



CHINA'S SUPPORT PROGRAMS FOR SELECTED INDUSTRIES: AGRICULTURE

Trade Lawyers Advisory Group

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For decades, China had been following the policy of taxing agriculture to support its urban industrialization efforts. The success of its recent economic reform not only gives the central government the fiscal means but also creates an urgent need to change this policy. Discrepancy in the rate of growth of the manufacturing sector compared to agriculture sector has led to a large income inequality between urban and rural populations. This gap poses a threat to the nation's social stability.

2004 was a year of change. In that year, the Chinese Communist Party Central Committee and the State Council jointly issued their No. 1 policy directive calling for an increase in government support to agriculture and to farmers. This policy change was later incorporated into the *11th 5-Year Guideline for National Economic and Social Development*, which was approved by the National People's Congress in March 2006. This *Guideline* is China's most authoritative development strategy and it laid out a clear roadmap for future agricultural and rural development.

Under the *11th 5-Year Guideline*, food security remains a key policy objective. New priority policy objectives include providing income support to farmers, developing a vertically-integrated, innovative and knowledge-intensive rural economy, and promoting a sustainable and environmentally-friendly development pattern.

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The measures adopted to achieve these policy goals include: (1) subsidizing grain production and agricultural inputs, such as fertilizer and improved crop strains and animal breeds; (2) developing an integrated national market and establishing unified national agricultural product standards, and an effective national safety and quality inspection system for agriculture products; (3) restructuring the agricultural sector to move the industry up the value chain; and (4) encouraging technology proliferation and enhancing innovation capacity in the industry. In addition, China has taken measures to encourage the adoption of environmentally-friendly methods of agricultural production, which evidences a shift in policy priorities from the food supply to environmental concerns.

China's central government has also undertaken a major effort to provide low-cost loans to farmers. The government has conducted a nationwide reform to consolidate and recapitalize the Rural Credit Cooperatives, the primary lender in rural areas. It is estimated that China has infused RMB 160 billion into these Rural Credit Corporatives to allow them to write off bad loans. Pilot programs have also been launched, such as micro-loans and joint-guarantee group lendings, to find viable ways to extend loans to small farmers. In the more developed regions, local governments also are experimenting with providing subsidized agricultural insurance to farmers.

As a result of these policy changes, government support to agriculture and farmers has been steadily increasing in recent years. In 2006, the Chinese government spent RMB 339.7 billion (US\$ 42.45 billion) on the "Three Rural"

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projects — projects that are related to agriculture, rural areas, and farmers. Another RMB 12 billion in a special fund was distributed directly to grain farmers to encourage grain production. Of the “Three Rural” projects, investment in agricultural and rural infrastructure was the largest investment category. According to the OECD, between 1998 and 2002, the Ministry of Agriculture alone invested RMB 126.3 billion in water conservancy works, and RMB 44.3 billion in forestry and ecological preservation works, including programs such as “grain for green.”

OECD reports show that China's *Producer Support* — that is, the measure of government support to farmers — is estimated to be 6 percent of the farmers' total income between 2000 and 2003, which is equal to one-fifth of the OECD average. However, China's *Total Support Estimate* — which measures the total government investment in agriculture, including infrastructure investment and general services, as well as direct support to producers — is almost twice as high as the OECD average.

The transparency of China's government support programs is improving. Since 2003, the website of the Ministry of Agriculture has been publishing information on certain subsidy programs, application guidelines, and itemized public funds distribution reports. This disclosure practice of the MOA, however, only covers those expenditures where distribution is discretionary — about 2 percent of total agriculture expenditures. While recent efforts to build an integrated government fiscal management system might eventually provide the

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necessary technical means to allow full public access to government support programs in agriculture, full transparency and access do not presently exist.

According to the terms of China's accession to the WTO, as set out in the Working Party Report, China is allowed recourse to an 8.5 percent *de minimis* exemption for both product-specific and non-product-specific agricultural support. Although no official numbers are available, a U.S. Department of Agriculture report estimates that China's current level of support remains below this threshold.

On the other hand, on several occasions, China's trading partners have raised concerns in the WTO that some of China's agricultural support programs may not be consistent with China's subsidy commitments. For example, the United States has pointed out that China has extended loans to farmers and rural enterprises at below market rates, and that local governments in China appear to provide various forms of agricultural support and assistance that is inconsistent with China's WTO obligations and commitments.

In addition, in the WTO's 2006 Trade Policy Review of China, the Secretariat's Report noted that China subsidizes some agricultural inputs, particularly fertilizer and agricultural machinery. Press reports, also, have noted that China had provided industry-specific subsidies to both dehydrated garlic and cut flower producers which have aided exportation of the two products.

In April 2006, China made its first subsidy notification to the WTO SCM Committee. That submission revealed that China's agriculture sector may benefit

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from many governmental support programs. Among the 78 subsidy programs listed in the notification, 67 are potentially-usable by enterprises in the agriculture sector.

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INTRODUCTION

This report is a review of China's new agricultural policy after the adoption of the *11th 5-Year Guideline for National Economic and Social Development* ("11th 5-Year Guideline")¹ in early 2006, with a focus on the new policy trends featuring increased government support to the agricultural sector and farmers, and its effort in fostering a more efficient, innovative and environmentally-friendly rural economy. The report is comprised of two parts.

Part I

Part I provides an overview of China's new agricultural policy and its rural development scheme based on publicly-available information from various government authorities at both the national and the sub-national level. To assist an understanding of the structure of China's agricultural support programs and their administration, the report begins with an introduction to China's agricultural sector and the new policy priorities as laid out in the *11th 5-Year Guideline* and subsequent implementation plans issued by the State Council Ministries, followed by a snapshot review of China's agricultural fiscal expenditures for 2005 and its budget for 2006.

After an overview of the basics of China's agricultural sector, the report examines specific policy measures that are currently operational or that have been laid out by the Chinese government. In the past two decades, reform has resulted in fast economic growth in urban areas, which have benefited primarily from a burgeoning manufacturing sector. Robust economic growth, in turn, has boosted government income and made possible a substantial increase in

¹ See *11th 5-Year Guideline for National Economic and Social Development*. See Exhibit A-I-2.

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governmental expenditures in rural areas. 2004 is notable as a year of change. In that year, the Chinese Communist Party Central Committee (CCPCC) and the State Council called for the government to give more attention to the “three-rural issue” and spelled out concrete measures to increase farmer income in its “No. 1 Central Directive” (Zhongyang Yihao Wenjian).² The “three-rural issue” is a term used in China to refer generally to issues concerning agriculture, farmers, and the countryside. Echoing this new policy, the *11th 5-Year Guideline for National Economic and Social Development*, drafted the next year by the State Council and later approved by the National People’s Congress (NPC) in March 2006, gave top priority to the “three-rural issue.” After the approval of the *11th 5-Year Guideline*, the functionaries within the State Council promptly released implementation plans for areas that fell within their respective provinces. This report reviews in detail the measures employed by these implementation plans in light of their respective policy objectives.

In China, a myriad of government agencies have authority to initiate and administer agricultural support programs, including the State Council Ministries, the Central Bank (People’s Bank of China (PBC)), as well as the authorities at the sub-national level. After a brief overview of China’s overarching policy objectives and the administrative structure for its agricultural support programs at the central government level, the report reviews the major support measures currently employed nationwide, including both domestic support programs and some trade measures.

² See CCPCC and State Council Opinions on Several Policies Regarding Farmer Income Promotion. See Exhibit A-I-1.

The report next discusses the administration of agricultural programs at the central government level, with a focus on the functions of the Ministry of Agriculture (MOA) and the programs that it manages. The MOA plays a pivotal role in formulating and implementing agricultural policies and is a reliable source for detailed information on the discretionary support programs that it administers.

The governmental authorities at the sub-national level have broad discretion to initiate agricultural support programs. The report presents some examples of the programs administered by the provincial and local governments. While there is presently limited information on the support provided by the provincial and local governments, this situation may soon change if the “golden fiscal management system” is implemented as planned. The report provides a brief introduction to this system.

Part II

Part II of this report reviews specific government support programs available to the agricultural sector. It begins with a review of China's WTO commitments for trade in agricultural goods. The report then discusses the support programs that either are expressly or potentially applicable to the agriculture sector based on information found in China's first notification to the WTO Committee on Subsidies and Countervailing Measures (SCM), filed in April 2006. The report concludes with a review of Chinese agricultural support programs identified by other WTO Members as well as by foreign private industry associations.

I. CHINA'S AGRICULTURAL POLICY UNDER THE NEW 11TH 5-YEAR GUIDELINE

A. OVERVIEW OF CHINA'S AGRICULTURAL POLICY

1. Introduction to China's Agriculture Sector

Given its huge population, the most prominent feature of China's agriculture sector is the short supply of the two primary agricultural inputs: cultivated land and water. As to land, although China is one of the largest countries on Earth, it has a cultivated land area of only 130 million hectares (hereinafter, "ha"), roughly 10 percent of the world's arable land. Thus, China's challenge is to use 10 percent of the world's farmland to feed 21 percent of the world's population.³ As to water, China suffers from a limited water supply for its population. China's per capita water supply stands at only one-quarter of the world average.⁴ Another important feature of China's agriculture sector is the small scale of farm operations which stems from the fact that a large portion of China's population still lives on the land. Under the collective land ownership system in place in China's countryside, 80 percent of rural households have a land allocation of about 0.65 ha.⁵

Until recently, China was predominantly an agricultural economy, with agriculture providing employment for 80 percent of the population.⁶ In years past, China's policy was to tax agriculture to support industrialization. This landscape has changed dramatically in the past two decades as China's export promotion strategy has been fostering the fast growth of its

³ *OECD Review of Agricultural Policies: China* (2005) at 28; available at http://www.oecd.org/document/57/0,2340,en_2649_201185_35557433_1_1_1_1,00.html.

⁴ *Id.*

⁵ *Id.* at 36, citing Tan Shuhao, *et al.*, *Land Fragmentation and Its Driving Forces in China*, LAND USE POLICY (2005).

⁶ *OECD Review of Agricultural Policies: China* (2005) at 28.

manufacturing sector. Government statistics show that in 2004 agriculture contributed a mere 13.1 percent to the national GDP. Despite the relatively small share of GDP accounted for by agriculture, a large portion of China's population continues to live on the land. Indeed, 47 percent of the national population is still employed in agriculture.⁷ The GDP per worker in agriculture is less than one-fifth of that in the rest of the economy. Not surprisingly, rural income lags far behind the income of urban workers; and the gap continues to increase as the industrial sector of China's economy grows at a much faster pace than the agriculture sector. In the mid-1980s, per capita income in urban areas was 1.85 times that in rural areas. By 2003-2004, this ratio had grown to 3.2.⁸ In 2005, per capita income in rural areas was RMB 3255 (USD \$425.2).⁹

2. New Policy Trends

The sluggish growth of the agriculture sector has given rise to many social problems in rural areas, and the inequality between urban and rural income levels poses threats to social stability in China. In response to these conditions, China has taken measures in recent years to promote agricultural growth, with the primary aim of increasing the income level of farmers. Legislation was passed to support agricultural and rural development.¹⁰

2004 has been noted as the year of change, with the CCPCC using its No.1 Central Directive to signal this policy adjustment by urging more government support to raise farmer

⁷ *Id.* at 33.

⁸ *Id.*

⁹ See *Development Guideline for Agriculture and the Rural Economy during the 11th 5-Year Period* (August 8, 2006) at 2. See Exhibit A-I-3.

¹⁰ See *Agriculture Law of the People's Republic of China* (2001).

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income levels.¹¹ The old policy of taxing agriculture to support the growth of the manufacturing industry was finally abandoned. In its place, China's policy is to channel newly created wealth from urbanized areas to the impoverished countryside.

The *11th 5-Year Guideline*¹² is China's most authoritative development blueprint for the period between 2006 and 2010. It was drafted by the State Council in accordance with a guiding outline authorized by the Chinese Communist Party National Congress (CCPNC) in late 2005, and approved in March 2006 by the NPC. Echoing the CCPCC's policy initiative laid out in its No. 1 Central Directive for 2004, the *11th 5-Year Guideline* gives top priority to agricultural growth and income promotion for farmers. After the *11th 5-Year Guideline* was approved by the NPC, State Council functionaries released a number of detailed implementation guidelines for areas within their respective provinces. Table 1 lists the implementation guidelines released so far.

Table 1
The 11th 5-Year Implementation Guidelines
and Legislation for the Agriculture Sector

	Title	Title in Chinese	Issuing agency	Date of issuance
1	<i>Development Guideline for Agriculture and the Rural Economy during the 11th 5-Year Period. (See Exhibit A-I-3)</i>	全国农业和农村经济发展第十一个五年规划	MOA*	09-08-2006
2	<i>National Development Guideline for the Socialized Agricultural Machinery Rental Service during the 11th 5-Year Period. (See Exhibit A-I-4)</i>	全国农机社会化服务“十一五”发展纲要	MOA	09-08-2006
3	<i>11th 5-Year Guideline for Economic and Social Development for the State-Owned Segment of the Agricultural Industry. (See Exhibit A-I-5)</i>	全国农垦经济与社会发展第十一个五年规划	MOA	09-26-2006

¹¹ CCPCC and State Council Opinions on Several Policies Regarding Farmer Income Promotion. See Exhibit A-I-1.

¹² *11th 5-Year Guideline for National Economic and Social Development. See Exhibit A-I-2.*

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	Title	Title in Chinese	Issuing agency	Date of issuance
4	<i>11th 5-Year Development Guideline for Agricultural Products Exportation. (See Exhibit A-I-6)</i>	农产品出口“十一五”发展规划	MOFCOM**	08-24-2006
5	<i>National Development Guideline for Mechanized Agricultural Production during the 11th 5-Year Period. (See Exhibit A-I-7)</i>	全国农业机械化发展第十一个五年规划	MOA	08-26-2006
6	<i>Development Guideline for the Food Processing Industry during the 11th 5-Year Period. (See Exhibit A-I-8)</i>	全国食品工业“十一五”发展纲要	MOA	10-19-2006
7	<i>Development Plan for the National Quality and Safety Inspection System for Agricultural Products (2006-2010). (See Exhibit A-I-9)</i>	全国农产品质量安全检验检测体系建设规划	MOA	10-2006
8	<i>National Grain Production Development Guideline.</i>	全国粮食生产发展规划	MOA	10-12-2006
9	<i>11th 5-Year Guideline for Rural Market System Development. (See Exhibit A-I-13)</i>	农村市场体系建设“十一五”规划	MOFCOM	10-30-2006
10	<i>National 10-Year Development Guideline for Rice Farming Mechanization (2006-2015). (See Exhibit A-I-11)</i>	全国水稻机械化 10 年发展规划	MOA	11-16-2006
11	<i>11th 5-Year Guideline for the Feeds Industry.</i>	饲料工业十一五发展规划	MOA	09-18-2006
12	<i>Development Plan for the National Agricultural Products Market during the 11th 5-Year Period.</i>	“十一五”时期全国农产品市场体系建设规划	MOA	12-15-2006
13	<i>11th 5-Year Development Guideline for Village and Township Enterprises. (See Exhibit A-I-14)</i>	乡镇企业“十一五”发展规划	MOA	12-13-2006
14	<i>Rural Specialized Agricultural Cooperative Promotion Act</i>	中华人民共和国农民专业合作社法	NPCSC***	10-31-2006
15	<i>Development Guideline for the Agricultural Processing Industry during the 11th 5-Year Period. (See Exhibit A-I-10)</i>	农产品加工业“十一五”发展规划	MOA	12-2006
* MOA = Ministry of Agriculture ** MOFCOM = Ministry of Commerce *** NPCSC = Standing Committee of the National People's Congress				

Among these guidelines, the *Development Guideline for Agriculture and the Rural Economy during the 11th 5-Year Period*¹³ is the master document that lays out the principal

¹³ *Development Guideline for Agriculture and the Rural Economy during the 11th 5-Year Period* (August 8, 2006). See Exhibit A-I-3.

policy goals and implementation measures for agriculture and rural areas. Box 1 below presents a summary of this guideline.

Box 1
The National Agriculture and Rural Economy
Development Guideline for the 11th 5-Year Period

The MOA released this principal Guideline for Agriculture and the Rural Economy in August 2006. After reviewing the achievements made during the 10th 5-year period (2000-2005), the Guideline identified the following major challenges for the agricultural sector.

- (1) The agricultural industry is faced with resource and environmental constraints resulting from economic development. The total acreage of cultivated land is unavoidably diminishing over time as a result of population growth and urbanization. The shortage of water supply has been a chronic problem, and is exacerbated by the wasteful use of water for which China has yet to find a solution. The rural areas are also facing the problem of energy supply shortage; yet not enough attention has been paid to develop renewable resources.
- (2) Low levels of investment and capital accumulation in agriculture results in the sector being excessively dependent on natural weather conditions. There are not enough irrigation works to defend the agricultural sector against unfavorable weather conditions.
- (3) After the reduction of tariff rates, the agricultural sector is now facing intensified market competition from imports.
- (4) The small scale of agricultural operations leads to a low level of productivity, which makes the task of raising farmer income levels enormously difficult.
- (5) The national disease and epidemic control system have not been receiving enough investment from the government in recent years; the system is even less efficient today than it used to be.

Based on this assessment of the situation, the Guideline lists three principal goals to be achieved during the 11th 5-year period:

- (1) To safeguard the grain production capacity so as to achieve food supply self-sufficiency.
- (2) To make sustained improvement in labor productivity levels and farmer income.
- (3) To achieve harmonious development in the rural society.

The Guideline then highlights nine development measures, as listed below, to achieve these three goals.

- (1) Raising grain production capacity and stabilizing grain planting acreage. Efforts will be concentrated on the main grain production counties; the existing cultivated land will be strictly protected; measures will be taken to stabilize aggregate grain-planting acreage; and the government will subsidize high-quality grain strains research and popularization projects, as well as projects to upgrade the fertility level of the cultivated land.
- (2) Speeding up technology innovation and the application process; upgrading the technology level of agricultural production.
- (3) Optimizing the structure of the agricultural industry; developing commercialized agricultural production.
- (4) Changing the development pattern of the industry; developing resource-efficient and environmentally-friendly methods of production.

Box 1 (Continued)
The National Agriculture and Rural Economy
Development Guideline for the 11th 5-Year Period

- (5) Strengthening the country's ability to control diseases and epidemics, and its ability to handle natural disasters.
- (6) Intensifying implementation of agricultural production standards; improving the safety and quality level of agricultural products.
- (7) Continuously deregulating the rural economy; promoting a market-oriented agriculture industry.
- (8) Diversifying farmer income sources; achieving sustained income increases for farmers.
- (9) Speeding up the construction of public facilities in the countryside; fostering the development of a grass-roots democratic political process.

In particular, the government sees an urgent need to increase investment in the agricultural industry and rural areas. The Guideline calls for continuously increasing governmental financial support for the agricultural industry, and expanding the coverage of public fiscal support in rural areas. The government will establish a system that guarantees a stable increase in funds supporting agriculture. The focus of the national infrastructure development will be shifted gradually from urban areas toward rural areas. The government will ensure an accelerated increase of budget allocations each year for the three-rural projects. The new additions of national spending on education, hygiene and cultural support shall be primarily used for rural areas.

The Guideline urges the central and local governments to focus their infrastructure investments in rural areas, increasing investment in the "Grand Seven Systems."¹⁴ Local fiscal allocations shall favor agricultural investment, and local authorities shall make efforts to diversify revenue sources to alleviate the burden on agriculture and to guarantee sufficient investment for the sector. Local government may raise the fees for converting cultivated land for commercial use, and shall apply the proceeds exclusively for developing new cultivated land.

The government will deepen reform of the investment management system for rural projects. For projects that are entirely or partially developed with public funds, the information of the project must be disclosed to the public, and contracts will only be granted through a bidding process. The local government will trace the usage of public funds, conduct audits and assessments of projects, ensure that the funds are used properly, and guarantee the quality of the projects. More rural and agricultural projects will be open to private investments. The government may undertake measures such as discounted loans, subsidies, and tax preferences, or direct public investment as guidance for private investment, and will encourage private capital investments in agricultural and rural infrastructure programs.

The central authority will gradually improve the agricultural subsidization system, and continue subsidizing farmers or rural enterprises in adopting improved crop strains and livestock breeds, purchasing agricultural machinery, and developing or popularizing new agricultural technology.

¹⁴ The term "Grand Seven Systems" refers to the following systems: (1) improved crop strains/animal breeds system; (2) agricultural technology innovation and application system; (3) animal and plantation protection system; (4) agricultural products quality and safety system; (5) agricultural products market information system; (6) agricultural resources and ecological protection system; and (7) socialized agriculture service and management system. *See Development Guideline for Agriculture and the Rural Economy during the 11th 5-Year Period* (August 8, 2006) at section I.1.6. *See Exhibit A-I-3.*

3. Level of China's Agricultural and Rural Support

As noted above, the Chinese government in recent years has benefited from a steady and substantial revenue boom. Increased government income has made large increases in agricultural support possible. The most recently-published official data show that the government spent RMB 297.5 billion (roughly USD \$37.18 billion, based on an exchange rate of 8 RMB per 1 USD) in 2005 on the "three-rural" projects, a 13.3 percent increase from the previous year. The increase in agriculture funding was faster than the GDP growth rate, but slower than the growth in government revenue, which was 19.7 percent for 2005. The largest category of expenditure by the central government was infrastructure projects investment. A total of RMB 81.3 billion was directly invested in rural and agricultural infrastructure projects in 2005; another RMB 9.85 billion was used for upgrading cultivated land. A further RMB 27.83 billion was expended to improve the education and hygiene systems in rural areas.¹⁵

The second largest expenditure category was farmer income support. China abolished the national agriculture tax in 2005. The government allocated RMB 66.2 billion in the budget to offset the impact of this huge tax cut, which is estimated to have alleviated the tax burden on RMB 120 billion of farmer income.¹⁶ Another RMB 17.47 billion was distributed directly to farmers in compensation for grain production and the purchase of improved crop strains and agricultural machinery.¹⁷

¹⁵ See MOF, *2006 Budget Report to the National People's Congress* (March 17, 2006); available at http://news.xinhuanet.com/misc/2006-03/17/content_4313792.htm. See Exhibit A-I-18.

¹⁶ Interview with Wuyun Qimuge, Vice Chairman of the NPC; available at http://www.mof.gov.cn/news/20061220_2115_22840.htm.

¹⁷ See MOF, *2006 Budget Report to the National People's Congress* (March 17, 2006). See Exhibit A-I-18.

For 2006, the budget for “three-rural” projects was set at RMB 339.7 billion at the central government level, a 14.2 percent increase from 2005; actual expenditure reached RMB 351.7 billion. In 2007, the government allocated RMB 391.7 billion for total “three-rural” expenditures; another RMB 223.5 billion will be used to provide free education in rural areas.¹⁸

As reviewed above, Chinese government support to agriculture and rural areas has been increasing at a rapid rate in recent years. To gauge how large the government support is, it is useful to compare the level of support provided by China to the level of support that various OECD members provide to their farmers. This comparison shows that China provided more support under at least one measurement – the Total Support Estimate (TSE)¹⁹. As measured by TSE, which includes support for agriculture infrastructure and direct budgetary transfers, China’s support to agriculture is equivalent to 3.3 percent of its GDP for the 2000-2003 period, which is higher than the OECD average level of support (1.25 percent) for the same period.²⁰ The level of support for China’s farmers, as calculated using the OECD’s Producer Support Estimate (PSE), reached 6 percent of gross farmer receipts for the period of 2000-2003, which was only one-fifth of the OECD average level of support (31 percent) and far below the level of support in Japan and Korea (58 percent and 64 percent, respectively).²¹ This low PSE is due to the fact that the

¹⁸ Wen Jiabao, *PRC Premier Report to the National People’s Congress on the Work of the Central Government*, XINHUA NEWS AGENCY (March 5, 2007); available at http://news.xinhuanet.com/misc/2007-03/05/content_5801368.htm

¹⁹ The TSE is the broadest measure of support, which is the sum of transfers to agricultural producers (*i.e.*, the Producer Support Estimate, or PSE), expenditures for general services (*i.e.*, the General Services Support Estimate, or GSSE), and direct budgetary transfers to consumers. Thus, the TSE directly measures the total level of support to the agricultural sector in the context of the overall economy. See *OECD Review of Agricultural Policies: China* (2005) at 141.

²⁰ *OECD Policy Brief: Agricultural Policy Reform in China* (October 2005) at 5; available at <http://www.oecd.org/dataoecd/3/48/35543482.pdf>.

²¹ *Id.*

majority of China's agricultural support went to expenditures for general services such as agriculture infrastructure investment, which is not included in the PSE calculation.

The OECD has observed that one positive feature of China's agricultural support is its relatively high General Service Support Estimate (GSSE) as compared to total support. The GSSE calculates the cost to the economy of investment in rural infrastructure, advisory services, training, research and development, and inspection services, which are believed to be less trade-distorting than other types of agriculture support. China's GSSE accounted for 72 percent of the TSE in 2000 and for 51 percent in 2003, much higher rates than the OECD average of 18 percent for comparable periods.²²

The OECD has noted, however, that "[w]hile the overall producer support is low, the levels of support for commodities facing import competition, such as sugar, milk, sheep meat, cotton and soybeans, as well as export commodities" is significant.²³ And the support "is dominated by price support and input subsidies, among the least efficient and most trade distorting ways of providing agricultural assistance."²⁴

²² *OECD Review of Agricultural Policies: China* (2005) at 143.

²³ *OECD Policy Brief: Agricultural Policy Reform in China* (October 2005) at 5.

²⁴ *Id.*

Table 2
2005 Central Government “Three-Rural” Expenditure (billions)

	Expenditure category	RMB	USD	%
1	Rural infrastructure investment	81.3	10.16	27.3
2	Agricultural tax cut offsetting expenditure	66.2	8.26	22.3
3	Investment in agricultural infrastructure, such as irrigation, and weather forecast systems	53.5	6.69	17.9
4	Various agricultural production subsidies	43.2	5.40	14.5
5	Rural education, hygiene and technology development support	18.9	2.36	6.4
6	Poverty alleviation direct subsidies	13.0	1.63	4.4
7	Agriculture comprehensive development investment	9.9	1.24	3.3
8	Other “three-rural” expenditures	11.5	1.44	3.9
	TOTAL	297.5	37.18	100

Source: PRC Ministry of Finance and the State Statistics Bureau.

B. THE FRAMEWORK OF CHINA'S AGRICULTURAL SUPPORT MEASURES

1. Primary Policy Objectives

Historically, the primary agricultural policy objective for the Chinese government was maintaining a sufficient food supply at stable prices. Under the *11th 5-Year Guideline*, however, although *food security* remains one of the key policy objectives, *raising farmers' income* and achieving *overall development of the rural area* are given equal priority to food security. The *Guideline* also highlights two additional key policy objectives: (a) *promoting the efficiency of the sector*, and (b) *protecting the environment*. Food security is to be achieved primarily through subsidizing grain production, supplemented by technology innovation. China has an abundant supply of labor but not of cultivated land; thus, producing low-yield products like grains is not as financially rewarding as raising more labor-intensive specialty crops. The government is fighting an uphill battle trying to encourage farmers to produce grain. It has been relying

primarily on direct support to farmers and other subsidy programs to induce grain production. Achievement of other policy objectives will depend more on raising the level of productivity through measures that induce capital investment in the sector, optimize the industrial structure and promote trade. The following sections discuss in detail the measures employed to achieve these policy objectives.

2. Administrative Structure and Legal Authorities

Agriculture and rural development falls within the province of various government agencies at each administrative level.²⁵ At the national level, the National Development and Reform Commission (NDRC), the Ministry of Agriculture, and the Ministry of Commerce (MOFCOM) are the principal entities that initiate and administer national agricultural support plans. These plans are then implemented through the Ministry of Finance (MOF) or the People's Bank of China (PBC), which is China's central bank,²⁶ when the allocation of public funds is involved, or through the State Administration for Taxation (a branch of MOF) if the program calls for preferential tax treatments. Sub-national governments frequently launch supporting programs in accordance with the particular situations of their respective regions.

No specific legislative delegation is required for launching an agricultural support program. Legislation, the relevant 5-year guidelines, and CCP or State Council policy directives are all competent authorities for government agencies to allocate public funds for an agricultural

²⁵ The report by the WTO Secretariat in the 2006 Trade Policy Review of China estimated that at least 16 institutions in the central government are involved in administering agriculture and its upstream and downstream sub-sectors. *See Trade Policy Review – People's Republic of China; Report by the Secretariat, WT/TPR/S/161/Rev.1* (26 June 2006) at 165.

²⁶ For example, it is believed that the PBC injected capital worth RMB 160 billion for reform of rural credit cooperatives. *See infra* at section I.B.3.a.ii.a (Rural Credit Cooperatives Reform).

support program as long as the matter falls within their recognized jurisdiction and the funds are available to the agency. Coordination between agencies has been difficult to achieve.²⁷ The following section presents a snapshot of China's agricultural support programs based on publicly-available information.

3. Major Agricultural Support Measures

This section provides a brief introduction to the support measures that have been laid out in China's *11th 5-Year Guideline* and the implementation guidelines subsequently issued. The measures are roughly grouped into domestic measures, trade measures, environmental measures, and other measures. Domestic measures cover six aspects: agricultural input, loans, market system, industrial structure, technology, and food security. Trade measures include border measures that manage exports and imports of agricultural products and export promotion measures. Environmental protection has become a key area that is drawing increasing attention. A separate section is devoted to the discussion of measures aimed at reducing the environmental impact from economic development. Finally, other measures basically cover infrastructure investments.

a. Domestic Support

i. Subsidizing Agricultural Inputs

The primary means through which the government channels fiscal funds into the agricultural sector are subsidies for agricultural inputs. The MOF annual fiscal report summarized the central government's agricultural subsidy programs as "three subsidies policy

²⁷ See *Trade Policy Review – People's Republic of China; Report by the Secretariat*, WT/TPR/S/161/Rev.1 (26 June 2006) at 165.

(San Butie Zhengce),” *i.e.*, (a) subsidies for purchasing improved crop strains/animal breeding stock, (b) subsidies for purchasing agricultural machinery, and (c) direct subsidies to grain farmers.²⁸ Two of these three subsidies are for agricultural production inputs.

Improved crop strains/animal breeds popularization subsidies (Liangzhong Butie) are distributed directly to farmers who purchase improved seeds or livestock breeding stocks recommended by the government. In 2002, the government provided RMB 100 million in improved crop strain subsidies for high-yield soybean seeds, covering 10 million mu (0.6 million ha). Certain wheat farmers, covering about 30 million mu (2 million ha) in wheat planting acreage, also received subsidies in 2003. By 2004, subsidized crops included wheat, rice, maize, and high-yield soybeans. The 2006 MOF fiscal report to the NPC reveals that, in 2005, the government, both central and sub-national, distributed RMB 3.87 billion in subsidies for the purchase of improved seeds/breeding stocks.²⁹

The other important agricultural input subsidy is for farming machinery. Farmer co-ops that purchase farming machines are entitled to reimbursement from the government of up to 30 percent of the purchasing price.³⁰ In 2005, the government distributed RMB 300 million in agricultural machinery purchasing subsidies.³¹

²⁸ See MOF, *2006 Budget Report to the National People's Congress* (March 17, 2006). See Exhibit A-I-18.

²⁹ See *id.* (Exhibit A-I-18). For example, the Jiangsu provincial government has allocated RMB 80 million in subsidies for the purchase of high-quality rice strains. See *Jiangsu launches its improved rice strain popularization support program*, JIANGSU AGRICULTURAL INFORMATION NETWORK (February 24, 2006); available at http://www.agri.gov.cn/ztl/qtbjhflssc/xdcst20060224_557980.htm.

³⁰ See Fred Gale, *et al.*, *China's New Farm Subsidies* (USDA, Economic Research Service Outlook Report WRS-05-01, February 2005) at 6 (hereinafter “USDA-ERS China Subsidies Report”); available at <http://www.ers.usda.gov/publications/WRS0501/WRS0501.pdf>.

³¹ See MOF, *2006 Budget Report to the National People's Congress* (March 17, 2006). See Exhibit A-I-18. Distribution reports for these funds are available from MOA's website. See <http://www.agri.gov.cn/cwgg/>.

In addition, China has subsidized fertilizer in an effort to reduce production costs for the agricultural industry. In the Trade Policy Review of China conducted in 2006, the WTO Secretariat noted: “China has sought to reduce the cost of agriculture input through measures including tax relief for manufacturers and service providers; and price regulation of essential services. For example, to lower prices of fertilizers, fertilizer producers have been given access to lower price electricity; and are exempted from VAT.”³²

ii. Facilitating Farmers' Access to Affordable Loans

To promote investment in agriculture and rural areas, in recent years the government has encouraged banks and rural credit cooperatives (RCCs) to increase loans to farmers. Notwithstanding that income in the countryside lags far behind that in urban areas, savings from rural areas are continuously flowing into urban areas and exacerbating the deficiency of investment in rural areas.³³ Outstanding agricultural loans account only for 5 percent of the national total, while agriculture contributes 13.1 percent of the GDP.³⁴ The agriculture sector and rural areas are viewed as being significantly underserved by China's financial institutions at the present time. Official statistics show that, in 2005, only 60 percent of farmers with both a need and credit qualification, have ready access to bank loans.³⁵ Similarly, a report from the Economic Research Service of the U.S. Department of Agriculture regarding new directions in

³² See *Trade Policy Review – People's Republic of China; Report by the Secretariat*, WT/TPR/S/161/Rev.1 (26 June 2006) at 175.

³³ See *Representatives Calling for Increasing Financial Service to Agriculture*, XINHUA NEWS (March 8, 2006).

³⁴ See Fred Gale & Robert Collender, *New Directions in China's Agricultural Lending* (USDA, Economic Research Service Outlook Report WRS-06-01, January 2006) at 11 (hereinafter “USDA-ERS China Lending Report”); available at <http://www.ers.usda.gov/publications/WRS0601/WRS0601.pdf>.

³⁵ Interview with Wu Xiaolin, Vice Governor of the Central Bank, PRC; available at <http://nc.people.com.cn/GB/61160/4951484.html>.

China's agricultural lending found that, although almost all of the farmers who sought loans during 2004 managed to secure some lending, only half of the loans were obtained from an RCC or a bank; the other half were financed by family and friends.³⁶

It is no surprise that rural areas are underserved by China's financial institutions. China's farming operations are mostly small in scale and are spread across remote areas far from the urban sites of the major financial institutions. As a result, administrative costs and loan risks involved in lending to rural areas will be relatively high. In addition, costs and risks are high because no security interests can be legally attached to rural land, and farmers usually lack other assets that could serve as collateral for secured lending. Further, the government normally has maintained a mandatory lending rate ceiling to protect farmers, which made lending to higher-risk farmers unattractive. For example, during the RCCs reform, the State Council limits the maximum rate lenders can charge to twice the bench market rate set by the PBC.³⁷

In recent years, the government has introduced many pilot programs to improve access to loans for farmers. The most important of these is the program to revitalize Rural Credit Cooperatives (RCCs). Rural Micro Loans and the Joint-Guarantee Group Lending Program are two new pilot programs designed to achieve the same purpose. The Postal Bank reform is another measure which has allowed the bank to extend loans to rural areas. In the past, the Postal Bank accepted deposits from farmers, but was not allowed to conduct retail lending.

³⁶ See *USDA-ERS China Lending Report* at 11.

³⁷ See *State Council Notice on Pilot Programs for the Deepening of RCC Reforms*, Guo Fa [2003] No. 15. See Exhibit A-I-17.

a. Rural Credit Cooperatives Reform

The Agricultural Bank of China (ABC), the Agricultural Development Bank of China (ADBC), and the China Development Bank (CDB) all service rural areas. However, the financial services market in rural areas traditionally has been dominated by some 35,000 RCCs, which in 2005 provided 81 percent of rural loans.³⁸ The vast majority of these RCCs, however, have been operating at or near losses for a number of years because of nonperforming loans. Statistics for 2002 show that, out of RMB 557.9 billion in total outstanding loans from RCCs, nonperforming loans (NPLs) accounted for RMB 330 billion.³⁹ The RCCs had a negative capital ratio of 8.45 percent at the time, since net capital was a negative RMB 121.2 billion.⁴⁰

In 2003, the State Council allowed experimental reform to be carried out in eight provinces and cities, which was later expanded nationally in August 2004.⁴¹ Under this experimental reform, provincial and local authorities were expected to increase their capital in the RCCs, and the PBC was to provide the participating RCCs with Special Central Bank Bills to allow the RCCs to write off part of their NPLs that qualified as “historical burden.” While these bills are not transferable, they will be redeemed by the Central Bank once the RCCs have met certain prescribed criteria such as capital sufficiency. By 2005, the Central Bank issued nearly RMB 160 billion in Special Bills to some 2300 RCCs.⁴² The State Council also requested that

³⁸ Muren, *RCC Reform is Showing Positive Results*, PEOPLE'S DAILY (August 18, 2005); available at <http://finance.people.com.cn/GB/1040/3624637.html>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See Council Notice on Pilot Programs for the Deepening of RCC Reforms*, Guo Fa [2003] No. 15. *See Exhibit A-I-17.*

⁴² *See David Scott and Wang Jun, Developments and Prospects for Rural Finance in China*, Stanford Center for International Development Working Paper No. 292 (September 2006) at 7 (hereinafter “Rural Finance in China Report”); available at <http://scid.stanford.edu/pdf/SCID292.pdf>. This number is consistent with the USDA-

local and provincial governments inject funds at a similar magnitude as the central government in order to alleviate the old NPLs problem for the RCCs.⁴³

Tax breaks have also been provided to the RCCs to reduce their operational costs. The State Tax Administration issued a notice in January 2004 which exempted RCCs in the west region, and in Jiangxi and Jilin provinces, from corporate income tax, reduced income tax rates by half for the rest of the regions participating in the experimental reform, and applied a reduced 3 percent operational tax rate for these RCCs.⁴⁴ After this experiment was extended to other provinces and cities, the tax breaks followed as well, with Jiangxi and Jilin provinces being re-categorized into the group that enjoyed an income tax rate half that of the normal rate.⁴⁵

In addition to injecting more funds into the RCCs, the provincial governments have coordinated consolidation of RCCs. Under this policy, RCCs in some economically-developed regions, most of which are in a relatively healthy financial status, are merged into rural commercial banks or rural cooperative banks, and RCCs in less-developed regions are merged into RCC Unions (RCCU), usually one RCCU for each county, which are supervised by a provincial-level rural credit cooperative union. The provincial level RCCU also provides services to the county-level RCCU.⁴⁶

ERS China Lending Report, which estimated that the Central Bank has spent roughly USD \$20 billion to clean up the old NPLs for the RCCs participating in the experimental reform program. *See USDA-ERS China Lending Report* at 7.

⁴³ *Id.*

⁴⁴ SAT, *Notice on Experimental Area RCCs Tax Policy*, Cai Shui [2004] No. 35. *See Exhibit A-IV-28.*

⁴⁵ SAT, *Notice on Expanding Experimental Area RCCs Tax Policy*, Cai Shui [2004] No. 177. *See Exhibit A-IV-29.*

⁴⁶ *See Rural Finance in China Report* at 7.

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By 2005, the original 2300 RCCs that participated in the reform were consolidated into 9 Rural Commercial Banks (Joint Stock Banks, or Gufenzhi Yinhang), 40 rural cooperative banks, and 175 county-level RCCUs.⁴⁷

The RCC reform program has produced positive results. By mid 2005, although the RCCs still carried RMB 385.1 billion in NPLs on their books, the NPL ratio was reduced to 17.5 percent. When their aggregate outstanding loans doubled to RMB 2.1968 trillion, the RCCs managed to roughly stabilize the total amount of NPLs.⁴⁸ The RCC reform appears to have benefited from capital infusion from the Central Bank. The USDA-ERS China Lending Report suggests that the Central Bank has committed funds to cover up to 50 percent of the RCCs' nonperforming loans.⁴⁹ A report by the National People's Congress Committee estimated that the Central Bank provided funds of RMB 165.8 billion in relation to the RCC reform.⁵⁰ Although no information is available regarding support from the sub-national governments, the PBC's policy has been that it would redeem the Special Bills only on the condition that the RCCs obtain capital infusions from local governments.⁵¹

⁴⁷ *Id.*

⁴⁸ Wuyun Qimuge, *Agricultural loans increase markedly*, XINHUA NEWS AGENCY (December 27, 2006); available at http://202.123.110.3/jrzg/2006-12/27/content_481251.htm.

⁴⁹ See *USDA-ERS China Lending Report* at 7: "Loans from the Peoples Bank of China to RCCs supported the increase in agricultural lending, and the central government has committed roughly \$20 billion to cleaning up old nonperforming loans in RCCs." In 2003, about \$99 billion in new agricultural loans were issued. *Id.* at 5. In 2003, about 37% of RCC loans were nonperforming. *Id.* at 7. Thus, the \$20 billion commitment from the central government is equal to about half of the RCCs' nonperforming loans. See also *Rural Finance in China Report* at 7 (The "central government agreed to purchase half the so-called 'historical burden' of {RCCs} non-performing loans").

⁵⁰ Wuyun Qimuge, *Agricultural loans increase markedly*, XINHUA NEWS AGENCY (December 27, 2006).

⁵¹ See *Rural Finance in China Report* at 7: "More specifically, with the support and encouragement of provincial and county governments, the RCCs are to raise additional capital to offset at least some of their capital deficiency. In return the central government agreed to purchase half the so-called "historical burden" of non-performing loans with special PBC bills which pay interest but cannot be sold or borrowed against. Beneficiary

b. Micro Loans and Joint-Guarantee Group Lending Programs

In addition to revitalizing the RCCs, the government has also initiated two major programs to increase the flow of funds to rural areas: the rural micro loans and rural joint-guarantee group lending programs. While the details of these two pilot programs are not yet available, it appears that, under these two programs, through the coordination of the local authorities, the banks and RCCs have agreed to delegate their credit rating functions to local commissions, which are believed to be better situated to assess the creditworthiness of the farmers within their villages. This will reduce both the risks and administrative costs for extending loans. Also, such commissions are able to apply peer pressure on debtors when loans are not serviced in a timely manner.

The China Development Bank (CDB), the largest official policy lender, is conducting a program named Micro- and Small- and Medium-Enterprise Finance Pilot (MSME). In 2005, CDB established a branch tasked with providing lines of credit and technical assistance to local banks (partner banks) interested in providing loans to small businesses, presumably including farmers. Loans provided under this program range between RMB 100 and RMB 500, 000. In early 2006, CDB launched an experimental program in two cities: Baotou (Inner Mongolia Autonomous Region) and Taizhou (Zhejiang Province). In both cities, CDB partnered with the two local city banks, provided the local banks with credit lines and technical support; and used the branch network of the two local banks to reach farmers and other small businesses.⁵²

RCCs are then to raise additional capital and take steps to improve governance. If, after two years, the RCC has met these and other criteria, the PBC will redeem the bills.”

⁵² See *Rural Finance in China Report* at 9-10.

The PBC is also conducting its own experiment with micro loans. A pilot program was launched in Pingyao County (Shanxi Province) in 2005. Under this pilot program, credit companies formed by private investors are allowed to extend loans to local small businesses under the guidance of the local government and the PBC. A similar pilot program launched in Sichuan will allow international investors to join such credit companies. The credit companies are not allowed to accept deposits from farmers or rural communities, but must rely exclusively on capital contributions of the owners for funds.⁵³

c. Loan Guarantee Companies

In China, lending to farmers is hindered by the fact that no security interest may legally be attached to collectively-owned land in rural areas.⁵⁴ Experiments have been conducted with various new loan guarantee mechanisms. The central government is encouraging local authorities at the city and county level to use their revenue income to fund some agricultural loan guarantee institutions, and to allocate part of their budgets to compensate for the anticipated operating losses of these guarantee institutions.⁵⁵

d. Agricultural Insurance Services

The government has also introduced measures encouraging insurance institutions to extend their services to farmers. The China Insurance Regulatory Commission (CIRC) initiated pilot programs for agriculture insurance reform in 2004. Three licenses were issued to companies that specialized in providing agricultural insurance in Shanghai, Jilin and

⁵³ See *Rural Finance in China Report* at 10-11.

⁵⁴ See *Land Administration Law of the People's Republic of China* (revised 2004).

⁵⁵ See Fang Likui, *Finding a Solution to the Three Obstacles in Promoting the Agricultural Industry and the Farmers' Income*; available at <http://www.zjagri.gov.cn/html/main/zjModernAgriView/2006012664447.html>.

Heilongjiang provinces, respectively. The three companies conducted different pilot programs to test three business models. Under one of the models, the insurance company operates on a commercial basis while the insured receives a subsidy to cover part of the insurance premium cost. In the other two models, the government is directly involved in the operation of the insurance company. In these two cases, the local government either acts as the insurer itself and contracts out clerical functions such as contracting, adjustment and indemnification services, or forms a joint venture with a commercial insurance company. These programs have been expanded to other provinces. By the end of 2006, 90 percent of provinces had joined this program. In 2005, the rural insurance industry saw an 89 percent increase in premium income, and 100 percent growth in insurance compensation payments.⁵⁶ By 2006, total insurance premiums reached RMB 850 million, reversing what had been a downward trend since 1994.⁵⁷

This program relies heavily on local government fiscal support. In Jiangsu province, three different models of operations were adopted. In Huaian City, the city government formed a joint venture with a commercial insurance company. Under this arrangement, the commercial insurance company conducts the daily operation of the joint venture for a management fee equal to 20 percent of the premium income, and is responsible for 30 percent of the indemnification payments, while the city government subsidizes 50 percent of the cost of premiums to the insured.

⁵⁶ See Wuyun Qimuge, *Agricultural loans increase markedly*, XINHUA NEWS AGENCY (December 27, 2006).

⁵⁷ See Xiaomei Mao, *Every Year for the Last 4 Years, the No 1 Central Document has Urged for More Agriculture Insurance Service*, XINHUA NEWS AGENCY (January 31, 2007); available at http://www.gov.cn/jrzq/2007-01/31/content_514180.htm.

In Suzhou City, the local government subsidizes 60 percent of the insurance premium payments for four types of farming operations: rice farm, tree seedling nursery, pig breeds stock nursery, and fresh water fish farm. Under this program, through a public bidding process, the city government selects a commercial insurance company to operate the agricultural insurance service. The company will be awarded 11.45 percent of the premium income as compensation for its management services. Insurance indemnification payments will first be made out of the paid-in premiums. The portion of the indemnification payment that exceeds the paid-in premiums will be borne by the commercial insurance company and local government in the proportion of 1:9. In 2006, 1125 agricultural insurance policies were issued with premium income reaching RMB 15.75 million.⁵⁸

iii. Developing an Integrated National Market for Agricultural Products

In anticipation of a continuing increase in demand for agricultural goods as the economy expands, the Chinese government released two guidelines in late 2006 to lay out a blueprint for building more efficient channels of commerce in rural areas.⁵⁹ The channels planned are comprised of three major components. At the base level is the “Ten Thousand Village, One Thousand Township Market Project.” This project envisions a basic commercial distribution channel in rural areas comprised of tens of thousands of standardized convenience stores similar

⁵⁸ See *Jiangsu Creates Three Models of Agricultural Insurance*, CHINA FINANCE NET (March 16, 2007); available at <http://news.zgjr.com/news/2007316/news/650576239110.html>.

⁵⁹ The two guidelines are: (1) MOA, *Development Plan for the National Agricultural Products Market during the 11th 5-Year Period*, Nong Shi Fa [2006] No. 21 (see Exhibit A-I-12), and (2) MOFCOM, *11th 5-Year Guideline for the Rural Market System Development.*, Shang Jian Fa [2006] No. 535 (see Exhibit A-I-13).

to the general stores in the United States, but, preferably, to be run according to a chain-store business model.

These stores are expected to cover 85 percent of the townships and 65 percent of the administrative villages by 2010. They are aimed at satisfying the basic needs of farmers arising out of household consumption and agricultural production.⁶⁰ In addition to performing the functions of a general store, these township and village convenience stores will also be the main channel of commerce for purchasing farm products and the main channel through which agricultural production-related services are provided, such as market information, agriculture machinery rental services, and technology consulting services. The government also envisions that these chain stores may themselves organize local farmers into large scale commercialized farming operations, thus achieving the vertical integration of distribution and production. To meet the goal set for 2010, various levels of government are encouraging chain grocery stores in the cities to expand into rural areas.

At a more advanced level of trade is the “Two-Hundred Project.” Under this program, the government will establish around 100 agricultural commodity exchanges across the nation and will, at the same time, incubate 100 or so commodity trading companies to serve as the market makers for various agricultural commodities.⁶¹ The government has not yet released specific details about this plan. The third component of this system will be 10 large enterprises that have annual turnovers above RMB 10 billion, and are engaged in manufacturing or trading

⁶⁰ See *11th 5-Year Guideline for the Rural Market System Development.*, Shang Jian Fa [2006] No. 535 at Chapter 3, Section 2 (hereinafter “Rural Market Development Plan”). See Exhibit A-I-13.

⁶¹ See MOA, *Development Plan for the National Agricultural Products Market during the 11th -5 Year Period*, Nong Shi Fa [2006] No. 21. See Exhibit A-I-12.

agricultural production material and equipment, such as seeds, animal breeding stocks, fertilizer, and agricultural machinery. The government favors an oligarchic market structure for the purposes of ensuring product quality and production efficiency. At the same time, the government is maintaining a certain level of competition in the market.⁶²

The two guidelines do not specifically address whether foreign companies will be allowed to enter the rural distribution market. It is clear, however, that the government does not intend to create an administrative entry barrier. The guidelines expressly state that, notwithstanding that the government will support some leading companies, the government encourages private entry into those markets unless the law specifically precludes entry. The guidelines also anticipate that the number of private enterprises serving the distribution channel will increase from 20,000 today to 40,000 by 2010. In providing support to 1000 leading private enterprises, the government's policy goal is to establish a mature market structure at the earliest possible time.⁶³

In addition to establishing the channels of commerce, the government recently has made efforts to facilitate the flow of agricultural products within the channels of commerce by establishing nationally-unified product standards, improving the inspection and quality/safety certification systems for agricultural products, and by taking other measures as well.⁶⁴ Since 2003, MOA has allocated around RMB 30 million each year for product standard setting and

⁶² See *Rural Market Development Plan* at Chapter 3, Section 3.

⁶³ See *Rural Market Development Plan* at Chapter 3, Section 1.

⁶⁴ See MOA, *Development Plan for the National Quality and Safety Inspection System for Agricultural Products (2006-2010)*. See Exhibit A-I-9.

updating purposes.⁶⁵ Box 2 below provides a detailed review of the government's plans to improve the inspection and quality/safety certification systems for agricultural products.

Box 2
Agricultural Products Quality and Safety Inspection System Development

**Development Plan for the National Quality and Safety Inspection
System for Agricultural Products during the 11th 5-Year Period**

The guideline notes that, in the past, the government's agricultural policy mainly focused on increasing production capacity. After China graduated from a subsistence economy into a relatively affluent one, the quality and safety of agricultural products drew more attention as the increased use of fertilizer, chemical pesticides, feed additives and hormones caused much concern. The guideline points out that an effective national quality and safety inspection system is indispensable for the structural adjustment of the agricultural industry to be successful, and is necessary for increasing the efficiency of the industry and raising farmer income, as well as for increasing the global competitiveness of China's agricultural products.

Fast economic development and the active importation of advanced agricultural production technology have put pressure on China's products inspection system. The system today is not capable of conducting the quality and safety inspection for many high-tech products that is necessary to meet elevated inspection requirements. For example, the recent inspection standard for vegetables requires conducting inspections on 48 properties of the products. Yet only 5 inspection centers in the country have the inspection technology and equipment to conduct the tests/inspection required. Most of the inspection centers lack experienced and qualified staff members, and there has not been enough government investment in this area in recent years. As a result, the producers bear a disproportionate share of the inspection cost, unlike in most industrialized countries where the cost is mostly paid for by public funds.

To improve the inspection capability, in addition to specifying technical requirements for the inspection centers, the guideline lays out a blue print for future development, which includes constructing one national research center for agricultural products quality standard and inspection technology, 42 ministerial-level specialized inspections centers, 15 ministerial-level regional inspection centers, 36 provincial general service inspection centers, and 1200 county inspection stations. A total investment of RMB 5.91 billion will be allocated for construction of these inspection centers in the next 5 years (*i.e.*, 2006-2010), with RMB 3.852 billion coming from the central government and RMB 2.054 billion coming from local governments.

These inspection service centers will be categorized as "shiyie danwei" — publicly-funded quasi-governmental entities. The guideline also calls for respecting the WTO rules with regard to sanitary and phytosanitary measures.

⁶⁵ See MOA, *Notice on Distribution of Funds for 2006 Agricultural Industry Standards Setting and Updating*, Nong Cai Fa [2006] No. 64. See Exhibit A-II-5.

iv. Achieving Structural Adjustments for the Agricultural Industry

a. Moving the Industry Up the Value Chain

The government is now directing more production resources into labor-intensive and high-value-added subsectors, such as specialty crops, fishery, and livestock. It is also encouraging the processing of raw products for exportation. In 2006, MOA allocated the following amounts:

- for the protection of livestock species resources - RMB 20 million;⁶⁶
- for fishery species resources preservation - RMB 15 million;⁶⁷
- for a demonstrative project to popularize standardized livestock farming facilities - RMB 15 million;⁶⁸
- for subsidizing the popularization of a new apple packing technology - RMB 17 million;⁶⁹
- for fishing ports public facilities maintenance - RMB 15 million;⁷⁰ and
- for purchasing high quality livestock breeding stocks - RMB 5 million.⁷¹

Another important measure to move the industry up the value chain is the building of brand names for some “Dragon Head” agricultural enterprises. Each year, relevant governmental authorities certify a certain number of brands as “recognized famous brands” and some

⁶⁶ See MOA, *Notice on Distribution of Funds for Livestock Species Resources Preservation*, Nong Cai Fa [2006] No. 44. See Exhibit A-II-17.

⁶⁷ See MOA, *Notice on Distribution of Funds for Preservation of Fishery Species Resources*, Nong Cai Fa [2006] No. 33. See Exhibit A-II-6.

⁶⁸ See MOA, *Notice on Distribution of Funds for Standardized Livestock Breeding Farm Program*, Nong Cai Fa [2006] No. 54. See Exhibit A-II-15.

⁶⁹ See MOA, *Notice on Distribution of Funds for Apple Packing Key Technology Demonstration Program*, Nong Cai Fa [2006] No. 56. See Exhibit A-II-18.

⁷⁰ See MOA, *Distribution Report for Fishing Ports Public Facilities Maintenance*. See Exhibit A-II-14.

⁷¹ See MOA, *Notice on Distribution of Funds to Subsidize Purchasing Improved Livestock Breeding Stocks*, Nong Cai Fa [2006] No. 84. See Exhibit A-II-7.

enterprises are given the title of “Dragon Head” enterprises.⁷² The list of these enterprises and their brand names are then publicized and given significant media exposure. These efforts have been very effective in boosting the name recognition of these enterprises. At the same time, the government expects that the designated Dragon Head enterprises will help to move the whole industry up the value chain, will engage more in value-added processing of agricultural products, will take advantage of economics of scale and scope, and will conduct more R&D.

In addition, government guidelines call for allowing township and village enterprises (TVEs) to play an active role in developing the new socialist countryside.⁷³

Box 3, below, presents a summary of the new policy regarding TVEs.

Box 3
Township and Village Enterprise Developing Guideline
for the 11th 5-Year Period

Township and Village Enterprises (TVEs) are an important component of the rural economy. In 2005, they employed 143 million workers, providing jobs for 28% of the rural labor force; contributed 27.7% of the national GDP (in comparison, the agricultural sector contributes only 13.1% of the GDP), and generated RMB 518 billion in tax revenue. On December 22, 2006, the Ministry of Agriculture issued the guideline for the development of TVEs for the 11th 5-year period.

According to the guideline, during the 11th 5-year period, the Ministry of Agriculture will continue to support the active participation of TVEs in developing the new socialist countryside, will support the engagement of TVEs in agricultural products processing, and will encourage TVEs to follow a harmonious development path and a sustainable growth pattern.

The guideline (in chapter 4) spells out the important measures the government will take in the next 5 years to help attain the goals stated above. The guideline starts with a new definition of TVEs. Traditionally, TVEs were collectively-owned enterprises normally under direct control of the township or village administrative authorities. The guideline abolishes this collective ownership feature of the TVEs. The guideline specifically states that TVEs are distinct from other business organizations for two reasons only: (1) they operate in rural areas; and (2) they are staffed by a rural labor force. The guideline further

⁷² See General Administrative Office of the MOA, *Rules on National Brand Name Certification for Agricultural Products*, Nong Ban Shi [2006] No. 20. See Exhibit A-I-19.

⁷³ See MOA, *11th 5-Year Development Plan for Township and Village Enterprises*, Nong Qi Fa [2006] No. 5. See Exhibit A-I-14.

Box 3 (Continued)
Township and Village Enterprise Developing Guideline
for the 11th 5-Year Period

clarifies that TVEs could take the form of individual private enterprises, enterprises limited by shares, etc. In essence, TVEs are no longer a distinct type of business organization. As a result, the guideline applies to all enterprises operating in rural areas, covering the entire non-agricultural sector of the rural economy, including both state-owned and privately-owned enterprises in rural areas. The guideline then lists the following measures that the Ministry will take in the period between 2006 and 2010.

(1) Establish an efficient administrative management system for TVEs

The government will institutionalize administrative agencies that provide service and guidance to TVEs, and will strengthen information collection and analysis abilities in order to effectively trace the development of the TVEs and give them timely guidance. The government will also encourage the formation of industry associations or business chambers by the TVEs.

(2) Protect the legal rights of TVEs and broaden market access for TVEs

The guideline recognizes TVEs as a primary market participant and allows TVEs to enter into any market that the law does not prohibit, including public utility, infrastructure projects, and financial services. The legitimate interests and rights of TVEs will be protected by law. No one will have the privilege of altering the property rights of TVEs unless through a process prescribed by law.

(3) Reduce the fiscal burden of TVEs

The government will implement the "TVEs fiscal burden management rule," will abolish certain administrative fees, will prohibit any abusive use of administrative power in collecting money from TVEs, and will regulate the conduct of administrative inspections carried out to reduce the fiscal burden on TVEs.

(4) Construct an effective social security system for employees of TVEs

The government will speed up construction of the social security system for TVE employees, which will guide TVEs in following the laws with regard to pension, unemployment insurance, health insurance, employment-related accident insurance, and birth insurance. The government will be realistic and will, at the current stage, seek primarily to establish the basic social security protection for TVEs employees, but will push to expand this basic coverage to as many employees as the enterprises are realistically able to provide.

(5) Protect the legal rights of employees and employers

The government will strengthen enforcement of PRC labor law, ensuring that employment contracts comply with relevant laws and regulations and are executed only after free will negotiation on equal footing. The government is endeavoring to gradually improve labor conditions, guarantee that workers are allowed to join unions and worker assemblies, and encourage the establishment of party organs within the TVEs.

(6) Further transform the government administrative functions

The government will implement the PRC Administrative Licensing Law. Governmental approval of licenses will be necessary only if specifically required by law, and the government also will make an effort to increase its efficiency in handling applications.

Box 3 (Continued)
Township and Village Enterprise Developing Guideline
for the 11th 5-Year Period

(7) Help TVEs to secure financial resources

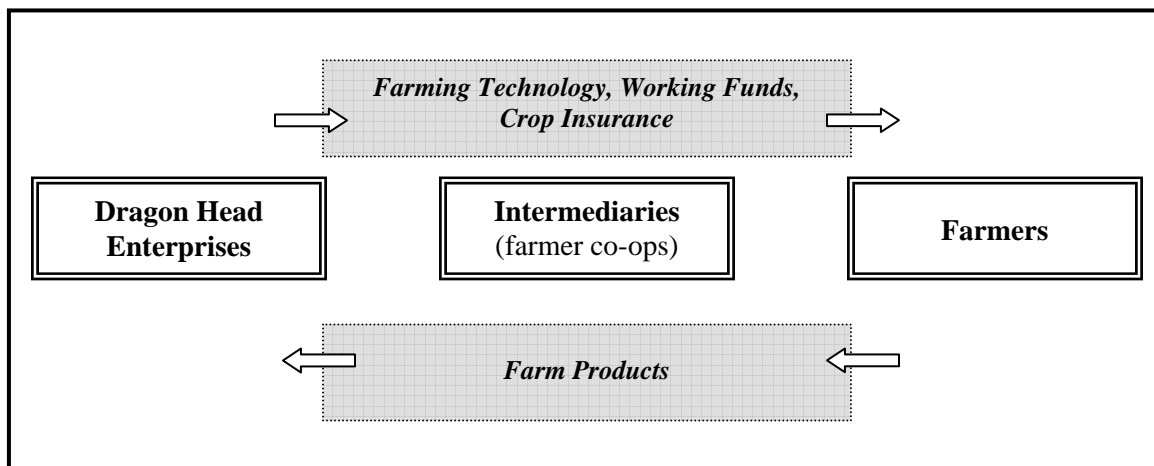
The MOA will advocate government support for TVEs in their efforts to secure financial guarantees, loans, capital investments and public offerings of stock. The government will do the following: (a) hold regular meetings to promote cooperation between banks and TVEs, (b) provide guidance for TVEs seeking participation in overseas capital markets, (c) encourage TVEs to conduct stock-backed financing and project financing, (d) help TVEs to receive their export rebate payments in a timely manner, (e) provide TVEs with export credit, export loan guarantees, and speed up the development of the TVEs' credit rating system and default penalty system; (f) push forward the TVEs' credit record system, and (g) establish and improve TVEs' credit data base.

The MOA also plans to build or improve an R&D service system, a training system, a job market, and an information service system to help to upgrade TVEs. It will also help TVEs to improve their corporate management system, clarify ownership and management relationships both within the TVEs and with outside investors and creditors, as well as to improve their asset management system.

b. Industrializing the Agriculture Sector

The industrialization of the agricultural sector is another China policy objective that is frequently mentioned. It essentially means the commercialization of agricultural production through government measures that encourage the use of machinery, measures that set up or update national standards to facilitate standardized production, and measures that improve coordination between upstream and downstream producers, such as vertical integration of market undertakings. The government envisions the ideal agricultural production structure as one that enhances efficiency through the vertical integration of production and distribution, such as the following.⁷⁴

⁷⁴ See MOA, *Guideline for Agricultural Industrialization Programs*; available at www.agri.gov.cn/cwggk.



Dragon Head enterprises are the cornerstone of many agricultural industrialization measures. The Dragon Head enterprises are primarily agricultural product processors, but sometimes they are also producers. The government expects that they will organize farmers into large-scale commercialized production through intermediaries. The Dragon Head enterprises are expected to provide necessary production technology, equipment, and production funds. Intermediaries are mostly rural specialized farmer co-operatives. They purchase products from farmers, and provide farmers with transportation, storage, and technical consulting services. Under this vertically-integrated structure, (1) market information is passed promptly from the Dragon Head enterprises to the farmers through the intermediaries, (2) the farmers farm under the guidance and with the help of the Dragon Head enterprises through the intermediaries, and (3) products catering to market needs are then collected from the farmers by the intermediaries, and processed and marketed by the Dragon Head enterprises.

The MOA supports Dragon Head enterprises that engage in this business model through a fund of RMB 30 million. Qualified programs include Dragon Head enterprises that provide

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assistance to farmers such as technical support and subsidizing farmers' purchases of improved crop strains and production equipment.⁷⁵ The MOA also subsidizes Dragon Head enterprises that partially reimburse farmers for their insurance expenses.⁷⁶ Some large Dragon Head enterprises are publicly-listed companies, and their annual reports usually disclose the subsidies they receive from the government. Table 3 below lists such information.

Table 3
Subsidies to Listed Dragon Head Companies
(in RMB, unless otherwise noted)

Company	Stock exchange	2005 Government Grant	2005 Turnover	2004 Government Grant	2004 Turnover	2003 Government Grant	2003 Turnover
China Mengniu Dairy Co., Ltd.	HKEX	--	10,825,950,000	17,865,000	7,213,827,000	4,561,000	4,071,468,000
Bright Dairy and Food Co., Ltd.	SHSE	6,183,202	6,903,862,650	5,504,968	6,785,678,602	13,621,874	5,981,051,611
Inner Mongolia Yili Industrial Group Co., Ltd.	SHSE	23,362,612	12,175,264,123	16,945,489	8,734,990,975	10,898,005	6,299,333,498
China Yurun Food Group Ltd.	HKEX	13,922,000 (Q1/05 only)	4,453,965,000	55,336,000	2,592,730,000	22,400,000	--
Zhongpin, Inc	OCTBB	\$ 2,515,592	\$ 73,400,000	\$ 928,302	\$ 42,787,000	149,158	29,593,000
Xuzhou VV Food & Bever-age Co., Ltd.	SHSE	8,172,900	2,915,720,864	12,303,916.	2,262,383,673	7,006,897	1,660,651,115

Source: Annual reports of the listed companies.

In addition to assisting Dragon Head enterprises, some government industrialization measures are directed toward helping farmer co-operatives, which are expected to provide various services to the member farmers, including the renting of agricultural machinery. Box 4, below, summarizes the government's development plan for the agricultural machinery rental

⁷⁵ See MOA Notice on Distribution of Funds for Agricultural Industrialization Programs, Nong Cai Fa [2006] No. 55. See Exhibit A-II-8.

⁷⁶ *Id.* at 2.

service industry. In 2003, to encourage the use of machinery, the MOA provided RMB 30 million to subsidize purchases of agricultural machinery by farmer co-operatives.⁷⁷ Also since 2003, the MOA has promoted farmer co-operatives under a program with an annual funding of RMB 30 million.⁷⁸

Box 4
The 11th 5-Year Guideline for the Development of
Socialized Agricultural Machinery Rental Service Industry

China's agricultural sector is dominated by small-scale household farming operations. The only feasible way to increase the use of machinery is to develop an agricultural machinery rental service industry. By 2005, China had 33.863 million agricultural machinery rental service providers, hiring 40.752 million workers. The total market value for the agricultural machinery rental service industry reached RMB 260 billion in 2005. In the same year, the government invested RMB 4 billion to subsidize the purchase of machinery by farmer co-ops. The private sector investment in agriculture machinery is estimated at RMB 28.3 billion.

In addition to direct subsidies, MOA calls for favorable policies toward the machinery rental service industry. In September 2006, MOA issued a 5-year guideline for the development of what is called "the socialized agricultural machinery rental service industry." (See Exhibit A-I-4.) The guideline laid out the following five major measures to be implemented in the next 5 years.

(1) Establish a Comprehensive Government Support System

The government will increase fiscal support for the purchase of agricultural machinery, continue the current policy of exempting certain agricultural vehicles from highway construction fees, coordinate local policies to reduce the road maintenance fees for agricultural vehicles, and reduce the business operation tax rate, as well as registration fees, for service providers. In addition, MOA will coordinate with other administrative agencies to provide preferential treatment for machinery rental services as to loans, insurance, emergency assistance, favorable capital deduction treatment and land-use policy.

(2) Develop a Friendly Legal Environment that is Conducive to the Growth of the Industry

The government will promulgate laws and regulations regarding such matters as intermediary regulation, arbitration, service quality supervision, and information services. In addition, the government will encourage trade associations to establish internal disciplines for member service providers, draft standard renting service contracts, and standardize rental services in order to protect the legal interests of service providers.

⁷⁷ See MOA, *2003 Distribution Report for Funds Used to Subsidize Purchase of New Agricultural Machinery*; available at http://www.agri.gov.cn/cwgk/xgzl/t20031031_132110.htm. See Exhibit A-II-12.

⁷⁸ See MOA, *Notice on the Distribution of Funds for Specialized Farmers' Cooperatives Demonstration Program*, Nong Cai Fa [2006] No. 28. See Exhibit A-II-2.

Box 4 (Continued)
**The 11th 5-Year Guideline for the Development of
Socialized Agricultural Machinery Rental Service Industry**

(3) Build an Agricultural Technology Promotion Center Network in Rural Areas

These centers are non-profit in nature, and will be supported by public funds. However, they are not expected to substitute for technology service providers that currently operate under market mechanisms. These centers will help to implement government support policy, and help machinery rental service providers to popularize new machinery and technologies among farmers.

(4) Establish a Service Information System for the Rental Industry

(5) Strengthen the Government's Role in Providing Guidance for the Industry

**v. Promoting Technology Proliferation and
Development**

Technology development is viewed as the ultimate solution for the “three-rural issue.” China has implemented several programs that promote innovation and technology development in agricultural production as well as to spread their achievements. The Agricultural Technology Jump Plan is one of the programs administered by the MOA which subsidizes various agricultural R&D programs with an annual funding of RMB 30 million.⁷⁹

The MOA also administers programs that promote the adoption of new technology or improved crop seeds/animal breeding stocks by farmers. In 2006, the MOA distributed the following amounts under this program:

- For supporting the popularization of a key rice-planting technology in dry areas - RMB 20 million.⁸⁰

⁷⁹ See MOA, *Notice on Distribution of Funds for Agricultural Technology Jump Plan*, Nong Cai Fa [2006] No. 27. See Exhibit A-II-4.

⁸⁰ See MOA, *Notice on Distribution of Funds for Advantageous Agricultural Products and Key Technology Popularizations (Water Saving Technology for Farming in Dye Areas)*, Nong Cai Fa [2006] No. 30. See Exhibits A-II-9.

- For popularizing advantageous agricultural products - RMB 32 million.⁸¹
- For adopting improved livestock breeding stock - RMB 20 million.⁸²
- For introducing certain apple-packing technology to farmers - RMB 25 million.⁸³
- For demonstration programs for mechanized rice seedling planting - RMB 5 million.⁸⁴

Local governments also have invested heavily in their own technology promotion programs. For example, the USDA-ERS China Lending Report stated that the Jilin provincial government invested USD \$840 million in a High-Tech Agriculture Demonstration Park in a new satellite city of Changchun, the provincial capital of Jilin.⁸⁵

Efforts have also been made to facilitate farmers' access to technology and market information. In 2005, the MOA initiated a program to develop in rural areas an integrated information system, combining the functions of a telephone, a television, and an internet work station, that would be capable of disseminating technology and marketing information into every rural household. The MOA has an annual budget of RMB 30 million to support content development for this information dissemination system.⁸⁶

vi. Maintaining Grain Production Capacity

Historically, China's most important agricultural policy objective has been to maintain grain production capacity sufficient to achieve self-reliance in the food supply. Today, this is

⁸¹ See MOA, *Notice on Distribution of Funds for Popularizing Advantageous New Agricultural Products*, Nong Cai Fa [2006] No. 53. See Exhibit A-II-13.

⁸² See MOA, *Notice on Distribution of Funds for Subsidizing Purchasing of Improved Livestock Breeding Stocks*, Cai Nong Fa [2006] No. 84. See Exhibit A-II-7.

⁸³ See MOA, *Notice on Distribution of Funds for Apple Packing Key Technology Demonstration Program*, Nong Cai Fa [2006] No. 56. See Exhibit A-II-18.

⁸⁴ See MOA, *Notice on Distribution of Funds for Demonstration Programs for Mechanized Rice Seedling Planting*, Nong Cai Fa [2006] No. 22. See Exhibit A-II-10.

⁸⁵ See *USDA-ERS China Lending Report* at 13.

⁸⁶ See MOA, *Notice on the Distribution of Funds for Three-in-One Agricultural Information Service Pilot Program*, Nong Cai Fa [2006] No. 51. See Exhibit A-II-1.

still China's most important agricultural policy objective. As such, the Chinese government has actively supported grain production. Because the production of grain normally generates less income for farmers than the production of specialty crops, China has, since the 1990s, implemented measures subsidizing grain procurement, storage, and exportation. Initially, if the market price fell below the "protection price," the government would reimburse farmers for the price difference.⁸⁷ This measure, however, proved to be costly, with benefits going mostly to distributors rather than to producing farmers.⁸⁸ In 2002, the government began to experiment with direct subsidies to producers in four provinces. By 2004, the direct subsidy program was introduced nationwide. After the introduction of direct subsidies, China allowed the market to set grain prices. The amount of the subsidy provided to farmers producing grain has been relatively low, maintained at roughly RMB 10 per mu (USD \$7.33 per acre). The USDA-ERS China Subsidies Report estimated that China's grain subsidies are equal to 2 percent of the gross value of grain production.⁸⁹ While grain production has increased in recent years, it is unclear whether this increase is the result of a global grain price hike or the direct subsidy program of the Chinese government.⁹⁰

In another grain production promotion program, China subsidizes farmers who adopt high-yield crop strains. This program was implemented simultaneously with the direct support program. Under this program, the government pays farmers for adopting improved crop strains

⁸⁷ See *USDA-ERS China Subsidies Report* at 4.

⁸⁸ *Id.*

⁸⁹ *Id.* at 10.

⁹⁰ *Id.*

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at the rate of RMB 10-15 per mu (USD \$7-10 per acre).⁹¹ Public funds have also been allocated to develop improved strains and for the local authority to establish demonstration programs to popularize the fine seeds. For example, in 2006, under its Agricultural Technology Jump Plan, the MOA distributed RMB 30 million to subsidize rice, wheat, and cotton farming technology demonstration programs.⁹²

In addition to direct grants, policy loans are another important channel through which China has funneled funds to support grain production and grain farmers. The USDA-ERS China Subsidies Report noted that the government requires some banks, notably the CDB and the ADBC in particular, to support procurement of grain at a “protection” price.⁹³ In 2003, “the ADBC made new loans of [USD] \$11.7 billion in support of such procurement of 90 million tons of grain and 600,000 tons of fats and oils by state marketing enterprises; and [USD] \$5.6 billion loans to the grain storage enterprises.”⁹⁴ This type of policy loan may have contributed to the high level of NPLs. In February 2005, the USDA-ERS China Subsidies Report noted that the ADBC had outstanding loans of USD \$83.3 billion, of which USD \$35 billion was classified as nonperforming.⁹⁵

⁹¹ *Id.* at 4.

⁹² MOA, *Notice on Distribution of Funds for 2006 Agricultural Technology Jump Plan*, Nong Cai Fa [2006] No. 27. See Exhibit A-II-4.

⁹³ Commercial banks are obliged to engage in policy lending for projects included in 5-year development guidelines. See *USDA-ERS China Subsidies Report* at 12.

⁹⁴ *Id.* at 5.

⁹⁵ *Id.*

Box 5
Grain Production Development Guideline (2006-2020)

Under this guideline, the government states that it will follow the policy of maintaining domestic grain production capacity to achieve food supply self-sufficiency. The guideline reasons that because of China's huge demand, the cost for relying on international markets is prohibitively high. The total volume of global trade in grain (240 billion tons) is equivalent to roughly half of China's total demand. Any substantial grain purchase by China will raise global grain prices dramatically and will disrupt the supply and demand balance of the global grain market. Based on this assessment, the guideline concludes that it is advisable for China to maintain the capacity to produce enough food for its own population. The guideline then lays out a 15 year development roadmap on how for China can maintain grain production capacity at a time when demand continues to increase and the supply of land that could be sowed with grain is unavoidably diminishing.

The guideline reveals that, in 2005, national grain production reached 968 billion Jin⁹⁶ (484 million metric tons) and consumption was 991.4 billion Jin (495.7 million metric tons). The guideline anticipates that by 2020 consumption will reach 1130 billion Jin (565 million metric tons) and sets as a goal to be achieved a production capacity of 1000 billion Jin (500 million metric tons). To achieve this level of production, the guideline lays out the following 5 development plans.

(1) Protect and scientifically use land and water resources

The government will do the following:

- (a) Ensure that the cultivated land protection rule is implemented.
- (b) Carefully plan land use and effectively control the allocation of land among different usages.
- (c) Follow a restrictive policy with regard to non-agricultural use of farm land.

(2) Further improve the legal framework that protects grain production

The government will do the following:

- (a) Stabilize the basic grain production protection system.
- (b) Revise relevant laws and regulations, such as the Land Management Law, the Rural Land Contracting Law, and the Basic Cultivated Land Protection Regulations.
- (c) Grant farmers long-term land use rights and derivative rights such as the right to cultivate land, the right to the proceeds from cultivating land and the right to transfer land-use rights.
- (d) Establish step-by-step grain production subsidies and a comprehensive subsidy system.
- (e) Conduct in-depth preparatory legislative research to further clarify or adjust policy goals with the purpose of providing legal support for long-term grain production development.

(3) Develop a detailed food supply plan to safeguard food security

The government will do the following:

- (a) Set forth a detailed national food supply guideline.
- (b) Divide the nation into a number of regions for food supply purposes.
- (c) Work out a detailed plan for each region and prescribe the production goal and the measures to achieve this goal.

⁹⁶ A "Jin" is a Chinese measure of weight. One Jin is equal to 500 grams or one-half kilogram.

Box 5 (Continued)
Grain Production Development Guideline (2006-2020)

- (d) Specify responsibilities for each entity involved in the food supply scheme.
- (e) Encourage grain export regions to establish long-term cooperation relations with grain net-consumption regions, under which consumption regions will allocate a portion of their land use fee to support grain production in the net-export regions.
- (f) Provide supportive measures, such as favorable tax and loan policies, to encourage investment by net-consumption regions in grain storage and transportation facilities and processing enterprises.

(4) Institutionalize government support for grain production

The government will do the following:

- (a) Integrate various government investment or support programs for grain production.
- (b) Seek out more fiscal resources to fund this integrated supporting system.
- (c) Establish grain production capacity development funds and grain production supporting funds at both the central and local government level.
- (d) Explore measures to alleviate the fiscal burden on grain-production regions.
- (e) Encourage county and city authorities to invest in agricultural infrastructure.
- (f) Find ways to channel financial capital and other commercial/private capital to invest in grain production projects so as to enlarge and strengthen grain production areas.

(5) Strengthen the ability to have macro-economic control of grain trade

The government will do the following:

- (a) Further improve the grain protection purchase price supporting measure.
- (b) Include staple crops such as maize and soybeans in the protection purchase price scheme.
- (c) Set the purchase price at a level that allows farmers to recover their production costs and a reasonable amount of profit, so as to encourage farmers to produce staple crops.
- (d) Also, in order to stabilize the market supply and price of crops, the relevant government agencies will draft practical purchasing plans, in particular, purchasing plans for the national and provincial grain reserve centers.

In addition, the government will do the following:

- (a) Strengthen provision of macro-guidance on grain reserve capacity building and grain trading.
- (b) Maintain a reasonable level of reserves to ensure an adequate food supply.
- (c) Establish an international grain market warning system and a research institution to effectively guide grain import and export.
- (d) Ensure a sufficient domestic supply of rice.
- (e) Supplement the domestic supply of wheat with purchases from the international wheat market.
- (f) Ensure that China's southern region imports a certain amount of maize and encourage China's northern region to export a certain amount of maize.
- (g) Continue to increase the domestic production capacity of soybeans and, at the same time, import a certain amount of soybeans from the global market.
- (h) Also, to continuously improve the ability to conduct macro guidance of the grain market, the government will build a national grain distribution statistics system to enable real-time tracking of grain production, consumption, the market situation, and reserve information.

b. Trade Measures

i. Border Measures

a. Tariff

Since joining the WTO in December 2001, China has, consistent with the Protocol of Accession to the WTO and attached schedules, implemented its commitments to reduce tariff rates as specified in its goods schedule. In its 2006 WTO compliance report, the U.S. Trade Representative (USTR) concluded that “China implemented the required tariff changes on agricultural goods for 2006 on schedule on January 1, 2006, just as it did for industrial goods.”⁹⁷ As a result, China’s average tariff on agricultural products that are important to U.S. farmers has declined from 31 percent in 1997 to 14 percent as of January 1, 2006.⁹⁸ In addition to lowering its tariff rates in accordance with its goods schedule, China has also liberalized its agricultural trade in other aspects.⁹⁹

b. Border VAT

Imports of agricultural products are generally subject to value-added taxes (VAT) at the rate of 13 percent *ad valorem*, which is four percentage points below the generally applicable VAT rate of 17 percent. The actual VAT rates that are levied on imported agricultural products, however, may vary depending on whether or not certain governmental policies are applicable to particular products. For example, in some case, China exempts certain products from the VAT so that downstream processors of the imported products are able to lower their own production costs, and thus remain competitive in the international market. On the other hand, when the

⁹⁷ USTR, *2006 Report to Congress on China's WTO Compliance* (December 2006) at 61.

⁹⁸ *Id.*

⁹⁹ *Id.*

domestic supply of certain products is abundant, China applies the VAT to discourage imports.¹⁰⁰

c. Export Taxes

In the 2006 Trade Policy Review (TPR) of China, the WTO Secretariat's report noted that China has been applying export taxes to some agricultural products. China has applied export taxes ranging between 20-40 percent on bones and horn-cores, powder and waste thereof, and raw hides.¹⁰¹ An export tax has the potential of encouraging the production of domestic value-added products. Under its WTO accession protocol, China retains the right to impose export duties on some products in order to maintain a balance of supply and demand in the domestic market.

ii. Export Promotion Measures

Export promotion is a major component of China's development strategy for the agriculture sector. In 2005, agricultural exports reached USD \$27.18 billion, accounting for 3.6 percent of China's total exports. According to WTO statistics for 2004, China was the world's fifth largest agricultural exporter, accounting for 3.2 percent of global trade in agriculture goods. China's major export commodities are garlic, peanuts, grilled eel, canned mushrooms, cider, and honey.

China's most important export promotion measure is the VAT export rebate system. China notified the WTO SCM Committee that exporters of agricultural products are entitled to a

¹⁰⁰ See *Trade Policy Review – People's Republic of China; Report by the Secretariat*, WT/TPR/S/161/Rev.1 (26 June 2006) at 175.

¹⁰¹ *Id.*

VAT rebate at the time of exportation. The VAT is treated as an indirect tax which under WTO rules is not viewed as a subsidy, at least when the rebate does not exceed the tax actually paid. The WTO Secretariat's TPR report observed that the level of VAT rebate varies for different commodities and appears to have been used to manage exports.¹⁰² For example, in January 1, 2004, China raised the VAT export rebate rate for wheat and corn flour but eliminated the VAT rebate for eel fry.¹⁰³

Another Chinese export promotion measure is a program under which the Chinese government exempts agricultural products destined for export from payment of the railway construction fee, an expense which is believed to constitute 20-50 percent of the total transportation costs for such products.¹⁰⁴

The government also promotes agricultural exports through subsidizing marketing efforts. From 2003, MOA has been providing RMB 17 million each year to support various marketing activities by agricultural producers. The funds distribution report for this program reveals that the funds have been used for both domestic and international sales promotion purposes. Certain distributions have been made to cover the cost of participating in overseas business shows by some agricultural enterprises.¹⁰⁵

¹⁰² *Id.*

¹⁰³ See MOF & SAT, *Circular on Adjustment of Certain VAT Export Rebate Rate*, Cai Shui [2003] No. 222. See Exhibit A-IV-30.

¹⁰⁴ See *Trade Policy Review – People's Republic of China; Report by the Secretariat*, WT/TPR/S/161/Rev.1 (26 June 2006) at 175.

¹⁰⁵ See MOA, *Notice on Distribution of 2006 Marketing Funds for Agricultural Products*, Nong Cai Fa [2006] No. 59; available at <http://www.agri.gov.cn/cwgc>. See Exhibit A-II-3.

In addition to the programs above, in August 2006, MOFCOM released a policy directive titled “The 11th 5-Year Development Guideline for Agricultural Products Exportation.”¹⁰⁶ The guideline calls for establishing a comprehensive export promotion system encompassing such areas as fiscal matters, taxation, commercial/policy loans and insurance. The concrete measures contemplated by MOFCOM for the purpose of promoting exports of agricultural commodities include: (1) increasing the amount of policy loans to exporters, (2) subsidizing export risk insurance, (3) providing tariff drawback or VAT reductions/exemptions for imported equipment used for processing export products, (4) adjusting the VAT export rebate structure to encourage exports of high value-added products, (5) reducing export inspection costs and expediting the customs service export clearance process.¹⁰⁷ Box 6 below presents a detailed summary of this guideline.

¹⁰⁶ See MOFCOM, *Agricultural Products Export Guideline for the 11th 5-Year Period* (August 25, 2006); available at <http://wms.mofcom.gov.cn/aarticle/subject/ncp/subjectguihua/200608/20060802960492.html>. See Exhibit A-I-6.

¹⁰⁷ *Id.*

Box 6
The Export Promotion Guideline for Agricultural Products

Unlike most agricultural implementation plans, this guideline was released by the Ministry of Commerce (MOFCOM). The guideline lays out six measures designed primarily to promote the competitiveness of China's agricultural products in the international market.

The guideline starts with a review of the current situation for trade in agricultural products. It reveals that, in 2005, China exported agricultural products worth a total of USD \$27.18 billion, accounting for 3.6% of overall exports from China. Companies with foreign investment took the biggest share, accounting for 43% of total agricultural exports. State-owned enterprises ranked second at 32%. Domestic privately-owned enterprises accounted for roughly 25% of exports. The guideline also lists a number of problems that undermine the competitiveness of China's agricultural exports. At the top of this list are product quality and safety issues. It noted that China's production pattern made it difficult to establish a national product quality inspection and quality records tracing system. The latter is now required by some major importing countries such as the EU and the U.S. Most developed countries have raised technical and safety standards for agricultural imports from developing countries. These measures have become a serious trade barrier for Chinese exporters.

In addition, the guideline observes that the government has yet to establish a systematic export support measure. Difficulties in obtaining loans cripple many exporters. Some local financial institutions are charging interest rates as high as 9-10% for export loans, which in most cases is beyond the means of the exporters. Another problem arises from the current law which prohibits the creation of a security interest on the leasehold interest that exporters have on rural land, the forest or other production inputs. Hence, the guideline calls for the government to issue new measures to reduce the financial burdens on agricultural exporters.

In response to the problems currently facing Chinese exporters, the guideline spells out the following six major measures which MOFCOM will seek to implement in the coming years.

(1) Intensify Efforts in Product Quality and Safety Regulation to Improve the Competitiveness of China's Agricultural Products

The government will do the following:

- (a) Intensify quality and safety control through popularizing GAP (Good Agricultural Practice) technology.
- (b) Encourage standardized production and support producers to improve production methods.
- (c) Develop a national traceable product quality control system so as to facilitate quality control over the entire farming and processing structure.
- (d) Establish a strict quality and safety control system for agricultural inputs.
- (e) Intensify pesticide and fertilizer quality and safety control and management.
- (f) Prohibit production, sale and use of pesticides that are highly poisonous or contain high residues.
- (g) Put in place measures to encourage self-discipline in food quality and safety management; such as conditioning famous brand certification with quality and safety requirements.
- (h) Intensify inspection for agricultural products destined for export.
- (i) Encourage enterprises to obtain GAP, GMP and HACCP international quality and safety certificates.

Box 6 (Continued)
The Export Promotion Guideline for Agricultural Products

- (j) Establish agricultural products farming/processing history records, and traceable quality records, so as to meet the requirements of importing countries.
- (k) Make efforts to reduce export inspection costs through measures such as inspection exemptions;
- (l) Improve the effectiveness of the export inspection system.
- (m) Increase the overall investment in inspection infrastructure, purchase more technologically-advanced inspection equipment, and increase the training level of inspection personnel.
- (n) Guide exporters to enhance their in-house quality and safety control and inspection abilities.

(2) Optimize the Structure of Agricultural Exports in Favor of High Value-Added Products

The government will do the following:

- (a) Encourage domestic enterprises to develop new products for which they own intellectual property rights either through the domestic development or purchasing of advanced technology and improved seeds/breeding stocks so as to enhance their competitiveness in the international market.
- (b) Release a new policy that encourages enterprises to import internationally-advanced agricultural production and processing technology and equipment, as well as improved crop strains, bio-fertilizers, and bio-pesticides that are environmentally friendly.
- (c) Establish a product origin registration system, and exempt from the export inspection process certain products registered under this system when the products meet other requirements.
- (d) Provide expedited export inspection to products from enterprises with a good reputation.
- (e) Build a national product standard system.
- (f) Actively encourage trade associations to adopt industry standards and certificate marks.
- (g) Popularize standardized farming and rely on advanced technology to realize quality control for the entire production process so as to achieve quality consistency.
- (h) Set up product quality marking requirements under which producers will be required to disclose information such as the unit price, ingredients (ingredients mark), nutritional value (nutrition mark), and the level of freshness (date of production and shelf life).
- (i) Encourage some horticultural and livestock exporters to adopt industry standards and marks, which will help to introduce the enterprises to the standards and marks adopted through government-imposed certificate requirements.
- (j) Help promote the standards and marks in major export markets.
- (k) Help famous agricultural exporters develop overseas sales promotion plans.
- (l) Favor agricultural products over other manufactured products and use the “brand name promotion funds for exportation” to subsidize famous and high-quality agricultural export producers to pay for their IPR protection expenses, advertisement costs and other product promotional costs, for the costs of obtaining product quality and standard certificates requested by importing countries or regions, and the costs to hire consultants to map out brand name establishment plans and other R&D efforts.
- (m) Help famous exporters establish global commercial distribution channels, to enable them to take the lead in integrating into the global supply and demand chain.

(3) Implement the Agricultural Export Promotion Plan and Strengthen Training and Information Services

To help agricultural export enterprises to expand their share of the global market, the government will do the following:

Box 6 (Continued)
The Export Promotion Guideline for Agricultural Products

- (a) Provide information, training and consulting services.
- (b) Intensify quality and safety control through popularizing GAP (Good Agricultural Practice) technology.
- (c) Organize international business shows.
- (d) Help enterprises to upgrade their international sales ability and to establish healthy and stable export channels.
- (e) Establish an authoritative trade information and export early warning system for agricultural products.
- (f) Government agencies and industry associations will research and follow market situations in the major importing markets, and collect information such as market shares and competition conditions.
- (g) Provide early warnings and obtain information on foreign trade remedy investigations against agricultural exports from China.
- (h) Construct a fast-reaction mechanism so as to fully bring into play the organizational functions of industry associations in response to antidumping investigations.
- (i) Provide enterprises with legal assistance and technical support to resolve overseas problems.
- (j) Establish a reaction strategy and a warning system against foreign trade measures based on enforcing new technical standards.

To elevate the professional proficiency level of persons engaged in the exporting business, the government will do the following:

- (a) Intensify efforts in conducting agricultural export training.
- (b) Draft scientific and systematic agricultural export training plans.
- (c) Support efforts of local governments and industrial organizations in conducting training with regard to foreign agricultural technical standards.
- (d) Help enterprises build quality control systems, adopt industry standards, obtain international certificates, improve production and processing technology and in particular encourage enterprises to adopt GAP and HACCP standards.
- (e) Help with training for compliance with foreign technical standards.

In addition, the government will do the following.

- (a) Continue to support the participation of exporting enterprises in international business shows and other promotional activities.
- (b) In particular, support the participation of enterprises and trade associations in international expo and other types of product promotional events.
- (c) Engage in general agricultural promotion activity to increase the name recognition of Chinese agricultural products.
- (d) Support enterprises and associations in conducting market surveys, advertising, market planning and product promotion.
- (e) Make investments to improve the agricultural export transport and storage system in order to facilitate exportation.
- (f) Speed up construction of frozen or low-temperature transportation systems for agricultural products.
- (g) Reduce or exempt agricultural products from transportation vehicle road construction and maintenance fees.

Box 6 (Continued)
The Export Promotion Guideline for Agricultural Products

(h) Focus efforts on achieving a low-temperature transportation system for primary and western agricultural products, so as to reduce export costs.

(4) Encourage the Formation of Agricultural Associations so as to Improve the Level of Coordination for Agricultural Exports

The government will do the following:

- (a) Make efforts to elevate the level of organization between agricultural producers, to promote the formation of agricultural special cooperatives in some export bases, and to help farmers adapt to standardized production so as to reduce administrative costs for exporting enterprises and to enhance the consistency of product quality.
- (b) Help enterprises to increase the organizational level of agricultural production, lead them toward large-scale and commercialized production and market-oriented business operations with the ultimate purpose of elevating the ability of the enterprise to increase efficiency and to overcome technical trade barriers.
- (c) Promote the formation of export industry associations which will operate on the basis of self-management, self-service and self-discipline; be engaged in coordinating operations among members; represent members in negotiations with the government; explore potential export markets; overcome technical barrier; and represent exporters in trade dispute resolution.
- (d) Foster a group of leading enterprises (Dragon Head Enterprises) that will be large, relatively high-tech and competitive. These Dragon Head Enterprises will be expected to organize farmers into large-scale commercialized farming through such models as: Dragon Heads→production bases, Dragon Heads→production bases→farmers, or “order sheet” agriculture. Standardization will be realized throughout the process of production, processing, and distribution in order to establish specialized and large-scale regional agricultural markets.

(5) Improve and Broaden Export Support Policies

The government will do the following:

- (a) Organize research on WTO rules, and draw on experience from other Members in order to further improve the government export support system.
- (b) Make new efforts to explore the possibility of expanding fiscal, tax, finance, and insurance support policies for agricultural exports.
- (c) Use central foreign trade development funds to favor agricultural exports in order to improve the global competitiveness of agricultural products, particularly through the following: (i) programs that support leading enterprises in establishing agricultural product quality standards and quality certification systems, and obtaining international quality certificates; (ii) programs that construct and reform export production bases, establish crop and livestock farming records, and traceable quality certificate systems; and (iii) programs on R&D and technology renovation.
- (d) Study and draft concrete measures to provide agricultural exporters with more policy loans.
- (e) Develop new financial products to cater to the special needs of agricultural export enterprises.
- (f) Broaden the business scope of agricultural development banks and strengthen their supportive function for agricultural export after they improve their operational mechanics.
- (g) Further improve the agricultural export insurance system.

Box 6 (Continued)
The Export Promotion Guideline for Agricultural Products

- (h) Explore a system that integrates export credit insurance with agricultural insurance.
- (i) Broaden the coverage of export credit insurance.
- (j) Effectively increase the percentage of export transactions that are insured with the purpose of increasing the risk resistance ability of export enterprises.
- (k) Improve the preferential tax system and explore ways to establish a unified coding system for processed agriculture products.
- (l) Realign the export rebate payment system to encourage exports of processed products.
- (m) Provide tariff drawbacks for inspection equipment and other general production equipment purchased by exporting enterprises.
- (n) Draw upon foreign experiences to reduce export inspection fees and speed up the inspection process so as to reduce export costs for export enterprises.
- (o) Enterprises that have obtained quality certificates such as HACCP, GMP, GAP and ISO 014000, and have a good reputation, will be exempted from inspection or be allowed to conduct the inspection by themselves using their own inspection facilities.

(6) Intensify Diplomatic Efforts to Create a Friendly International Environment

MOFCOM will improve its fast reaction ability, and its ability to coordinate on the interagency level with regard to agricultural export matters.

MOFCOM will intensify diplomatic efforts in the following three areas:

- (a) Active participation in WTO negotiations to push forward agricultural trade liberalization, and effectively address the issues of market access, domestic support and export subsidies.
- (b) Promote bilateral trade agreement negotiations with neighboring countries, such as the negotiations between China and ASEAN countries, China and Australia, and negotiations aimed at establishing a regional economic and trade union; engage in negotiations with the aim to establish bilateral trade dialogue mechanisms with EU, Japan, U.S., and South East Asia countries.
- (c) Strengthen the negotiating abilities of agencies to facilitate effective trade dispute resolutions and to foster a friendly international environment.

c. Environmental Protection Measures

The *11th 5-Year Guideline* devoted one chapter to the environmental protection issue. It acknowledged that China's economic development has resulted in considerable harm to the environment, and called for transforming the economy into one that is environmentally friendly.¹⁰⁸ In its "development strategy" section, the *11th 5-Year Guideline for Agriculture*

¹⁰⁸ See *11th 5-Year Guideline for National Economic and Social Development* at Chapter 2. See Exhibit A-I-2.

states that the government will endeavor to transform the current wasteful development pattern into a sustainable development model, and will establish an early warning system for agricultural environmental protections. Specifically, the government will reduce the agricultural production level in the areas surrounding Beijing and Tianjin, as well as “the three northern regions,” and will reduce the number of livestock in order to preserve the grasslands.¹⁰⁹

Among the 27 programs listed on MOA’s website for 2006, 3 of them are directly relevant to environmental protection issues. In the first program, MOA provides funds of RMB 30 million annually for popularizing environmentally-friendly cultivation methods.¹¹⁰ In the second program, RMB 90 million is allocated each year for establishing a national inspection system that will certify non-hazard and green agricultural products, and thus encourage adoption of environmentally-friendly methods of production.¹¹¹ In the third program, MOA distributes RMB 20 million each year to popularize water-saving farming technology.¹¹²

The OECD’s review of China’s agricultural policies similarly noted that the government’s agricultural policy priority has recently shifted from food supply to environmental concerns.¹¹³ Sustainable use of land and water resources has been given a high profile, especially since the late 1990s, with significant levels of funding being made available to

¹⁰⁹ See *11th Five-Year Guideline for National Agriculture and Rural Economy Development* (August 8, 2006) at Chapter 3, Section 3.6. See Exhibit A-I-3.

¹¹⁰ See MOA, *Notice on Distribution of Funds for (Environmentally) Protective Cultivation Program*, Nong Cai Fa [2006] No. 15. See Exhibit A-II-11.

¹¹¹ See MOA, *Notice on Distribution of Funds for Non-Hazard Agricultural Products Quality and Safety Supervision Program*, Nong Cai Fa [2006] No. 66. See Exhibit A-II-16.

¹¹² See MOA, *Notice on Distribution of Funds for Advantageous Agricultural Products and Key Technology Popularizations (Water Saving Technology for Farming in Dye Areas)*, Nong Cai Fa [2006] No. 30. See Exhibit A-II-9.

¹¹³ See *OECD Review of Agricultural Policies: China* (2005) at 29.

projects such as the so called “grain for green” project.¹¹⁴ Public funds were also allocated to construct ecosystem protection zones, national natural reserve parks, agricultural ecological demonstration projects, and a generic resources bank.¹¹⁵

The OECD reported that during 1998-2002, MOA invested RMB 126.3 billion in water conservancy works, with another RMB 44.3 billion invested in forestry and ecological preservation works, including the “grain for green” program.¹¹⁶ The “grain for green” is an environmental protection program launched in 1999, under which the government compensates farmers for retiring cultivated land back to forest or grassland. RMB 25.17 billion was distributed to farmers for this purpose alone in 2005.¹¹⁷

d. Other Support Programs

As noted by the OECD, the largest portion of China’s agricultural support went to infrastructure, normally for irrigation projects and transportation facilities, but also including projects like agriculture high-technology parks.¹¹⁸ The USDA-ERS China Subsidy Report estimated that RMB 150 billion was spent for infrastructure investments in 2004.¹¹⁹ China’s official fiscal report disclosed that the central government spent RMB 81.28 billion on production infrastructure projects in 2005.¹²⁰ Information about local government expenditure on infrastructure projects, however, was not available.

¹¹⁴ *Id.* at 76.

¹¹⁵ *Id.* at 108.

¹¹⁶ *Id.* at 103.

¹¹⁷ See MOF, *2006 Budget Report to the National People’s Congress* (March 17, 2006). See Exhibit A-I-18.

¹¹⁸ *OECD Review of Agricultural Policies: China* (2005) at 84, 104.

¹¹⁹ See *USDA-ERS China Subsidies Report* at 8.

¹²⁰ See MOF, *2006 Budget Report to the National People’s Congress* (March 17, 2006). See Exhibit A-I-18.

Another important portion of the central government's agricultural expenditure was for income support programs. As previously noted, China introduced direct support for grain producers in 2004. A total of RMB 11.6 billion was distributed to farmers directly in 2004. This expenditure increased 13.8 percent in 2005, reaching a total of RMB 13.2 billion.¹²¹

In addition, according to newly-released information, the government is allocating RMB 223.5 billion to provide free education in rural areas in 2007.¹²²

C. ADMINISTRATION OF AGRICULTURAL PROGRAMS AT THE CENTRAL GOVERNMENT LEVEL

At the central government level, general policy objectives are set by the Chinese Communist Party Central Committee (CCPCC) and the State Council. The National Reform and Development Commission (NRDC), a ministerial level organ within the State Council, has a great influence over the policy-making process. The Ministry of Agriculture (MOA) is primarily responsible for policy recommendations and drafting implementation measures once the CCPCC and State Council have made their policy decisions. Other ministries and commissions of the State Council also enjoy a certain level of influence over some supporting measures. For example, all of the supporting programs that require fiscal allocation will need approval by the Ministry of Finance, which manages the national treasury.

In practice, MOF normally defers to the decisions of MOA on the specific allocation of funds among the agricultural supporting programs, maintaining control only on the overall level of agricultural spending. Similarly, consent from the People's Bank of China (PBC) is necessary

¹²¹ *Id.*

¹²² Wen Jiabao, *PRC Premier Report to the National People's Congress on the Work of the Central Government*, XINHUA NEWS AGENCY (March 5, 2007).

when funds are provided through the banking system.¹²³ The Ministry of Science and Technology also administers a substantial number of agricultural technology programs. In 2004, it oversaw agricultural technology support programs with an annual expenditure of more than RMB 194 million.¹²⁴

1. Programs Administered by the Ministry of Agriculture

a. MOA Transparency and Disclosure Practice

As is true for all WTO Members, transparency is an important obligation for China under its Protocol of Accession to the WTO. In 2003, as an internal anticorruption measure, the Ministry of Agriculture adopted a rule that required the agencies within the Ministry to publicize on the Ministry's website those programs that the agency has discretionary authority in the distribution of public funds. Since the adoption of this rule, MOA has been consistently publishing information on all the agricultural promotion programs it administers. The disclosure has been prompt; the 2006 distribution reports are now available on its website, as well as the 2007 application instructions and standardized application forms. The website provides a decent level of detail about each program, makes available information such as the name of the program, the administering authority, the recipient of the funds, the purpose for which the funds would be applied, and the amount of each distribution. Box 7 below provides a translation of a sample distribution report.

¹²³ For example, the PBC provided RMB 160 billion for the reform of rural credit cooperatives. See Wuyun Qimuge, *Agricultural loans increase markedly*, XINHUA NEWS AGENCY (December 27, 2006).

¹²⁴ See Ministry of Science and Technology, *2005 Annual Report* (November 2005); available at www.most.gov.cn/ndbg/2005ndbg/.

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Box 7
Sample Distribution Report¹²⁵

**Ministry of Agricultural Notice on Distribution of Funds for
2006 Agricultural Technology Jump Plan**

Attn: Provincial and Autonomous Region Agricultural and Livestock Bureaus, Xinjiang Production Corps Agricultural Bureau

In accordance to the requests laid out in the “Ministry of Finance Notice on Response to Ministry of Agriculture 2006 Budget Plan” (Cai Yu [2006] 167), and after review by this Ministry, we hereby distribute to you the funds you applied for under the program *Agricultural Technology Jump Plan*, to be used for rice, wheat and cotton production technology development and demonstration as well as other relevant purposes. Please use 070101 (designated for popularization and training expenditures) to identify this fund in all accounting records. The funds shall be used strictly for the purpose specified in this notice.

The funds will be distributed directly from the Ministry of Finance to the primary recipients. The recipients shall maintain detailed accounting records which shall include a ledger for “agricultural technology jump guideline.” This account shall be separate from the other ledgers. The recipients shall record each drawing from this account in accordance with the program purpose and the applicable accounting rules; the supervising agency shall conduct good organizational and co-ordination work, and shall submit to the financial bureau and technological bureau of this Ministry an audit report on the development of the program and the use of the funds.

Attachment: funds distribution table [only sample entries provided below]

No.	Managing Agency	Program Name	Recipient	Principal Scientist	Amount (RMB)
1	The Ministry of Agriculture	N2Y6 super seeds breeding and farming technology experiment and demonstration program	China Rice Research Center	Cai Liyong Cheng Shihua	1,400,000
2	Jiangsu Provincial Agricultural Bureau	NG 1 non-hazard high quality rice key farming technology integration and commercialization demonstration	Jiangsu Province Crops Farming Technology Consulting Station	Zhang Hongcheng	1,200,000
3	Hei Longjiang Agricultural Committee	New high yield rice strain for low temperature area breeding research and farming technology demonstration	Hei Longjiang Agricultural Science Center	Zhang fenming	1,200,000
			Hei Longjiang Bayi-Nongken University	Wang Chun	600,000
4	Fujian Province Agricultural Bureau	High quality rice strain Youhang 2, Yiyou 673, Jiafuzhan culvary improvement and commercialization	Fujian Province Agricultural Science Center Rice Research House	Wang Wuqi	800,000
			Xiameng University	Wang Houchong	600,000
5 et seq.	***	***	***	***	***
TOTAL					30,000,000

¹²⁵ For the original report in Chinese, see Exhibit A-II-4.

b. List of Distribution Reports

The MOA programs listed are discretionary budget programs, since approval does not appear to be automatic. The total amount involved in these programs is quite small. The listed programs for 2006 involve a total expenditure of RMB 605 million; which was less than 2 percent of the total agricultural support budget for the 2006 fiscal year (RMB 339.7 billion).¹²⁶ The percentage for 2004 is similarly small.

In 2003, MOA listed 25 programs. The number increased to 32 in 2004 and to 40 in 2005. In 2006, the number of listed programs declined to 27 due to consolidation of some of the programs. Table 4 below lists all of the programs for which fund distribution reports have been disclosed.

Table 4
List of MOA Programs With Itemized Distribution Reports¹²⁷

	Budget Items	RMB '000s	
		2004	2006
1	Funds for fishing administration in Exclusive Economic Zone	12,000	0
2	Marketing funds for agricultural products	17,000	17,000
3	Funds for industry standard setting or updating	30,000	30,000
4	Funds to develop the agricultural products quality certificate system	10,000	10,000
5	Fishery resources survey program	3,000	0
6	Agricultural inputs quality control program	15,000	0
7	Funds for fishery disease prevention and counter measure	1,000	0
8	Fishery resources protection program	10,000	15,000
9	Marine rescue support funds	3,000	0
10	Domestic water fishing administration funds	3,000	5,000

¹²⁶ See MOF, *2006 Budget Report to the National People's Congress* (March 17, 2006). See Exhibit A-I-18.

¹²⁷ MOA programs for 2005 are not listed because documents for that year could not be downloaded.

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	Budget Items	RMB '000s	
		2004	2006
11	Funds for lighthouse maintenance	2,000	0
12	Funds for tier one fishing ports public facilities construction and maintenance	8,000	10,000
13	Funds for agricultural products market information tracking and disseminating system	24,000	0
14	Funds for super seeds selection and demonstration project	10,000	30,000
15	Agricultural technology development funds	30,000	30,000
16	Livestock species resources protection project	16,000	20,000
17	Crops species resources protection program	15,000	15,000
18	Demonstration program for rural special co-ops	20,000	20,000
19	Grass species resources protection funds	4,000	0
20	Funds for popularizing important technology for advantageous agricultural products	12,900	0
21	Funds for popularizing important technology: Mechanized rice seedling planting	0	5,000
22	Funds for popularizing important technology: apple packaging technology	0	25,000
23	Funds for agricultural technology demonstration program	30,000	30,000
24	Funds for model farmer technology training	5,000	0
25	Rural comprehensive energy project construction funds	12,500	0
26	Funds for agricultural industrialization	30,000	30,000
27	Funds for conducting the national cultivated land fertility level survey	10,000	0
28	Funds for popularizing important technology that reduces crop water consumption in dry area	10,000	20,000
29	Funds for fine seeds research and cultivation projects	20,000	31,000
30	Funds for subsidizing farmers to purchase improved crop strains	10,000	
31	Funds to support farmer co-ops to purchase agricultural machinery	8,550	0
32	Funds for constructing test field	20,000	0
33	Funds for adopting (environmentally) protective cultivation methods	30,000	30,000
34	Funds to support farmer co-ops to purchase agricultural machinery	31,450	0
35	Funds for disseminating technology information into each household	0	50,000
36	Funds to increase the fertility level of the cultivated land	0	17,000
37	Funds for (constructing) the integrated rural information system	0	10,000

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	Budget Items	RMB '000s	
		2004	2006
38	Funds for agricultural products safety inspection	0	90,000
39	Funds for mice countermeasure	0	10,000
40	Funds for highly poisonous insecticide substitutes research and popularization	0	10,000
41	Funds for subsidizing purchasing fine livestock breeding stocks	0	20,000
42	Funds for popularizing standardized livestock farm technology	0	15,000
43	Funds for blue sea fishery resources exploration	0	10,000
TOTAL		463,400	605,000

Source: Ministry of Agriculture Website -- <http://www.agri.gov.cn/cwgg/>.

D. AGRICULTURAL SUPPORT PROGRAMS AT THE LOCAL LEVEL

Local governments at each administrative level are delegated with broad authority to promote agricultural and rural development. Provincial governments in more developed areas, such as Shanghai, Beijing, Jiangsu, Zhejiang and Guangdong, normally will draft their own local 5-year development guidelines, which cover the agricultural sector and rural areas in a general fashion.¹²⁸ In most cases, support programs at the sub-national level are focused on industries that have particular local significance.¹²⁹

The OECD Agricultural Policy Review noted that livestock promotion in China is primarily delegated to the provincial governments in the several provinces having significant livestock farming operations. These sub-national governments, particularly in Inner Mongolia, Heilongjiang, Henan, Anhui, Shandong and Jilin, have provided support to their livestock industries through discounted loans, supplying government-secured feed grains, and subsidies for

¹²⁸ See, e.g., *11th Five-Year Plan of Beijing Municipal Government*. See Exhibit A-I-15.

¹²⁹ See, e.g., *Shanghai Municipal Government Notice on Livestock Industry Development Guideline for the 10th 5-Year Period*, Hu Fu [2002] No. 53. See Exhibit A-I-16.

purchasing equipment and breeding stock.¹³⁰ The vegetable basket project, launched in 1988 and currently still operational, also is funded at the provincial level. This program supports production of livestock and vegetables through “provision of preferential loans to producers, extension of new technologies, and preferential tax rates for the feed industry.”¹³¹ The Zhejiang provincial government operates a farmer support program that provides subsidies for less-developed area at a much higher level of support than the national program. Specialty crop farmers in those areas are entitled to RMB 200 for each mu planted in tea; and RMB 100 per mu for vegetable farming.¹³²

The USDA-ERS China Lending Report listed the following local agricultural programs.

- (1) The Shenyang local government invested USD \$120 million to develop the Shenyang Agricultural Development Zone. It was designed to be a “dairy town” concentrating on dairy production and cow breeding operations.
- (2) The Liaoning local government has invested in a project called the “123 Agricultural Industrialization Project.” It will include 10 pollution-free agricultural production bases, 20 modern agricultural parks, and 30 agricultural enterprises.
- (3) The Hunan provincial government plans to invest USD \$568 million to foster 20 key agricultural enterprises.
- (4) The Changchun local government invested USD \$840 million in building a High-Tech Agriculture Demonstration Park in a new satellite city of Changchun. It will provide subsidized facilities to enterprises engaged in agricultural technology development and dissemination.
- (5) The China Development Bank has loaned USD \$2.7 million to the Zhejiang provincial government to be used to reclaim 1,540 acres of swampland. Half of the reclaimed land will be allocated to local farmers.¹³³

¹³⁰ *OECD Review of Agricultural Policies: China* (2005) at 210.

¹³¹ *Id.*

¹³² The central government provides direct subsidies to grain farmers at a rate of RMB 10 per mu.

¹³³ *See USDA-ERS China Lending Report* at 13.

E. TRANSPARENCY AND THE GOLDEN FISCAL MANAGEMENT SYSTEM

So far, the MOA's practice of publicly disclosing its discretionary programs has not been widely followed by other government agencies; and China has yet to develop an information system that allows the tracking of its budgetary spending at the itemized level. This makes the task of measuring the overall scope of agricultural support extremely difficult. The task is further complicated by the fact that government agencies at each level have the authority to initiate their own agricultural or rural area support programs; and there is no systematic way of tracking those expenditures under the current governmental budgetary management system.

This situation might soon change, at least for the central government. Recently, the Ministry of Finance has made efforts to develop an integrated national budget management system. A working group was established in 2000, and delegations have been sent overseas to draw upon the experience of other countries. Experimental operation of this system was conducted in 2001. In 2002, the project was officially elevated to be one of the 12 top-priority E-government projects and was given the official name "Golden Fiscal Management System."

This system is expected to be fully operational by the end of 2008. By that time, it should be capable of performing budget planning, revenue collection and public funds distribution management, treasury debt management, government employee salary management, and state-owned fixed assets management, as well as conducting economic analysis. It is expected that that the system will manage the transfer of funds equivalent to 20 percent of the GDP, and that it will contribute to increasing the ability of the Chinese central government to track both budget planning and public funds distribution. The system will enhance the

government's ability to conduct macro-economic guidance, and, it is hoped, lead to greater transparency for the public and for China's trading partners.

II. CHINA'S WTO COMMITMENTS ON TRADE IN AGRICULTURAL PRODUCTS AND ITS COMPLIANCE WITH RESPECT TO ITS SUBSIDY OBLIGATIONS

Part II of this report reviews China's WTO commitments on trade in agricultural goods, with an emphasis on domestic support and export subsidies. First, Section A provides a brief introduction to China's WTO commitments that are relevant to the agricultural sector, including commitments made under the WTO Agreement on Agriculture and other relevant agreements such as the SCM, TBT and SPS agreements. Pursuant to its WTO obligation under the SCM Agreement, China, in April 2006, submitted its first subsidies notification to the WTO SCM Committee in which it listed the subsidy programs that China currently maintains. Section B identifies China's subsidy programs that are either expressly- or potentially-applicable to the agricultural sector. Finally, Section C summarizes possible Chinese subsidy programs that have been identified by other WTO Members over the first five years of China's Transitional Review Mechanism (TRM) and the WTO's 2006 Trade Policy Review (TPR) of China.

A. CHINA'S AGRICULTURAL COMMITMENTS

China's agricultural commitments under the WTO regime are spelled out primarily in China's WTO Accession Protocol, the Working Party Report, China's Goods Schedule, and the WTO Agreements. The Agreement on Agriculture contains general obligations for WTO Members with regard to market access, domestic support and export subsidies in trade in

agricultural goods.¹³⁴ China's Goods Schedule lists China's binding tariff rates, tariff-rate quotas (TRQs), and its Aggregated Measurement of Support (AMS) reduction obligations. China's other WTO obligations are also applicable to trade in agricultural goods to the extent that they do not conflict with the Agreement on Agriculture.

With regard to market access, the Agriculture Agreement obliges China, as well as other Members, to undertake two basic commitments. The first commitment is adoption of a tariff-only system as provided under Article 4.2 of the Agriculture Agreement.¹³⁵ China is required to eliminate all non-tariff border measures. China was permitted, however, to convert its non-tariff border measures into equivalent tariff protections, as long as the final applicable rate did not exceed the binding rate listed in China's Goods Schedule. The second commitment is that China will not apply a tariff rate that exceeds the applicable binding rate listed in its Good Schedule.¹³⁶

With respect to domestic support, the Agriculture Agreement imposes certain restrictions on government support programs and WTO Members are obliged to reduce their support programs in accordance with the Agreement. However, domestic support programs that fall within the "green box" category are exempt from such restrictions. "Green box" subsidies are those domestic support programs that have no or, at most, minimal trade-distorting effects on

¹³⁴ See Agreement on Agriculture, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, LEGAL TEXTS, RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (Cambridge, 2004) [hereinafter "Agriculture Agreement"].

¹³⁵ *Agriculture Agreement* at Article 4.2.

¹³⁶ *Agriculture Agreement* at Article 2.1. WTO general exceptions apply to this limitation. Non-tariff measures are allowed if they are consistent with GATT Articles XII and XVIII (balance of payments provisions), Article XIX (general safeguard provisions), Article XX (general exceptions), and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the WTO Agreement on Technical Barriers to Trade.

production.¹³⁷ In any given year, the maximum level of non-exempt support is bound as set forth in each Member's WTO goods schedule. If a Member has no scheduled reduction commitments, any domestic support program not falling within the "green box" must be maintained within the relevant product-specific and non-product-specific *de minimis* levels. Upon WTO accession, China's base total AMS was zero and its product specific support was negative.¹³⁸ Hence, China's total AMS commitment level at accession was zero.

Provisions in China's Working Party Report allow China recourse to a *de minimis* exemption for product-specific support equivalent to 8.5 percent of the total value of production of a basic agricultural product, and recourse to a *de minimis* exemption for non-product-specific support of 8.5 percent of the value of China's total agricultural production.¹³⁹ In addition, the Agriculture Agreement requires all Members to notify the Committee on Agriculture regarding the extent of their export and domestic support measures.¹⁴⁰

In general, for most WTO Members who do not have a reduction schedule, the Agriculture Agreement does not allow export subsidies.¹⁴¹ China did not report export subsidies for its base period or make any export subsidy reservations in its Goods Schedule. In fact, as

¹³⁷ *Agriculture Agreement* at Annex 2, para. 1.

¹³⁸ *See Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Annex 8 (Schedule CLII). Schedule CLII is contained in the Working Party Report. *See Report of the Working Party on the Accession of China; Schedule CLII – People's Republic of China*, WT/MIN(01)/3/Add.1 (10 November 2001) at Part IV, Section I (referencing document WT/ACC/CHN/38/Rev.3 (19 July 2001)). China's aggregate AMS commitments are contained in WT/ACC/Chn/38/Rev.3 (19 July 2001) at Tables DS: 4 and DS:5.

¹³⁹ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 235.

¹⁴⁰ *Agriculture Agreement* at Article 18.2.

¹⁴¹ Following the Agriculture Agreement's implementation period, agricultural export subsidies are allowed in two situations: (1) for Members with product-specific reduction commitments, export subsidies are allowed as long as they are within the limits specified in their schedule; (2) export subsidies that are not subject to the reduction obligation under Article 9.1 are allowed provided they are in conformity with Article 10.

recorded in the Working Party Report, China committed that, by the date of accession, it would not maintain or introduce any export subsidies on agricultural products.¹⁴²

The Working Party Report records other commitments by China that are relevant to trade in agricultural goods. In response to concerns from Members that China might use import policies, including TRQ allocations, to achieve certain domestic industrial policy objectives, China confirmed that it would base import policies for agriculture on commercial considerations only.¹⁴³ In Annex 4 of the Protocol of Accession, China made reservations with regard to pricing of certain agricultural products. It retained the right to impose price controls over tobacco products and to implement a guidance pricing system for grain, vegetable oil, processed oil, fertilizer, silkworm cocoons, and cotton.¹⁴⁴ In the Working Party Report, with respect to those goods and services on which China intended to maintain price controls pursuant to Annex 4, some Members noted that China's pricing control or guidance pricing should be maintained in a manner consistent with Annex 2, paragraphs 3 and 4, of the Agreement on Agriculture (*i.e.*, public stockholding for food security purpose, and domestic food aid exceptions) and Article III of the GATT 1994 (*i.e.*, national treatment), and should not be extended to any goods or services beyond those listed in Annex 4.¹⁴⁵ In response, China noted that "national treatment was applied in the areas of government pricing for all imported goods" and that "products and services subject to government pricing were those having a direct bearing on the national economy and

¹⁴² *Report of the Working Party on the Accession of China*, WT/MIN (01)/3 (10 November 2001) at para. 234.

¹⁴³ *Id.* at para. 231.

¹⁴⁴ *See Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Annex 4.

¹⁴⁵ *Report of the Working Party on the Accession of China*, WT/MIN (01)/3 (10 November 2001) at para. 50-51.

the basic needs of the people's livelihood, including those products that were scarce in China.¹⁴⁶ Further, China stated that “price controls would not be used for purposes of affording protection to domestic industries or service providers,” that “China would apply its current price controls and any other price controls upon accession in a WTO-consistent fashion,” and that “price controls would not have the effect of limiting or otherwise impairing China’s market-access commitments on goods and services.”¹⁴⁷

Other WTO commitments that bear significantly on trade in agricultural goods include those under the SPS and the TBT agreements. These commitments basically impose transparency requirements in the administration of SPS and TBT measures, and that substantive standards have a scientific basis.

Table 5, below, briefly identifies China’s agricultural commitments and notes the compliance assessment of the U.S. government.

¹⁴⁶ *Id.* at para. 52.

¹⁴⁷ *Id.* at paras. 62, 64.

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Table 5
China WTO Agricultural Commitments and Compliance Assessments

China Agricultural Commitment		Compliance Assessment by the U.S.
Market Access	Binding tariff schedule	“China implemented the required tariff changes on agricultural goods for 2006 on schedule on January 1, 2006, just as it did for industrial goods.” USTR, <i>2006 WTO Compliance Report</i> at 61.
	Elimination of non-tariff barriers	“The full market access potential of China’s tariff cuts was not realized for some products....A variety of non-tariff barriers continue to impede market access for U.S. agricultural exports to China, particularly exports of consumer-ready and value-added products.” USTR, <i>2006 WTO Compliance Report</i> at 61.
		AQSIQ requires importers to obtain a Quarantine Inspection Permit prior to signing purchase contracts for nearly all traded agricultural commodities. USTR, <i>2006 WTO Compliance Report</i> at 68.
	TRQ	Lack of transparency. USTR, <i>2006 WTO Compliance Report</i> at 63.
Domestic Subsidies	8.5% <i>de minimis</i> threshold for product-specific and non-product-specific subsidies	“Subsidies and tax reductions provide benefits equal to 2-4% of the value of agricultural production.” <i>USDA-ERS China Subsidies Report</i> at 14.
Export Subsidies	No exceptions	Agricultural product exports are exempted from payment of the railway construction fee (equal to about 20-50% of transportation costs). USTR, <i>China TRM 2006 - Questions from the U.S.</i> at para. 13.
SPS		China was unable to provide a scientific-based rationale for maintaining import restrictions on U.S. beef products and some U.S. poultry and pork products. USTR, <i>2006 WTO Compliance Report</i> at 64.
TBT		China has overly restrictive food additive standards as laid out in China’s proposed hygienic standard for uses of food additives. USTR, <i>2006 WTO Compliance Report</i> at 67.

Sources: USTR, *2006 Report to Congress on China’s WTO Compliance* (December 2006); Fred Gale, *et al.*, *China’s New Farm Subsidies* (USDA, Economic Research Service Outlook Report WRS-05-01, February 2005); *Questions from the United States to China*, G/SCM/Q2/CHN/23 (16 October 2006).

B. AGRICULTURAL SUBSIDIES IDENTIFIED IN CHINA’S SCM NOTIFICATION

In April 2006, pursuant to Article 25.2 of the SCM Agreement,¹⁴⁸ China submitted its first subsidies notification to the WTO SCM Committee (“SCM Notification”).¹⁴⁹ Among the 78

¹⁴⁸ Article 25.2 of the WTO Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) requires Members to notify all of their all export and specific subsidies to the SCM Committee.

subsidy programs identified in that notification, 36 programs are specifically applicable either to the agricultural sector or to rural areas (*see* Table 6, below, for a list of these programs). Another 31 programs are potentially applicable to the agriculture sector as well as to other sectors. Of the agriculture-specific subsidy programs, 9 programs are dedicated to public facilities or environmental protection purposes,¹⁵⁰ 5 programs are for poverty alleviation or underdevelopment support purposes,¹⁵¹ 5 programs are for technology development, including popularization of improved crop strains or animal breeds,¹⁵² 3 programs are for agricultural industrialization,¹⁵³ 3 programs are for disaster relief or prevention,¹⁵⁴ 2 programs are for grain production capacity preservation,¹⁵⁵ 1 program is for training rural migrant workers,¹⁵⁶ and another program supports the replacement of the planting of poppies.¹⁵⁷

On the following pages, two tables are presented. The first, Table 6, lists in detail the programs identified in China's Notification which are applicable to the agricultural sector and to rural areas. The second table, Table 7, lists those programs identified in China's Notification which are potentially applicable to the agricultural sector.

¹⁴⁹ *People's Republic of China – New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement*, G/SCM/N/123/CHN (13 April 2006).

¹⁵⁰ *See id.* at subsidy programs XLVI, XLVII, XLVIII, XLIX, L, LI, LII, LIII, and LIV.

¹⁵¹ *See id.* at subsidy programs III, XV, XVI, XVII, and XVIII.

¹⁵² *See id.* at subsidy programs XXXVI, XXXVIII, XXXIX, XLI, and LXXXVI.

¹⁵³ *See id.* at subsidy programs XXIX, XL, and XLII.

¹⁵⁴ *See id.* at subsidy programs XLIII, XLIV, and XLV.

¹⁵⁵ *See id.* at subsidy programs LXI and LXII.

¹⁵⁶ *See id.* at subsidy program XXXV.

¹⁵⁷ *See id.* at subsidy program LXV.

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Table 6							
List of Subsidies in China's SCM Notification Applicable to the Agricultural Sector or to Rural Areas							
ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
1	III	Preferential tax policies for foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas	Preferential tax benefit (15-30% reduction of the original rate)	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法	F-4
2	XV	Preferential tax policies for enterprises established in the poverty stricken areas	Preferential tax benefit (3 year tax exemption or reduction)	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》	F-50
3	XVI	Fiscal funds to alleviate poverty	Discretionary grants	MOF Circular, Cai Nong [2000] No. 18	Circular on the Distribution of "Interim Administrative Rules of the Fiscal Funds for Poverty Alleviation" and "Interim Administrative Rules of the Administration Fee for the Poverty Alleviation Projects"	关于印发《财政扶贫资金管理办法》(试行)和《财政扶贫项目管理费管理办法》(试行)的通知	F-57

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Table 6
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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
4	XVII	Specific subsidy on agricultural production and construction in the poverty stricken areas of Hexi and Dingxi of Gansu Province and Xihaiyu of Ningxia Hui Autonomous Region	Discretionary grants	MOF Circular, Cai Nong [2001] No. 67	Circular of MOF and the Leading Group on Poverty Alleviation and Development of the State Council on the Distribution of "Administrative Rules of the Special Subsidies to the 'Three West' Agricultural Construction"	财政部、国务院扶贫开发领导小组关于印发《“三西”农业建设专项补助资金使用管理办法》的通知（2001）	F-58
5	XVIII	Interest discount on poverty alleviation loans	Subsidized loan (loan provided at 3% annual rate, up to 3 years)	People's Bank of China Circular, Yin Fa [2001] No. 185	Administrative Rules of Subsidized Loans for Poverty Alleviation	中国人民银行、财政部、国务院扶贫开发领导小组办公室、中国农业银行关于印发《扶贫贴息贷款管理实施办法》的通知	F-59
6	XXIII	Preferential tax policies for township enterprises	Preferential tax treatment (10% reduction of income tax)	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》	F-50
7	XXIX	Preferential tax policies for the key leading enterprises engaged in agricultural industrialization	Preferential tax treatment (income tax exemption)	MOA Circular, Nong Jing Fa [2000] No. 8	Circular on Opinions Regarding Supporting Leading Enterprises Engaged in Agricultural Industrialization	关于扶持农业产业化经营重点龙头企业的意见》的通知	A-IV-1

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
7	XXIX	Same as above	Same as above	MOA Circular, Nong Jing Fa [2000] No. 10	MOA Circular on Publication of the List of the Leading Enterprises Engaged in Agricultural Industrialization	《关于公布农业产业化国家重点龙头企业名单的通知》 (农经发[2000]10号)	A-IV-2
7	XXIX	Same as above	Same as above	SAT Circular, Guo Shui Fa [2001] No. 124	Circular on Publication of the List of the Leading Enterprises Engaged in Agricultural Industrialization	农业部、国家计委、国家经贸委、财政部等部门关于公布农业产业化国家重点龙头企业名单的通知	A-IV-3
8	XXX	Preferential tax policies for the enterprises engaged in forestry	Tax preferential treatment (income tax exemption)	MOF Circular, Cai Shui [2001] No. 171	MOF & SAT Circular on Tax Policies on the Forestry Industry	财政部、国家税务总局关于林业税收政策问题的通知	A-IV-4
8	XXX	Same as above	Same as above	MOF Circular, Cai Shui [1997] No. 49	MOF & SAT Circular on Income Tax Collection for State-Owned Agriculture Entities	财政部、国家税务总局关于国有农口企事业单位征收企业所得税问题的通知	A-IV-5

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
8	XXX	Same as above	Same as above	MOF Circular, Cai Jian [2004] No. 124	Interim Administrative Measures of the Special Fund for Establishment of the Service System for Small- and Medium-sized Enterprises	中小企业服务体系专项补助资金使用管理办法(暂行)	A-IV-6
9	XXXV	Fund for subsidizing the training of the rural migrant labor force	Grants (RMB 100 per trainee)	MOF Circular, Cai Nong [2004] No. 38	MOF and MOA Circular on Administrative Measures of the Fund for Subsidizing the Training of the Rural Migrant Labor Force	财政部、农业部关于印发《农村劳动力转移培训财政补助资金管理办法(试行)》的通知(财农[2004]38号)	A-IV-7
10	XXXVI	Outlay for training of youngster farmers on science and technology	Discretionary grants	MOA Circular, Nong Ke Jiao Fa [1999] No. 8	Comments on Development of Trial-Point for the Training of Cross-Century Youngster Farmers on Science and Technology	关于开展跨世纪青年农民科技培训工程试点工作的意见	A-IV-8
11	XXXVII	Fund for specialized cooperatives of farmers	Discretionary grants	MOF Circular, Cai Nong [2004] No. 87	MOF Circular on the Interim Administrative Measures of the Fund for Specialized Cooperatives of Farmers	财政部关于印发《中央财政农民专业合作组织发展资金管理暂行办法》的通知	A-IV-9

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Table 6							
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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
12	XXXVIII	Subsidy for popularization of agricultural technologies	Discretionary grants	MOF Circular, Cai Nong [2004] No. 81	MOF Circular on the Administrative Measures of the Fund for Popularization of Agricultural Technologies	财政部关于印发《农业科技推广示范项目资金管理办 法》的通知	A-IV-10
13	XXXIX	Subsidy for growing superior grain cultivars	Grants (RMB 10 per mu)	MOF Circular, Cai Nong [2004] No. 16	MOF & MOA Circular on the Interim Administrative Measures of the Fund for Popularization of Superior Grain Cultivars	财政部、农业部关于印发《农作物良种推广项目资金管理暂行办法》的通知	A-IV-11
13	XXXIX	Same as above	Grants (up to 30% of the purchase price)	MOF Circular, Cai Nong [2004] No. 17	MOF & MOA Circular on the Interim Administrative Measures of the Subsidy for Popularization of Superior Rice Cultivars	财政部、农业部关于印发《水稻良种推广补贴资金管理暂行办法》的通知	A-IV-12
14	XL	Subsidy for purchasing agricultural machinery and tools	Grants (up to 30% of the purchase price)	MOA Circular, Nong Cai Fa [2004] No. 6	MOA Circular on the Interim Administrative Measures of the Subsidy for Purchasing Agricultural Machinery and Tools	农业部关于印发《农业机械购置补贴资金使用管理办法(试行)》的通知	A-IV-13

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
15	XLII	Subsidy for actualizing agricultural technology	Grants (up to RMB 3 million per project)	MOST Circular, Guo Ke Ban Cai Zi [2001] No. 417	Interim Measures on the Management of Projects of Funds Earmarked for Actualizing the Agricultural Scientific and Technological Achievements	农业科技成果转化资金项目管理暂行办法	A-IV-14
16	XLIII	Fund provided for agricultural industrialization	Grants	MOF Circular, Cai Nong [2004] No. 88	MOF Circular on the Administrative Measures on the Fund for Agricultural Industrialization	财政部关于印发《中央财政支持农业产业化资金管理暂行办法》的通知	A-IV-15
17	XLIV	Fund for agricultural disaster relief	Grants	MOF Circular, Cai Nong [2001] No. 232	MOF Circular on the Administrative Measures of the Fund for Agricultural Disaster Prevention and Relief	财政部关于印发《农业防灾救灾资金管理暂行办法》的通知	A-IV-16
18	XLV	Fund provided to exempt from or reduce agriculture tax on farmers suffering from poor harvest after disasters	Preferential tax treatment	N/A	Regulation of the People's Republic of China on Agricultural Tax	中华人民共和国农业税条例 (abolished)	A-IV-17

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
18	XLIV	Same as above	Grants	MOF Circular, Cai Nong [2001] No. 132	MOF Circular on the Administrative Measures of the Fund for the Exemption from or Reduction of Agricultural Tax on Farmers Suffering from Poor Harvest After Disasters	中华人民共和国财政部关于印发《农业税灾歉减免财政专项补助资金管理辦法》的通知	A-IV-18
19	XLV	Subsidy for major flood control and drought resistance	Non-discretionary grants	MOF Circular, Cai Nong [2001] No. 30	MOF and MWR Circular on the Interim Rules of the Distribution of Subsidy for Major Flood Control and Drought Resistance	财政部、水利部关于印发《特大防汛抗旱补助费分配暂行规定》的通知	A-IV-19
20	XLVI	Fund for construction of small irrigation facilities in rural areas	Discretionary grants	MOF Circular, Cai Ban Nong [2001] No. 74	Circular from the General Office of MOF on the Pilot Administrative Rules of the Subsidy for Construction of Small Irrigation Facilities in Rural Areas	财政部办公厅关于印发《农村小型公益设施建设补助资金管理试点办法》的通知	F-16
21	XLVII	Fund for construction of small ecological facilities in rural areas	Discretionary grants	MOF Circular, Cai Ban Nong [2001] No. 74	Circular from the General Office of MOF on the Pilot Administrative Rules of the Subsidy for Construction of Small Irrigation Facilities in Rural Areas	财政部办公厅关于印发《农村小型公益设施建设补助资金管理试点办法》的通知	F-16

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
22	XLVIII	Fund for projects on collection, reservation and utilization of rainfall	Grants	MOF Circular, Cai Nong [2004] No. 138	MOF & MWR Circular on the Interim Administrative Rules of the Fund for Collection, Reservation and Utilization of Rainfall	财政部、水利部关于印发《中央财政雨水集蓄利用专项资金管理暂行办法》的通知	F-73
23	XLIX	Fund for interest discount on loans for the purpose of agricultural water-saving irrigation	Loan interest subsidy (actual interest paid, normally not exceeding 3%)	MOF Circular, Cai Yu [2001] No. 388	Interim Administrative Rules of the Fund for Interest Discount on Loans for Water-Saving Irrigation	节水灌溉贷款中央财政贴息资金管理暂行办法	A-IV-20
24	L	Subsidies for national key construction projects on water and soil conservation	Grants	MOF Circular, Cai Nong [1987] No. 402	Administrative Rules of the Subsidies for Small-Scale Irrigation and Soil Conservation	小型农田水利和水土保持补助费管理的规定	F-78
25	LI	Special fund for projects on protection of natural forestry	Grants	MOF Circular, Cai Nong [2000] No. 151	MOF Circular on the Administrative Rules of the Fund for Protection of Natural Forestry	财政部关于印发《天然林保护工程财政资金管理规定的通知	F-77
26	LII	Cash subsidy for returning cultivated land to forests	Grants (RMB 5-20 & grain 100-150 kg per mu)	State Council Circular, Guo Fa [2000] No. 10	Opinions of the State Council on Further Improving the Policies and Measures on Returning Cultivated Land to Forests	国务院关于进一步完善退耕还林政策措施的若干意见	F-17

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
27	LIII	Compensation fund for forestry ecological benefits	Grants (RMB5 per mu)	MOF Circular, Cai Nong [2004] No. 169	MOF & SFB Circular on Administrative Measures of the Compensation Fund for Forestry Ecological Benefits	财政部、国家林业局关于印发《中央森林生态效益补偿基金管理办法》的通知	F-18
28	LIV	Interest discount on loans for the purpose of desertification prevention in forestry	Loan interest subsidy (RMB 2-4% of the qualified loan, up to 3 years)	MOF Circular, Cai Nong [2002] No. 137	MOF Circular on Administrative Measures of the Fund for Loan Interest Subsidy for Desertification Prevention in Forestry	财政部关于印发《林业治沙贷款财政贴息资金管理规定的通知	F-19
29	LV	Subsidy for prevention from and control of pest and disease in forestry	Grants	MOF Circular, Cai Nong [2002] No. 69	MOF Circular on Administrative Measures of the Subsidy for Prevention from and Control of Pest and Disease in Forestry	财政部关于印发《林业病虫害防治补助费管理规定》的通知	F-54
30	LVI	Subsidy for grass seed sowing by airplanes	Grants	MOF Circular, Cai Nong [2004] No. 139	MOF & MOA Circular on the Subsidy for Grass Seed Sowing by Airplanes	财政部、农业部关于印发《中央财政飞机播种草补助费管理暂行规定》的通知	A-IV-22

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Table 6							
List of Subsidies in China's SCM Notification Applicable to the Agricultural Sector or to Rural Areas							
ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
31	LXI	Preferential tax policies for enterprises of grain or oil reserves	Preferential tax treatment (VAT exemption)	MOF Circular, Cai Shui Zi [1999] No. 198	MOF & SAT Circular on VAT Exemption for Staple Crops Enterprises	财政部、国家税务总局关于粮食企业增值税征免问题的通知	A-IV-23
32	LXII	Preferential tax policies for the imports of China Grain Reserves Corporation for the purpose of rotation of grain reserves	Preferential tax treatment (income tax exemption for certain income)	MOF Circular, Cai Shui [2001] No. 13	MOF & SAT Circular on Tax Policy Regarding China Grain Reserves Corporation	财政部、国家税务总局关于中国储备粮管理总公司有关税收政策的通知 2001	A-IV-24
32	LXII	Same as above	Preferential tax treatment (income and other tax exemption)	MOF Circular, Cai Shui [2004] No. 74	MOF & SAT Circular on Tax Policy Regarding China Grain Reserves Corporation	财政部、国家税务总局关于中国储备粮管理总公司有关税收政策的通知 2004	A-IV-25
33	LXIII	Preferential tax policies for the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grass land, and the grain rations for the migrants from the reservoir areas	Preferential tax treatment (VAT exemption)	MOF Circular, Cai Shui Zi [1999] No. 198	MOF & SAT Circular on VAT Exemption for Staple Crops Enterprises	财政部、国家税务总局关于粮食企业增值税征免问题的通知	A-IV-23

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
33	LXIII	Same as above	Preferential tax treatment (VAT exemption)	SAT Circular, Guo Shui Fa [2001] No. 131	SAT Circular on VAT Exemption for the Relief Grain and Disaster Relief Grain, Compensation Grain for Returning Cultivated Land to Forests and to Grassland	国家税务总局关于退耕还林还草补助粮免征增值税问题的通知	F-20
34	LXIV	Preferential tax treatment for tea sold in the border areas	Preferential tax treatment (VAT exemption)	MOF Circular, Cai Shui Zi [1994] No. 60	MOF & SAT Circular on Certain Policy Issues on VAT	财政部、国家税务总局关于增值税几个税收政策问题的通知	F-84
34	LXIV	Same as above	Preferential tax treatment (VAT exemption)	MOF Circular, Cai Shui [2001] No. 71	MOF & SAT Circular on Continuing VAT Exemption for Tea Sold in the Border Area by State-Designated Producers and Retailers	财政部、国家税务总局关于继续对国家定点企业生产和经销单位经销的边销茶免征增值税的通知	A-IV-26
35	LXV	Preferential tax treatment for imported products for the purpose of replacing the planting of poppies	Preferential tax treatment (VAT exemption)	MOF Circular, Cai Shui [2000] No. 63	MOF, SAT and CC Circular on Tax Polices Related to Border Trade in Yunnan Province	财政部、国家税务总局、海关总署关于云南省边境贸易发展中有关税收政策的通知	A-IV-27

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ID	SCM No.	Subsidy Program	Benefits	Legal authorities			Exhibit No.
				Legislation	Title in English	Title in Chinese	
36	LXVI	Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fry (breeds) and non profit-making wild animals and plants kept as breeds during the period of the "Tenth Five-Year Plan"	Preferential tax treatment (VAT exemption)	MOF Circular, Cai Shui [2001] No. 130	MOF & SAT Circular on Tax Policies on Imports of Seeds, Breeding Stock, Fish Fry and Non Profit-making Wild Animals and Plants Kept as Breeds During the Period of the "10th Five-Year Plan"	财政部、国家税务总局关于“十五”期间进口种子（苗）种畜（禽）鱼种（苗）和非盈利性种用野生动植物种源税收问题的通知	A-IV-21

SCM No.: This column identifies the number of the subsidy program listed in China's SCM Notification. See *People's Republic of China - New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement*, G/SCM/N/123/CHN (13 April 2006).

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List of Subsidy Programs in China's SCM Notification Potentially Applicable to the Agricultural Sector					
ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
1	I	Preferential tax policies for foreign-invested enterprises	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法
1	I	Same as above	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise	中华人民共和国外商投资企业和外国企业所得税法实施细则
2	II	Preferential tax policies for foreign-invested export enterprises	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法
2	II	Same as above	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise	中华人民共和国外商投资企业和外国企业所得税法实施细则

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
3	IV	Preferential tax policies for foreign-invested enterprises engaged in energy, transportation, and infrastructure projects	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法
3	IV	Same as above	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法实施细则
3	IV	Same as above	State Council Circular, Guo Fa [1999] No. 13	Circular of the State Council on Expanding Preferential Tax Treatment to Foreign-Invested Companies Involved in Energy, Transportation and Infrastructure	国务院关于扩大外商投资企业从事能源交通基础设施项目税收优惠规定适用范围的通知
4	VI	Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive	SAT Circular, Guo Shui Fa [1995] No. 139	Circular on the Preferential Tax Treatment to Foreign-Invested Companies that are Technology-and Knowledge-Intensive	关于外商投资企业享受“两个密集型企业”税收优惠有关问题的通知

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
4	VI	Same as above	SAT Circular, Guo Shui Fa [2003] No. 135	SAT Circular on the Preferential Tax Treatment to Foreign-Invested Companies that are Technology-and Knowledge-Intensive	国家税务总局关于外商投资企业享受“两个密集型”税收优惠政策有关问题的通知 2003
5	VII	Preferential tax policies for enterprises with foreign investment in the border cities	SAT Circular, Guo Shui Han Fa [1992] No. 1412	SAT Circular on Granting Preferential Tax Treatment to Foreign-Invested Companies in 12 Border Cities	国家税务局关于明确黑河等十二个边境城市执行外商投资企业税收政策问题的通知
6	VIII	Preferential tax policies for enterprises with foreign investment recognized as high- or new-technology enterprises established in the State high-or new-technology industrial development zones, and for advanced technology enterprises invested in and operated by foreign businesses	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法实施细则

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
7	IX	Preferential tax policies for enterprises recognized as high- or new-technology enterprises established in the State high- or new-technology industrial development zones	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》
8	X	Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法
8	X	Same as above	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法实施细则

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
9	XI	Preferential tax policies for enterprises with foreign investment established in the costal economic open areas and in the economic and technological development zones	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法
9	XI	Same as above	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法实施细则
10	XII	Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai	N/A	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
10	XII	Same as above	N/A	Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises	中华人民共和国外商投资企业和外国企业所得税法实施细则
11	XIV	Preferential tax policies in the western regions	State Council Circular, Guo Fa [2000] No. 33	Circular of the State Council on Several Policies on the Development of Western Regions	国务院关于实施西部大开发若干政策措施的通知
11	XIV	Same as above	General Office of State Council Circular, Guo Ban Fa [2001] No. 73	The General Office of the State Council to Circulate the Circular of the State Council on the Implementation of New Policies for the Development of Western Regions	国务院办公厅转发国务院西部开发办关于西部大开发若干政策措施实施意见的通知
11	XIV	Same as above	MOF Circular, Cai Shui [2001] No. 202	Circular on Preferential Tax Treatment for Western Regions Development Program	财政部、国家税务总局、海关总署关于西部大开发税收优惠政策问题的通知
11	XIV	Same as above	SAT Circular, Guo Shui Fa [1999] No. 172	SAT Circular on Extending 15% Preferential Income Tax Rate for Three Years to Foreign-Invested Companies in Central and Western Regions	国家税务总局关于实施对设在中西部地区的外商投资企业给予三年减按 15% 税率征收企业所得税的优惠的通知

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
12	XIX	Preferential tax policies for enterprises which utilize the waste materials	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》
13	XX	Preferential tax policies for enterprises suffering from natural disasters	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》
14	XXI	Preferential tax policies for welfare enterprises	SAT Circular, Guo Shui Fa [1994] No. 155	SAT Circular on Preferential Turnover Tax Treatment for Social Welfare Enterprises	国家税务总局关于民政福利企业征收流转税问题的通知
15	XXII	Preferential tax policies for enterprises making little profits	MOF Circular, Cai Shui Zi [1994] No. 009	MOF & SAT Circular on Certain Decisions Related to Corporate Income Tax Policies	财政部、国家税务总局关于印发《企业所得税若干政策问题的规定》的通知
16	XXIV	Preferential tax policies for enterprises which provide employment for unemployed people	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
17	XXV	Preferential tax policies for scientific research institutions under transformation	MOF Circular, Cai Shui [2003] No. 137	MOF & SAT Circular on the Tax Policy Regarding Research Institutions Undergoing Restructuring	财政部、国家税务总局关于转制科研机构有关税收政策问题的通知
18	XXVI	Preferential tax policies for the research and development of enterprises	MOF Circular, Cai Shui [2003] No. 244	MOF & SAT Circular on Expanding the Application of Tax Deduction for Technology Development Expenditure by Enterprises	财政部、国家税务总局关于扩大企业技术开发费加计扣除政策适用范围的通知
19	XXVII	Preferential tax policies for the research and development of foreign-invested enterprises	SAT Circular, Guo Shui Fa [1999] No. 173	SAT Circular on Granting Income Tax Deduction to FIEs for Technology Development Expenditure	国家税务总局关于外商投资企业技术开发费抵扣应纳税所得额有关问题的通知
20	XXVIII	Preferential tax policies for enterprises transferring technology	MOF Circular, Cai Shui Zi [1994] No. 001	MOF & SAT Circular on Several Preferential Corporate Income Tax Policies	财政部、国家税务总局《关于企业所得税若干优惠政策的通知》
21	XXXI	Funds for supporting technological innovation for the technological small- and medium-sized enterprises (SMEs)	General Office of State Council Circular, Guo Ban Fa [1999] No. 47	Circular on the Interim Administrative Rules of the Technological Innovation Fund for the Technological Small- and Medium-sized Enterprises	国务院办公厅转发科学技术部财政部关于科技型中小企业技术创新基金的暂行规定的通知（国办发〔1999〕47号 1999年5月21日）

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
22	XXXII	Development funds for SMEs	N/A	Law of the People's Republic of China on Promotion of Small- and Medium-sized Enterprises	中华人民共和国中小企业促进法
23	XXXIII	Fund for international market exploration by SMEs	MOF Circular, Cai Qi [2000] No. 467	Administrative Measures on Funds Earmarked for International Market Exploitation of Small- and Medium-sized Enterprises	财政部、对外贸易经济合作部关于印发《中小企业国际市场开拓资金管理(试行)办法》的通知
23	XXXIII	Same as above	MOFTEC (MOFCOM) Circular, Ji Cai Fa [2001] No. 270	Implementing Rules of the Administrative Measures on Funds Earmarked for International Market Exploitation of Small- and Medium-sized Enterprises	中小企业国际市场开拓资金管理实施办法实施细则(暂行)
24	XXXIV	Special fund for establishment of service system for SMEs	N/A	Law of the People's Republic of China on Promotion of Small- and Medium-sized Enterprises	中华人民共和国中小企业促进法
24	XXXIV	Same as above	MOF Circular, Cai Jian [2004] No. 124	Interim Administrative Measures of the Special Fund for Establishment of the Service System for Small- and Medium-sized Enterprises	中小企业服务体系专项补助资金使用管理办法(暂行)

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
25	LVIII	Preferential tax policies for foreign-invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically-produced equipment	MOF Circular, Cai Shui [2000] No. 49	MOF & SAT Circular on Granting Income Tax Deduction for Domestically-Produced Equipment Purchased by Foreign Invested-Enterprises and Foreign Enterprises	财政部、国家税务总局关于外商投资企业和外国企业购买国产设备投资抵免企业所得税有关问题的通知
25	LVIII	Same as above	SAT Circular, Guo Shui Fa [2000] No. 90	SAT Circular on Administrative Measures of Income Tax Deduction for Domestically-Produced Equipment Purchased by Foreign-Invested Enterprises and Foreign Enterprises	国家税务总局关于印发《外商投资企业和外国企业购买国产设备投资抵免企业所得税管理办法》的通知
26	LIX	Preferential tax policies for domestic enterprises purchasing domestically-produced equipment for technology-upgrading purpose	MOF Circular, Cai Shui [1999] No. 290	MOF & SAT Circular on the Interim Measures of Income Tax Deduction for Domestically-Produced Equipment Purchased for Technology-Upgrading Purpose	财政部、国家税务总局关于印发《技术改造国产设备投资抵免企业所得税暂行办法》的通知

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
27	LX	Exemption of tariff and import VAT for imported technologies and equipment	State Council Circular, Guo Fa [1997] No. 37	Circular of the State Council on Adjusting Tax Policy on Imported Equipment	国务院关于调整进口设备税收政策的通知
28	LXIX	Preferential tax treatment for building material products produced with integrated utilization of resources	MOF Circular, Cai Shui Zi [1995] No. 44	MOF & SAT Circular on VAT Exemption for Products Produced with Integrated Utilization of Resources	财政部、国家税务总局关于对部分资源综合利用产品免征增值税的通知
28	LXIX	Same as above	MOF Circular, Cai Shui Zi [1996] No. 20	MOF & SAT Circular on Continuing with the Preferential VAT Treatment for Products Produced with Integrated Utilization of Resources	财政部、国家税务总局关于继续对部分资源综合利用产品等实行增值税优惠政策的通知
29	LXX	Preferential tax treatment for other products produced with integrated utilization of resources	MOF Circular, Cai Shui [2001] No. 198	MOF & SAT Circular on VAT Treatment for Products Produced with Integrated Utilization of Resources	财政部、国家税务总局关于部分资源综合利用及其他产品增值税政策问题的通知
29	LXX	Same as above	MOF Circular, Cai Shui [2004] No. 25	MOF & SAT Supplementary Circular on VAT Treatment for Products Produced with Integrated Utilization of Resources	财政部 国家税务总局关于部分资源综合利用产品增值税政策的补充通知

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ID	SCM No.	Subsidy Program	Legal authorities		
			Legislation	Title in English	Title in Chinese
30	LXXVI	Preferential tax treatment for casting and forging products	MOF Circular, Cai Shui [2003] No. 96	MOF & SAT Circular on VAT Refund for Casting and Forging Products	财政部、国家税务总局关于铸锻件产品增值税先征后返问题的通知
31	LXXVII	Preferential tax treatment for dies products	MOF Circular, Cai Shui [1998] No. 139	MOF & SAT Circular on Continuing VAT Refund for Dies Products	财政部、国家税务总局关于继续对模具产品实行增值税先征后返的通知
31	LXXVII	Same as above	MOF Circular, Cai Shui [2003] No. 95	MOF & SAT Circular on VAT Refund for Dies Products	财政部、国家税务总局关于模具产品增值税先征后返问题的通知

SCM No.: This column identifies the number of the subsidy program listed in China's SCM Notification. See *People's Republic of China - New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement*, G/SCM/N/123/CHN (13 April 2006).

C. AGRICULTURAL SUPPORT PROGRAMS IDENTIFIED BY OTHER WTO MEMBERS

In addition to the programs listed in China's SCM notification, other WTO Members have identified a number of Chinese support programs. In addition, some U.S. industry groups have raised concerns about some of China's governmental support programs that are potentially applicable to the agricultural sector.

1. Industry-Specific Subsidies

To promote exports, the Chinese government has been providing support to the cut flower industry and to dehydrated garlic producers. The producers of agricultural inputs, particularly fertilizer and agricultural machinery, are also receiving government support, and the support programs for these two products has an influence on the competitiveness of many other agricultural industries that are significant buyers of fertilizer and agricultural machinery.

a. Cut Flower Industry

"In a bid to narrow the income gap between rich city dwellers and unemployed farmers," the Chinese government has undertaken to develop a cut flower export base in remote Yunnan Province.¹⁵⁸ To further this end, the government has invested in "building 12 lane roads, sturdy bridges and international airports" in the province, and is offering "interest-free loans for greenhouse construction" and "refrigerated trucks ... free or at deep discounts" to the flower farmers.¹⁵⁹ However, because flower production costs account for only a small fraction of the

¹⁵⁸ See Keith Bradsher, *Bouquet of Roses May Have Note: "Made in China,"* THE NEW YORK TIMES (September 25, 2006) at A1.

¹⁵⁹ *Id.*

retail price, the impact of the government subsidy on the competitiveness of the industry is limited in the cut flower market.¹⁶⁰

b. Dehydrated Garlic

China is the largest exporter of garlic.¹⁶¹ In the 2004 China TRM, the United States reported that “the Chinese government provided financial support to the dehydrated garlic industry in the form of a three-year tax waiver for exporting interests and a three per cent export tax rebate.”¹⁶²

c. Agricultural Machinery Industry

In the 2006 China TRM, the United States, relying upon data released by the China International Agricultural Machinery Industry Association, stated that “the large increase in the rate of growth for the agricultural machinery industry in 2005 was due to subsidies from the central government to this industry worth over RMB300 million (\$37.5 million) during that period. Furthermore, local governments gave an additional RMB800 million in subsidies to the agricultural machinery industry.”¹⁶³

¹⁶⁰ *Id.* The report noted that the costs incurred after the flowers land in the U.S. or Europe account for as much as 90 percent of the retail price.

¹⁶¹ See MOFCOM, *11th 5-Year Development Guideline for Agricultural Products Exportation* (August 25, 2006). See Exhibit A-I-6.

¹⁶² See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 10.

¹⁶³ See *Questions from the United States Regarding the New and Full Notification of China*, G/SCM/Q2/CHN/19 (July 26, 2006) at para. 53.

d. Fertilizer

It has been alleged that China subsidizes fertilizer production. For example, in several of its compliance reports, USTR has maintained that China has used VAT policies to benefit domestic fertilizer production. In the 2006 compliance report, USTR said:

In July 2001, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) issued a circular exempting all phosphate fertilizers except DAP from a 13 percent VAT.... The circular also allowed a partial VAT rebate for domestic producers of urea, a nitrogen fertilizer, through the end of 2002. The United States raised this issue bilaterally with China soon after it acceded to the WTO and in many subsequent bilateral meetings, including high-level meetings. The United States has also raised this issue at the WTO, both in regular meetings of the Committee on Market Access and during the annual transitional reviews, including in 2006. So far, however, China has refused to make any changes, although it did allow the special tax treatment for domestic urea to expire at the end of 2002.”¹⁶⁴

The OECD Review corroborated the U.S. claim. It found that “fertilizer is generally exempted from VAT,”¹⁶⁵ and concluded that “[c]hemical fertilizer production ... receives subsidized electricity, in an attempt to suppress agricultural input prices.”¹⁶⁶ Another WTO Member, Taiwan, also noted that compounded fertilizer, diammonium phosphate, ammonium nitrate and potassium chloride are subject to price guidance.¹⁶⁷

¹⁶⁴ See USTR, *2006 Report to Congress on China's WTO Compliance* (December 11, 2006) at 40. See also USTR, *2006 National Trade Estimate Report on Foreign Trade Barriers* (2006) at 99.

¹⁶⁵ See *OECD Review of Agricultural Policies: China* (2005) at 91. The OECD observed that “VAT has generally not been collected on essential farm inputs such as fertilizers, seeds and water.” *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See *Questions from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to China Concerning Subsidies and Price Controls*, G/SCM/Q2/CHN/11 (22 October 2004) at para 6.

2. Subsidy Programs Applicable to Multiple Industries

China's trading partners and private parties have raised concerns regarding a number of Chinese government measures that are not strictly limited to agriculture.

a. Policy Loans

The United States has raised questions about China's bail out of its Big Four commercial banks. In the 2005 TRM, the United States noted that China injected USD \$45 billion into the Bank of China and the China Construction Bank in 2003 and voiced concern about the lending policies of China's state banks, claiming that the loans are carried out on a non-commercial basis.¹⁶⁸ The United States said:

It appears that state-owned banks continue to make policy-driven loans that are not commercially justified, and when those loans fail, the loans are written-off and passed to the asset management companies to be dealt with. The recent inauguration of Huida Asset Management Ltd., set up to specifically deal with the non-performing loans of the state-owned People's Bank of China is one such example.¹⁶⁹

¹⁶⁸ See *Questions from the United States to China Concerning Subsidies and Price Controls*, G/SCM/Q2/CHN/14 (29 September 2005) at para. 6.

Historically, state banks have made loans based on political directives from the national government in Beijing, not on which companies had the best prospects or which economic sectors were thriving, These so-called 'policy loans' typically went to state-owned enterprises.

Reform of China's Banks, Burdened by Bad Loans, Is Priority for Government, Knowledge@Wharton (June 1, 2005); available at <http://209.85.165.104/search?q=cache:LxjJRat0DSEJ:knowledge.wharton.upenn.edu/article.cfm%3Farticleid%3D1202+china+%22policy+loans%22&hl=en&ct=clnk&cd=7&gl=us>.

¹⁶⁹ See *Questions from the United States to China Concerning Subsidies and Price Controls*, G/SCM/Q2/CHN/14 (29 September 2005) at para. 6.

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In the 2006 TRM, the United States asked China to explain why China's state banks did not charge a premium for risky investments and why the state banks are required to give due consideration for government industrial policy in making loan decisions.¹⁷⁰

Some U.S. industries have raised similar questions. In its 2005 Report on China's Compliance with its WTO Commitments, the National Association of Manufacturers (NAM) stated that "lending to un-creditworthy enterprises continues on a large scale as evidenced by the high levels of nonperforming loans on the books of the Chinese banks and the extremely low rates of return on equity they have compared with other Asian banks."¹⁷¹ NAM's 2006 report noted that "Chinese enterprises have access to: subsidized State Policy Bank loans; the automatic roll-over of unpaid principal and interest; loan forgiveness; continued borrowing despite having nonperforming loans; and below-market interest rates."¹⁷²

The United States has identified several local subsidy programs in the form of policy loans. For example, in the 2004 TRM, the United States noted:

The Henan provincial government has set up a special purpose fund for foreign exchange-earning agriculture products in a program designed to improve the quality of the province's agricultural products and to increase exports. The fund will provide low interest loans for processors of agricultural products whose direct export volumes are valued at more than \$500,000."¹⁷³

¹⁷⁰ See *Questions from the United States to China*, G/SCM/Q2/CHN/23 (16 October 2006) at para. 18.

¹⁷¹ See National Association of Manufacturers, *Review of China's Compliance with its WTO Commitments* (September 6, 2005) at 9.

¹⁷² *Id.*

¹⁷³ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 12.

In a hearing before the U.S.-China Economic and Security Review Commission (USCC), Dr. Usha C.V. Haley, Director of the Global Business Center at the University of New Haven, asserted:

The [Chinese] government exercises a vice-like grip on banks, stock markets and bond issuance and these translate to the ability to make grandiose loans. The most extreme statistics in the financial sector deal with loans outstanding. In three years from 2002 to 2004, loans increased by 58 per cent, or \$785 billion. In 2003, new lending equaled almost one quarter of gross domestic product (GDP). A credit binge fueled this latest boom. Half of all bank loans go to SOEs. Most of these loans will never be repaid.”¹⁷⁴

The OECD Review similarly pointed out that “[t]he ADBC provided a wide range of preferential loans in line with government policies programmes.... Preferential loan rates were below the prevailing commercial rate.”¹⁷⁵

b. Tax Breaks

China's trading partners have, on several occasions, taken notice that China uses various tax breaks to achieve its industrial policy ends. In May 2007, the United States requested further consultations with China regarding 9 Chinese measures which the U.S. believes are inconsistent

¹⁷⁴ See *Hearing Before the U.S.-China Economic and Security Review Commission on China's WTO Compliance and Industrial Subsidies* (April 4, 2006), Statement by Dr. Usha C.V. Haley, Associate Professor, University of New Haven, West Haven, CT; available at http://www.uscc.gov/hearings/2006hearings/written_testimonies/06_04_04wrts/06_04_04_haley.php.

Similar views were stated by other witnesses at the same hearing. See, e.g., Prepared Statement of Robert Baugh, Executive Director, Industrial Union Council, AFL-CIO; available at http://www.uscc.gov/hearings/2006hearings/transcripts/april_4/06_04_04_trans.pdf.

¹⁷⁵ *OECD Review of Agricultural Policies: China* (2005) at 94.

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with the WTO SCM and TRIMS Agreements.¹⁷⁶ Of the 9 measures identified by the United States, 8 are tax measures, as listed below.

Summary of Tax Measure	Measures granting refunds, reductions, or exemptions from taxes or other payments identified in U.S. consultation request ¹⁷⁷
VAT Refunds for FIEs that Purchase Domestic Equipment	<i>Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax Refunds to Enterprises with Foreign Investment for Their Domestic Equipment Purchases</i>
Income Tax Credits for FIEs that Purchase Domestic Equipment	<i>Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises, read in conjunction with Circular of the State Administration of Taxation on Printing and Distributing the Measures Concerning Business Income Tax Credit on the Investment of Enterprises with Foreign Investment and Foreign Enterprises by Way of Purchasing Homemade Equipment</i>
Income Tax Reduction and Exemption for Domestic Enterprises that Purchase Domestic Equipment for Technology-Renovation Purposes	<i>Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation</i>
Income Tax Reduction or Exemption for Export or High-Tech FIEs	Articles 75(7) and 75(8) of the <i>Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises</i> , read in conjunction with Articles 8 and 9 of the <i>Provisions of the State Council on the Encouragement of Foreign Investment</i> and Articles 6 and 8 of the <i>Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises</i>
Income Tax Reduction for FIEs in Industries where Foreign Investment is Encouraged	Article 73(6) of the <i>Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises</i> , read in conjunction with Articles 6 and 7 of the <i>Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises</i> and Section XIII of the Catalogue for the Guidance of Foreign Investment Industries
Income Tax Refunds for Foreign Investors Who Reinvest After-Tax Profits in Export-Oriented or High-Tech FIEs and For Foreign Investors Who Reinvest Profits from FIEs located in Hainan Special Economic Zone (the HSEZ) into Infrastructural and Agricultural Projects in the HSEZ	Article 81 of the <i>Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises</i> , read in conjunction with Articles 6 and 10 of the <i>Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises</i> and Article 10 of the <i>Provisions of the State Council on the Encouragement of Foreign Investment</i>
Preferential Income Tax Treatment for Enterprises or Projects Whose Development is Supported and Encouraged by the State; and the 5-Year Grace Period for Existing Tax Benefits that is Believed to be WTO-inconsistent	Parts IV and VIII of the <i>Enterprise Income Tax Law of the People's Republic of China</i>
Import Tariff and VAT Exemption for Imported Equipment to be used in Encouraged Projects or Projects with Foreign Investments	<i>Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment</i> , read in conjunction with Section XIII of the Catalogue for the Guidance of Foreign Investment Industries

¹⁷⁶ *China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, Request for Further Consultations by the United States*, WT/DS358/1/Add.1 (2 May 2007).

¹⁷⁷ *Id.* at 2-3.

In the 2004 TRM, the United States noted that China provided refunds of income taxes to induce FIEs to reinvest profits in their production operations in China. Foreign investors who reinvest in production projects that are scheduled to be operational for more than 5 years qualify for a 40 per cent refund of income taxes paid on the profits reinvested.¹⁷⁸ The United States also noted that the Chinese government has provided income tax refunds contingent upon export performance, citing Article 75.7 of the *Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises*, which states that an FIE exporting at least 70 per cent of its output in a given year may receive a 50 per cent income tax reduction.¹⁷⁹

China's trading partners have noted that China has used the VAT as a tool to achieve its industry policy objectives.¹⁸⁰ For example, the United States noted that in September 2004 the MOF and SAT jointly issued Circular 156 (Cai Shui [2004] 156) titled *Provisions on Expanding the Qualifications of Fixed Asset Input VAT Deductions in the Northeast Region*. Essentially, the Circular allowed the equipment, manufacturing, petrochemical, metallurgy, shipbuilding, auto manufacturing, and agricultural processing industries to deduct the VAT paid on qualified fixed asset purchases from the VAT payable increase from 2003 to 2004.¹⁸¹ The OECD Review similarly found that "while the same VAT rate is applied to import and domestically produced

¹⁷⁸ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 4, citing Article 81 of the *Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises*, promulgated by Decree No. 85 of the State Council on June 30, 1991 (effective July 1, 1991).

¹⁷⁹ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 6.

¹⁸⁰ See, e.g., *id.* at para. 3-4.

¹⁸¹ See *Questions from the United States Regarding the New and Full Notification of China*, G/SCM/Q2/CHN/19 (26 July 2006) at para 50.

agricultural products, differences in the method of calculating the VAT to be levied on imports and on domestic agricultural products, may provide additional protection to China's agriculture sector."¹⁸²

The United States has noted that China maintains a preferential border trade policy with Russia. Pursuant to an order issued in 1996, the VAT is reduced by one-half for a number of products imported from Russia. Although China removed 20 products from the list of eligible products on June 1, 2003, it appears that the preferential VAT policy is still in effect for other products.¹⁸³

The United States has noted that China provides VAT refunds for imported capital equipment used to produce products for export.

Enterprises that import capital equipment used exclusively to produce export products are eligible to receive a full refund of customs duties and VAT on the imported capital equipment. Enterprises receive 20 per cent of the tax refund each year the equipment is used exclusively for export production, resulting in a full tax refund at the end of a five-year period. Enterprises receive a 20 per cent VAT refund each year if the imported equipment is used exclusively for export production, resulting in a full tax refund at the end of a five-year period.¹⁸⁴

¹⁸² See *OECD Review of Agricultural Policies: China* (2005) at 117. The report claims that while VAT is levied on the Customs Clearance Price for imported goods, VAT is only levied on the dealer's margins for domestic goods. The value added at the producer level is exempted from VAT.

¹⁸³ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 22.

¹⁸⁴ *Id.* at para. 8.

In addition, the European Communities has asserted that China offers a special VAT refund scheme to encourage the export of silk.¹⁸⁵

In its 2005 China WTO Implementation Report, the U.S. Chamber of Commerce stated that “[t]he application of the VAT to agricultural products, both domestically and at the border, is neither consistent nor transparent, resulting in a barrier to trade for importers and unfair advantages to Chinese exporters.”¹⁸⁶ It found that the actual VAT rate assessed on domestic agricultural products is much lower than the VAT rate applied to imports of equivalent products. For example, the VAT rate applied to domestic grain is much lower than the VAT rate assessed on imported grains. Thus, the Chamber noted, the VAT “effectively functions as an additional import duty.”¹⁸⁷

The Chamber’s report also claimed that China uses the VAT to encourage exports. It noted that “[t]here are persistent rumors that the rebates exceed the actual VAT paid, again functioning as an export subsidy. This case is well known with China’s corn exports. The VAT has constrained imports and supported exports and may violate a key principle of the WTO by acting as a hidden export subsidy.”¹⁸⁸

c. Export-Related Subsidies

Over the last several years, the United States has pointed out that China uses certain support measures that encourage exports. In its 2005 compliance report, USTR observed that it

¹⁸⁵ See *Questions from the European Communities to China with regard to China's Transitional Review Mechanism on Subsidy Practices*, G/SCM/Q2/CHN/24 (20 October 2006) at Q.1.

¹⁸⁶ U.S. Chamber of Commerce, *China's WTO Implementation and Other Issues of Importance to American Business in the U.S.-China Commercial Relationship* (September 2005) at 36.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

“continued to raise questions about potentially prohibited subsidies maintained by China, including tax incentives and preferential bank financing provided to producers of agricultural and industrial goods that are contingent upon export or the use of domestic over imported goods.”¹⁸⁹

For example, in a 2004 submission to the WTO SCM Committee, USTR had noted that

Foreign-invested enterprises (FIEs) located within Special Economic Zones, Economic Technological Development Zones, Open Coastal Economic Zones and Old Urban Areas that export at least 70 per cent of their production are assessed the lowest rate of the national income tax, *i.e.*, 10 per cent. FIEs which do not meet the 70 per cent export requirement are taxed at rates of 12, 15 or 24 per cent.¹⁹⁰

In the same submission, the USTR also observed that enterprises that meet certain criteria may achieve the designation of an "honourable enterprise for foreign exchange receipts".¹⁹¹ One of these criteria is an annual export volume exceeding USD \$200 million. An "honourable enterprise for foreign exchange receipts" enjoys various benefits including “preferential access to foreign trade funds” and commercial bank lending rates that are up to 10 percent lower than lending rates fixed by the People's Bank of China.¹⁹²

¹⁸⁹ USTR, *2005 Report to Congress on China's WTO Compliance* (December 11, 2005) at 39.

¹⁹⁰ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 3, citing Article 75.7 of the *Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises*, promulgated by Decree No. 85 of the State Council on June 30, 1991 (effective July 1, 1991). The European Communities cited the same law in the 2005 TRM. See *Questions from the European Communities to China with regards to China's Transitional Review Mechanism on Subsidy Practices*, G/SCM/Q2/CHN/12 (22 September 2005) at 2.

¹⁹¹ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 2, citing Article 3 of the *Detailed Rules for Reward and Punishment for the Trial Implementation Measures for Appraising Foreign Exchange Receipts for Exports*, jointly issued by the People's Bank of China, the Ministry of Foreign Trade and Economic Cooperation and the State Administration of Taxation (effective 1 April 2000).

¹⁹² See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 2, citing Articles 5 and 6 of the

In the 2006 TRM, the United States noted that the “NDRC issued a notice that became effective on 20 August 2006, announcing an exemption from the railway construction fund levy for all grains bound for overseas markets”, and asked China to “explain how this support is consistent with China’s WTO obligations, including those under Article 3 of the Subsidies Agreement and paragraph 12.1 of China’s Protocol of Accession.”¹⁹³

The United States and European Communities have also noted that local authorities in China have maintained export supporting programs. In the 2005 TRM, the United States noted that although China had agreed, in its Protocol of Accession, that it would not maintain or introduce any export subsidies on agricultural products, China still appeared to “maintain several export subsidy programmes for agricultural products.”¹⁹⁴ As examples, the United States identified policies and programs maintained by Jiangxi Province and Henan Province.

For example, Jiangxi Province has issued policies to encourage exports of agricultural products. Under these policies, according to the Ministry of Commerce (MOFCOM) website, the province provides capital support for exporting bases and leading exporting enterprises; grants discount loans for exporters; assists small/medium sized enterprises in attending international exhibitions and new product promotional activities; grants cash rewards for exporters with annual export revenue of US\$5 million (growth of the export revenue should exceed 30%); reimburses 20% to 30% export credit insurance fees for exporters. The province provides capital support for export-oriented projects and technological upgrading projects and provides loans to enterprises presenting export orders or export letters of credit. The province also guides enterprises in avoiding export credit risks and assists them in reducing export costs. In another example, Henan

Detailed Rules for Reward and Punishment for the Trial Implementation Measures for Appraising Foreign Exchange Receipts for Exports.

¹⁹³ *Questions from the United States to China*, G/SCM/Q2/CHN/23 (16 October 2006) at para. 13.

¹⁹⁴ *Questions from the United States to China Concerning Subsidies and Price Controls*, G/SCM/Q2/CHN/14 (29 September 2005) at para. 3.

Province set up a special purpose fund to encourage the export of foreign exchange-earning agricultural products. The special purpose fund reportedly provides low-interest loans for processors of agricultural products which met specific direct export volume levels. The support provided pursuant to these and other provincial and central government policies appear to be inconsistent with the commitments contained in China's Protocol of Accession and with its obligations under Article 3 of the SCM Agreement not to maintain export subsidies.¹⁹⁵

In its 2004 submission to the WTO SCM Committee, the United States stated that "The Guangdong provincial government has introduced a programme to provide RMB 25 million in grants over five years to export-oriented companies. These grants will be provided to companies meeting specific export targets as an incentive to increase export sales."¹⁹⁶

In the 2006 TRM, the European Communities raised questions regarding a number of local support programs maintained by Guangdong Province, Shenzhen and Zhejiang Province.

According to www.tdctrade.com, (as of 01.03.2004) the Guangdong Provincial Government supports private enterprises to "expand outward". Eligible private enterprises may apply for special funds conceived for developing foreign trade activities. These funds include: market exploration, export credit insurance, offshore processing trade project loan interest subsidy, export research and development fund, anti-dumping proceedings fund, export rebate account loan interest subsidy fund and outward-looking enterprises development fund.¹⁹⁷

* * *

According to www.tdctrade.com, (as of 01.05.2004) the Export Interest Subsidy for Shenzhen Enterprises has been raised from 20 per cent to 40 per cent. The policy of subsidising US\$0.03 for every US\$1 export of general merchandise is only applicable to

¹⁹⁵ *Id.*

¹⁹⁶ See *Request from the United States to China Pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/Q2/CHN/9 (6 October 2004) at para. 11.

¹⁹⁷ See *Questions from the European Communities to China with regard to China's Transitional Review Mechanism on Subsidy Practices*, G/SCM/Q2/CHN/24 (20 October 2006) at Q4.2.

merchandise procured in Shenzhen. SMEs with export value below US\$15 million are eligible for application. Fund allocation is on a first-come-first-served basis. This year the fund would provide RMB 800 million.¹⁹⁸

* * *

Similar information was reported from Zhejiang Province. According to these resources, an Export Subsidy Fund based on a federal programme enables regional authorities to provide all exporting companies exporting for more than US\$3 million with a subsidy of 0.01 RMB per each US\$ exceeding this threshold.¹⁹⁹

In the 2004 TRM, the European Communities cited certain benefits provided to export oriented-enterprises by the Shanghai Foreign Investment Center, including cheap public utilities, easy access to loans, and cheap land.

At the last TRM . . . China stated that the purpose of its regional programmes was to promote regional, social and economic development and absorbing foreign investment, and they were **by no means contingent upon export performance or on use of domestic products**. However it has come to our attention that the “**Shanghai Foreign Investment Center**” provides the following information on its official website:

Export oriented enterprises, defined as “enterprise whose product export volume accounts for over 50 per cent of its annual sales volume and who has a surplus of foreign exchange and has made a profit during the year”, examined and verified by government authorities every year, enjoy various preferential policies, *inter alia*:

- priority in the supply of water, electricity, transport and telecommunication charged at the same price as state owned companies
- priority for short term funds or other necessary loans
- exemption from local income tax after expiration of normal income tax exemption if more than 70 per cent of production is exported and a 10% reduction on the reduced tax rate of 15 per cent with the same requirement

¹⁹⁸ *Id.* at Q4.3.

¹⁹⁹ *Id.* at Q4.4.

- preferential charge for land use (maximum of 3 Yuan/m²/year)²⁰⁰

d. Currency Policy

The U.S. government has not officially determined that China's currency policy is equivalent to an export subsidy, but the U.S.-China Economic and Security Review Commission (USCC) — a Congressional advisory commission — and some industry representatives have charged that the Renminbi has been purposely undervalued to give Chinese industries a competitive edge. In its 2006 annual report to Congress, the USCC stated:

China's government undervalues the renminbi relative to the dollar at a level estimated by most economists to be between 15 percent and 40 percent. ... The failure to address this problem is increasingly a factor in U.S. companies relocating production to China. The overall result is a growing U.S. current account deficit and increasing ownership of U.S. debt instruments by the Chinese.²⁰¹

The Northwest Horticultural Council, in a submission to USTR regarding the annual National Trade Estimate Report on Foreign Trade Barriers, asserted:

China's policy of maintaining its currency undervalued relative to the U.S. dollar, provides the Chinese apple industry a de facto export subsidy and import barrier. The impact of this policy is contributing to market share losses U.S. apple exporters have experienced in Southeast Asian markets over the past five years.²⁰²

²⁰⁰ *Questions Posed by the European Communities to the People's Republic of China*, G/SCM/Q2/CHN/5 (2 October 2003) at Q2 (bold in original).

²⁰¹ *2006 Report to Congress of the U.S.-China Economic and Security Review Commission*, 109th Cong., 2d Sess. 26 (November 2006).

²⁰² See Northwest Horticultural Council, *Submission Regarding the Annual National Trade Estimate Report on Foreign Trade Barriers (NTE) 2007* (November 2006) at 8.

In the first U.S. countervailing duty investigation concerning China, the U.S. paper industry argued that China's currency policy is tantamount to an export subsidy. However, although the U.S. Department of Commerce initiated an investigation concerning various Chinese subsidies, it did not initiate an investigation of China's exchange rate policies.²⁰³

e. Preferential Policy Toward SOEs

State-owned enterprises (SOEs) are important participants in the agricultural market, particularly in the distribution and processing industries. In the Working Party Report accompanying China's Protocol of Accession, China stated that its "objective was that state-owned enterprises, including banks, should be run on a commercial basis and be responsible for their own profits and losses."²⁰⁴ Despite China's stated objective, in the 2005 TRM, the United States pointed out that China has been extending favorable policies toward SOEs which have the same effect as a government subsidy. The United States noted:

According to MOFCOM's website, "China needs to find ways to support certain state-owned enterprises (SOEs) to help them remain competitive in the retail distribution market. MOFCOM will seek to address problems such as the need to consolidate tax tables and tax payments made by chain stores and other policy obstacles, will reduce or exempt certain SOE distribution firms from re-payment of non-performing loans, and provide a debt-to-equity swap policy. The policies will support firms' trans-regional development, make good use of domestic and foreign trade

²⁰³ See NewPage Corporation's *Petition for the Imposition of Countervailing Duties in the Matter of Coated Free Sheet Paper from China, Indonesia and South Korea* (October 30, 2006) at 33; see also *Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia, and the Republic of Korea*, 71 Fed. Reg. 68546, 68548 (November 27, 2006).

²⁰⁴ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 172.

development funds, provide subsidized interest for technical innovation loans, and accelerate infrastructure development.²⁰⁵

The United States concluded that MOFCOM's "statements indicate that China's state-owned enterprises have benefited and will continue to benefit from preferential government treatment," and asked China to explain how this treatment was consistent with statements made by China in the Working Party Report.²⁰⁶ Similarly, with respect to the operations of state-owned banks, the United States noted:

In one recent example, state-owned banks supported the efforts of a state-owned company in the energy sector to acquire the assets of a US firm. This support reportedly included approximately \$13 billion in loans that appeared to be on terms that were inconsistent with commercial considerations.²⁰⁷

The United States asked China to "explain how this type of support to a state-owned enterprise is consistent with China's Working Party Report statements regarding the operation of state-owned enterprises and the role of state-owned banks."²⁰⁸

f. Subsidies for Energy, Land and Other Utilities

Some commentators have argued that energy and land have been used by the Chinese government as means of subsidizing industries. For example, at a hearing held by the U.S.-China Economic and Security Review Commission, Dr. Usha C.V. Haley noted:

Currently, Beijing tightly controls the price of both gasoline and electricity at well below their true economic levels. The state also

²⁰⁵ *Questions from the United States to China Concerning Subsidies and Price Controls*, G/SCM/Q2/CHN/14 (19 September 2005) at para. 10.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at para. 9.

²⁰⁸ *Id.*

offers free land and utilities to SOEs and companies in key strategic sectors.²⁰⁹

g. Industrial Parks

The National Association of Manufacturers (NAM) has claimed that Chinese government-invested industrial parks constitute a type of subsidy for the companies located within the park. Specifically, NAM claims that subsidies in China

take the form of local governments that construct entire industrial parks with complete infrastructure and donate buildings and factory space to induce investment. It has been noted that U.S. state governments also provide some of the same kinds of investment incentives. However, those provided by local governments in China are exceptionally generous.²¹⁰

h. Legal Fees Subsidies

In one instance, a local government-related entity was found to have been reimbursing Chinese exporter legal fees paid for participating in antidumping investigations. In the 2006 China Trade Review Mechanism (TRM), the EC noted that “the Shenzhen World Trade Organization Affairs Office sponsors a fund of more than 10 million Yuan in order to reimburse up to 30 per cent of legal fees to local export companies facing anti-dumping lawsuits. The fund

²⁰⁹ *Hearing Before the U.S.-China Economic and Security Review Commission on China's WTO Compliance and Industrial Subsidies* (April 4, 2006), Statement by Dr. Usha C.V. Haley, Associate Professor, University of New Haven, West Haven, CT; available at http://www.uscc.gov/hearings/2006hearings/written_testimonies/06_04_04wrts/06_04_04_haley.php. See also *Sinopec Receives Another Infusion of Chinese Cash*, THE WALL STREET JOURNAL (December 28, 2006) at A12, reporting that the Chinese government compensated Sinopec for maintaining low gas prices at a time when the price of crude oil shot up.

²¹⁰ National Association of Manufacturers, *Review of China's Compliance with its WTO Commitments* (September 6, 2005) at 5.

aims to ‘encourage local export companies to aggressively strive for their legal rights in the anti-dumping cases through legal action.’”²¹¹

i. Brand Name Building

The efforts of the Chinese government to help promote name recognition of leading enterprises have raised concerns that such efforts may be equivalent to subsidizing these enterprises. For example, in the 2006 TRM, the United States noted that “earlier in 2006, [MOFCOM] issued a notice on ‘Sell Well’ brands and a notice on a programme entitled ‘Ten Thousand Miles March for Brand Building,’ which involves brand appraisal, brand promotion, brand marketing and brand protection for 45 types of products.”²¹² The United States also noted that “The China Development Bank has reportedly expanded its focus to support ... Chinese ‘brand name’ companies.”²¹³

²¹¹ *Questions from the European Communities to China with regard to China's Transitional Review Mechanism on Subsidy Practices*, G/SCM/Q2/CHN/24 (20 October 2006) at Q4.1, citing information from www.tdctrade.com (as of February 16, 2004) and www.chinadaily.com.cn (as of February 14, 2004).

²¹² *Questions from the United States to China*, G/SCM/Q2/CHN/23 (16 October 2006) at para. 7.

²¹³ *Id.* at para. 21.