

## People's Republic Of China Market Access Memorandum Of Understanding

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

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

#### ARTICLE I - TRANSPARENCY

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

The provisions of this paragraph, however, do not require disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. For the purposes of this Memorandum of Understanding (MOU), confidential information that could prejudice the legitimate commercial interests of a particular enterprise means specific information concerning the importation of a product that would have a significant adverse effect on the price or quantity available of such product, but shall not include information required to be disclosed under the GATT and related agreements.

2. Such laws, regulations, rules, decrees, administrative guidance and policies referred to in paragraph 1 that are not published and made available to other governments and traders as of the date of signature of this MOU will be published and made available within twelve months thereafter. The Chinese Government will issue regulations, to go into effect within 12 months of the signing of this MOU, which will provide that only laws, regulations, rules, decrees, administrative guidance, and policies that are published and readily available to other governments and foreign traders will be enforced.

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

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

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

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

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

## ARTICLE II - QUANTITATIVE RESTRICTIONS ON IMPORTS

1. Pursuant to the People's Republic China's policy of bringing its trade regime into line with international standards, the Chinese Government:

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

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

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

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

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

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

## ARTICLE III - IMPORT SUBSTITUTION

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

## ARTICLE IV - STANDARDS AND TESTING

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

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

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

scientifically unjustifiable phytosanitary restrictions against imported produce, such as bonsai, citrus fruit and Chinese pears.

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

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

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

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

#### ARTICLE V - TARIFFS

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

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

#### ARTICLE VI- - EXPORT RESTRICTIONS

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

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

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

#### ARTICLE VII - CONDITIONS OF MARKET ACCESS

1. The Chinese Government will ensure that the conditions for market access specified in this MOU remain unimpaired directly or indirectly by any other restrictions affecting imports or exports of products from the People's Republic of China.

2 . Notwithstanding the provisions of the MOU, the U.S. Government and Chinese Government reserve any rights they may have in the future under the General Agreement on Tariffs and Trade.

#### ARTICLE VIII - SECTION 301 INVESTIGATION AND GATT

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

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

#### ARTICLE IX - CONSULTATIONS AND FINAL PROVISIONS

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

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

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

[Signed by Michael Kantor]

For the Government of United States of America

[Signed by Wu Yi]

For the Government of The People's Republic of China

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*TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.*