by individuals: the Interpretation Regarding Practical Questions Concerning the Judicial Application in Hearing the Illegal Publication Criminal Cases by the Supreme People's Court, and the Interpretation Regarding Practical Questions Concerning the Judicial Application in Hearing Producing, Selling Counterfeit Goods Criminal Cases by the Supreme People's Court and the Supreme People's Procuratorate. At this stage, the Supreme People's Court had been carrying out investigation and research concerning the responsibility and scientificity of the Standards for Initiating Criminal Cases. China would stipulate the interpretation with the feasibility or submit the relevant law-making suggestions in the near future. (Verbal <sup>e</sup> )
Steps taken to facilitate referrals of criminal IPR cases from administrative agencies, including standards for evidence collection and	Written <sup>a</sup>		Regarding the steps which were being taken to facilitate the referral from administrative agencies, the Chinese representative referred to the Provisions on the Transfer of

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
preservation, standards for referral to criminal prosecution, standards for referral back to administrative punishment if a case is not initiated by criminal justice authorities.			Susceptible Criminal Cases by the Administration Organs for Law Enforcement. (Verbal <sup>e</sup> )
Guidelines established apart from those in China's criminal code regarding the penalties to be provided for willful trademark counterfeiting or copyright piracy on a commercial scale.	Written <sup>a</sup>		Chapter 3 of the Chinese Criminal Law, revised in 1997, criminalized the destruction of the socialist market economic order. Section 7 of Chapter 3 was set to target the infringement of IPRs and listed seven crimes in detail, covering trademarks, patents, copyright and confidential information. In addition, on 17 December 1998, the Supreme Court's Interpretation on the Practical Problems on Application of Laws Against Illegal Publications clarified the standards of penalty regarding copyright offences, including the penalty against a crime of illegal business operation. Moreover, the Regulations of the Standards for Litigating Cases in Economic Crimes, which was promulgated by the Supreme People's Procuratorate and the Ministry of Public Security on 18 April 2001, set the standards of prosecution in IPR offences except copyright crimes. Section 7 of Chapter 3 of the Criminal Law and these two above-mentioned Interpretations constituted the most fundamental basis for the protection of IPRs in terms of the criminal law. In addition, Section 1 of Chapter 3 of the Criminal Law, which criminalized the production and distribution of counterfeiting products, and the Supreme Court's and the Supreme People's Procuratorate's Interpretation of Practical Problems Concerning Criminal Cases of Production and Distribution of Counterfeiting Products were applicable to some of the IPR infringement cases, mainly trademark offences. Relevant regulations could also be found in Articles 54 and 59 of the Trademark Law, Article 58 of the Patent Law, Article 47 of the Copyright Law, Article 24 of the Software Regulations, Article 40 of the New Species of Plant Regulations, and Article 21 of the Anti-Unfair Competition Laws. Those infringing offences, once proved criminal, would be brought to justice by the Criminal Law. (Verbal <sup>e</sup> )
Definition of counterfeit trademarks in China's Criminal Code and conformity with TRIPS.	Written <sup>a</sup>		
Information on whether criminalization is provided only of identical goods or whether counterfeiting of goods of the same class or other classes in which the trademark is registered may be prosecuted.	Written <sup>a</sup>		"Goods of the same class" meant goods that were completely identical, or of the same category and class, or with the same name, that share basically the same nature and function. "Goods of the same class" had bigger extension than "identical goods." The practical judgment of "goods of the same class" was usually subject to comprehensive

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			assessment by the judge based upon the general knowledge of the public of certain products and the classification of goods by the international classification list of goods and services, with the trademark registration. The classification list was not the only benchmark for judgment, but an important standard for reference. To sum up, one of the important criteria to tell whether two products were of the same class was whether they shared the same product name, though they might have different practical functions. However, those goods with different names could also be defined as goods of the same class as long as they bore the same practical function or scope. (Verbal <sup>e</sup> )
Information on whether the manufacturing, distribution, import or export, of products bearing a mark that cannot be distinguished in its essential aspects but is not identical is criminalized in these or other provisions of China's criminal law.	Written <sup>a</sup>		<p>Article 5 of the Advice on the Practical Problems Concerning Administrative Enforcement Regarding Trademark, which had been promulgated by the State Administration for Industry and Commerce, provided that "identical trademark means the characters, pictures and patterns or the combinations of the characters and pictures on two trademarks are identical or have no visual difference by comparison." Article 9 of the Supreme Court's Interpretation on Practical Questions Concerning Applicable Laws Governing Civil Disputes on Trademarks, which had been promulgated on 12 October, 2001, stated that "an identical trademark defined in Item 1 of Article 52 of the Trademark Law means, by comparison, the trademark being accused of infringement generally has no visual difference from the registered trademark of the plaintiff." Article 10 of this Interpretation also defined the principle on judgment of identical or similar trademarks as "(1) set the attention of the relevant public as the standard; (2) comparison should be made not only to trademarks as a whole, but also to the major parts of them". The process should only be undertaken when the compared objects were separated and isolated. Therefore, the Chinese representative inferred that identical trademarks in legal terms made a difference to what "identical" meant in daily language. (Verbal<sup>e</sup>)</p> <p>"Identical trademark" was different from what "identical" meant in daily language. China's standard for judgment was whether marks had no visual difference. According to this understanding, this standard generally conformed to the principle of being "not distinguished in essential aspects." (Verbal<sup>e</sup>)</p>
Information on whether the export of counterfeit goods constitutes a "sale" within the meaning of China's Criminal Code.	Written <sup>a</sup>		Commercial import and export actions constituted a "sale" in real terms. However, under these circumstances, a party involved could be criminally liable for smuggling or

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Information on whether China currently criminalizes in its laws, or has any intention of criminalizing, commercial scale piracy, which is not undertaken for private gain or profit.	Written <sup>a</sup>		illegal operations. (Verbal <sup>e</sup> ) Although some infringing acts did not constitute acts of crime according to Articles 217 and 218 of the Criminal Law, that did not mean that they were not criminal acts. They could constitute the crime of intentional property damaging or the crime of construction impediment. China had noticed that some foreign countries, including the United States, the United Kingdom, and Japan, did not specify the aim of making profits as a subjective element for copyright crimes. China was taking this factor into consideration and weighing up the possibility of integrating it into its legal system. (Verbal <sup>e</sup> )
Information on whether China has undertaken any criminal, administrative or civil prosecutions against individuals or entities based in China who use the Internet to obtain access to computer systems or databases overseas for purposes of obtaining unauthorized access to foreign copyrighted materials.	Written <sup>a</sup>		Regarding whether China had undertaken criminal, administrative or civil prosecutions against individuals or entities who used the Internet to obtain access to computer systems, though the acts <i>per se</i> did not constitute the copyright crimes defined by Articles 216 and 217 of the Criminal Law, their following acts usually did. (Verbal <sup>e</sup> )
Information on whether certain financial thresholds of referring cases to criminal prosecution, as required by China's intellectual property law, may be satisfied by non-monetary means, such as barter exchanges of pirated material or other forms of compensation.	Written <sup>a</sup>		The financial threshold was a major element, but by no means the complete element in IP-related crimes. The record of the administrative penalty for counterfeiting and piracy and serious consequences could all be regarded as factors in crime determination. On the other hand, financial threshold was a generic term that might refer to sales volume, value of goods, illegal profits or damages to the right owner. It could also exist in various forms like money or commodities, as they could be transferred in money terms. (Verbal <sup>e</sup> )
Calculation of illegal business amount as proof of guilt.	Written <sup>a</sup>		As to the so-called illegal business amounts, on the one hand, the illegal business amounts could be determined using other evidence, such as written documents from the purchaser, witness, testimony, and assessment on goods. On the other hand, in cases where the illegal business amount could not be verified, the constitution of crime could be determined through other factors. (Verbal <sup>e</sup> )
Provisions for landlord liability for illegal activities taken by lessee and any instances of its imposition in IP matters.	Written <sup>a</sup>		
Tougher measures needed to protect intellectual property rights in line with its international commitments.		EC – Written <sup>b</sup>	
Establishment of a forward-looking enforcement strategy for intellectual property which will suit both the domestic and international markets.		EC – Written <sup>b</sup>	
Efficient and deterrent system needed for the enforcement of intellectual		EC – Written <sup>b</sup>	

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
property rights.			
Recommendation for creation of a high level Coordination Working Office.		EC – Written <sup>b</sup>	
Number of criminal prosecutions related to patent rights, trademark rights, industrial design rights and copyrights.		Japan – Written <sup>c</sup>	
Changes that should be made to the standards for criminal prosecutions related to copyright infringements.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	
Regulations and notifications to make customs and other enforcement bodies informed who bear the disposal costs of the infringing products.		Japan – Written <sup>c</sup>	The cost of confiscation and disposal of counterfeiting goods undertaken by the Customs shall be borne by right holders. According to Articles 14 and 15, and other relevant provisions of the Regulation on the Customs Protection of Intellectual Property Rights, the applicant who requested the Customs to detain suspected infringing goods should provide a bond to the Customs. After a relevant administrative determination, judicial judgment or adjudication came into effect, the Customs should refund the remainder of the bond, from which the cost of storage, custody, and disposal of the goods as well as the compensation fees to the interested parties for the loss induced by the inappropriate application had been deducted. (Verbal <sup>e</sup> )
Steps to eliminate localism that encourages soft approach to manufacture of counterfeit goods by local firms.		Japan – Written, <sup>c</sup> Verbal <sup>e</sup>	The Chinese Government had always been engaged in fighting against "localism". The State Council's Provisions on Prohibiting Regional Blockage in Market Economic Activities, published on 21 April 2001, showed the positive attitude of China against localism in the field of intellectual property rights. China protected right holders in strict accordance with the laws and administrative regulations on the protection of intellectual property rights that were in complete conformity with the WTO TRIPS Agreement. China was now making every effort to implement the obligations of the TRIPS Agreement. (Verbal <sup>e</sup> )
Activity plan to fight against pirated software and other pirated goods; information on policies to implement the activity plan established in June 2003; establishment of activity plan in the other pirated goods but software; legal responsibility provided for ISP.		Japan – Written <sup>c</sup>	The guiding ideology of the Activity Plan for Fighting against Pirated Software, which was published in June 2003, was to resolutely crack down on various piracy and infringing acts in respect of software and to promote the development of the Chinese software industry. The working objective was to establish a fair and orderly software market and to realize the fundamental improvement in the social environment of software copyright protection. The Activity Plan was a provisional measure, while the crackdown on various piracy acts was a long-term and standing task. At present, a crackdown on software piracy was included in this Plan in the light of the current situation of China, and it was possible for this Plan to include anti-piracy work in other respects later.



Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			(Verbal <sup>e</sup> )
Status of operations for regulation of export of counterfeits and pirated goods made in China.		Japan – Written <sup>c</sup>	
<b>Border measures</b>			
Type, value and quantity of Customs' seizures of infringing goods; disposition of goods; nature of rights infringed; whether goods were being imported or exported; destination or source of goods; and nature of fine or penalty imposed.	Written <sup>a</sup>		<p>With respect to counting the value of infringing imports, the Customs would follow the Customs Law, the Customs Regulation for Protection of Intellectual Property Rights and other administrative regulations. The Customs had cooperation with traditional authorities, including public security, according to the Regulation on Transfer of Suspected Criminal Cases by the Administrative Agencies, and other laws or regulations. (Verbal<sup>e</sup>)</p> <p>Regarding the regulations of the export of counterfeit and pirated goods, in the year 2002, the Chinese customs had seized a total of 573 cases worthy of RMB 95.62 million, including four worth RMB 230,000 and 569 cases worth RMB 95.39 million. (Verbal<sup>e</sup>)</p>
Number and type of cases referred to administrative investigation; number of cases referred to and provision of criminal law applied to criminal investigations.	Written <sup>a</sup>		
Method for Chinese Customs to determine the valuation of seized goods for purposes of assessing penalties or referral to criminal prosecution under IPR laws or under anti-smuggling laws.	Written <sup>a</sup>		
Steps under way to improve cooperation between Chinese Customs and criminal justice agencies, such as the Ministry of Public Security and Procuracy.	Written <sup>a</sup>		
Status of any revisions to China rules regarding Customs Rules for Protection of Intellectual Property.	Written <sup>a</sup>		<p>China was considering the revision of the Customs Regulation for the Protection of Intellectual Property Rights according to the TRIPS Agreement and to China's promises upon its accession to the WTO. The customs had the administrative authority over the import or export of pirated goods over the Internet. The customs and other IPR agencies would make a decision on infringement according to the Customs Regulation for Protection of Intellectual Property Rights, the Patent Law, the Trademark Law, and the Copyright Law. (Verbal<sup>e</sup>)</p>
Customs or other agencies with administrative authority over the import or export of pirated goods over the Internet.	Written <sup>a</sup>		
Information on whether Customs or other authorities have authority over export of counterfeit or pirated goods by mail or delivery services.	Written <sup>a</sup>		

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
Method for Customs to adjudicate determinations of infringement of particular goods by a recorded trademark, copyright, patent or other intellectual property rights; information on any anticipated changes to how Customs adjudicates determinations of infringements.	Written <sup>a</sup>		
<b>Relationship among civil, criminal, and administrative enforcement</b>			
Information on whether an administrative punishment for an IPR infringement precludes subsequent criminal enforcement for the same act.	Written <sup>a</sup>		Theoretically an administrative punishment did not preclude the subsequent criminal enforcement for the same act. According to the Provisions on the Removal of Suspected Crime Cases by Administrative Enforcement Agencies of 2001, which had been enacted by the State Council, cases of suspected crime of violating the Copyright Law should be removed to judicial authorities. Consequently, it was infrequent that a criminal enforcement came after an administrative punishment. (Verbal <sup>e</sup> )
Steps to insure that individuals are deterred from pursuing infringing activities after having once committed an offence; central registry for determining when a party has been administratively, criminally, or adjudicated to be civilly liable to have infringed IP rights.	Written <sup>a</sup>		
Steps to close down or police markets for pirate and/or counterfeit goods in popular locations.	Written <sup>a</sup>		In 2003, the NCAC had launched three special actions. In February, the NCAC had launched the Special Action for Striking Piracy during the World Intellectual Property Leader's Meeting. According to incomplete figures, the copyright administrative departments in Beijing, Shanghai, Tianjing, Chongqing, and the provinces of Liaoning, Jilin, Hainan, Guangdong, Fujian, Zhejiang, Anhui, Jiangxi, Jiangsu, Yunnan, Guizhou, Gansu, Shanxi and Inner Mongolia had checked 2,588 markets, 30 schools, and 77 enterprises, imposed administrative punishments on 1,430 infringing or pirating entities, imposed a forfeit of RMB 1,339.5 thousand, suppressed 816 shops, and removed five cases to judicial authorities, and investigated one underground compact disc press. In July, the NCAC combined with the General Administration for Press and Publication, Ministry of Education, and the National Anti-Piracy and the Pornography Working Committee, had launched the 2003 Autumn Special Action for Striking Pirated Textbooks and Assistant Teaching Materials. This action was still under way at present. In August, the NCAC had launched the 2003 Special Action for Striking Pirated Software. On the first day of this action, 250,000 infringing copies alone of software had been confiscated in Beijing, Shanghai, and the provinces of Sichuan and Guangdong. The

Summary of issues by theme	Raised by United States	Raised by other WTO members	China's response
			local agencies of industrial and commercial administration would also step up the efforts in clamping down on trademark infringements. Furthermore, local administrative authorities for industry and commerce conducted routine monitoring and investigation to discourage counterfeit markets. If any counterfeit goods were found in the market, they would strictly enforce the relevant laws and regulations. (Verbal <sup>e</sup> )
Regulations regarding approvals of markets for the designation of markets posting signs that they contain no "counterfeit products," as well as enforcement actions taken against such markets.	Written <sup>a</sup>		
Regulations or procedures involving administrative or criminal enforcement at trade fairs such as the Canton Trade Fair.	Written <sup>a</sup>		The relevant IPR agencies undertook enforcement actions every year at the Canton Trade Fair. (Verbal <sup>e</sup> )
Steps to deprive exporters of counterfeit goods of their right to engage in international trade and to provide adequate punishments against them.	Written <sup>a</sup>		
Rules that apply to the operations of foreign private investigations firms in IPR matters, and any plans to permit these firms to more actively assist China's administrative, criminal and civil enforcement authorities.	Written <sup>a</sup>		
Provisions established under Chinese civil law to insure that civil penalties that are imposed are deterrent in nature.	Written <sup>a</sup>		The revision of the Chinese Civil Law was an important task for legislators. The ninth National Congress had enacted and revised a draft code. Due to the rapid social and economic development in China, it was necessary to regulate and rewrite some contents of that draft. China needed to do further research and investigation on this matter. (Verbal <sup>e</sup> )
Provisions established in China's criminal law to insure that penalties are known to the public at large and that criminal prosecutions influence social behavior.	Written <sup>a</sup>		

Source: GAO analysis of WTO documents.

Note: An additional document source is a communication from China: IP/C/W/415; dated 11/17/03.

<sup>a</sup>Communication from U.S.: IP/C/W/414; dated 11/10/03.

<sup>b</sup>Communication from European Communities: IP/C/W/413; dated 11/7/03.

<sup>c</sup>Communication from Japan: IP/C/W/410; dated 10/20/03.

<sup>d</sup>Communication from Chinese Taipei: IP/C/W/411; dated 11/5/03.

<sup>e</sup>Committee report detailing verbal statements made during meeting: IP/C/31; meeting dated 11/18/03.

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