

ASIAN DEVELOPMENT BANK

TAR: PRC 34559

TECHNICAL ASSISTANCE

TO THE

PEOPLE'S REPUBLIC OF CHINA

FOR

WTO MEMBERSHIP AND FOREIGN TRADE LAW REFORM

June 2001

CURRENCY EQUIVALENTS

(as of April 2001)

Currency Unit	–	Yuan (Y)
Y1.00	=	\$0.121
\$1.00	=	Y8.277

On 1 January 1994, the dual exchange rate systems of the People's Republic of China were unified. The exchange rate of the yuan is now determined under a managed floating exchange rate system.

ABBREVIATIONS

ADB	–	Asian Development Bank
GATT	–	General Agreement on Tariff and Trade
MOFTEC	–	Ministry of Foreign Trade and Economic Cooperation
PRC	–	People's Republic of China
WTO	–	World Trade Organization
TA	–	technical assistance

NOTES

- (i) The fiscal year of the Government and its agencies ends on 31 December.
- (ii) In this report, "\$" refers to US dollars.

I. INTRODUCTION

1. During the Mid-Term Review of the People's Republic of China (PRC) Country Assistance Plan in March 2001, the Government reconfirmed its request for a technical assistance (TA) to study legal issues arising from PRC's membership in the World Trade Organization (WTO) and asked that the processing of the TA be accelerated. This request reflects PRC's anticipated accession to WTO and recognizes the urgent need to revise existing laws and regulations relating to foreign trade and to adopt new ones to satisfy WTO requirements. The Asian Development Bank (ADB) Fact-Finding Mission visited Beijing from 27 November to 7 December 2000, and reached an agreement on the objectives, scope, terms of reference, and cost for the TA.¹ The TA framework is attached as Appendix 1.

II. BACKGROUND AND RATIONALE

2. WTO is the only international body dealing with the rules of trade between nations. At its heart are the WTO agreements, which are negotiated and signed by most of the world's trading nations and provide the legal ground rules for international trade.

3. Before the birth of WTO in January 1995, the world trading system was governed by the General Agreement on Tariff and Trade (GATT). Under GATT, eight rounds of trade negotiations resulted in the reduction of tariffs, removal of nontariff barriers, trade liberalization, adoption of a comprehensive set of rules for trade of goods, and, most important, with the last round—the Uruguay Round—the creation of WTO. GATT was amended and incorporated into the WTO agreements and continues in existence, together with the new General Agreement on Trade in Services and Agreement on Trade-Related Aspects of Intellectual Property Rights. WTO brings all these agreements under a single organization, and under a single system for resolving disputes.

4. PRC is by far the largest trading nation that is not a member of WTO. In the early 1980s, PRC resumed its participation in GATT activities as an observer. In July 1987, PRC submitted its formal application for accession. It participated in the Uruguay Round and after the creation of WTO, the unresolved issue of PRC's accession to GATT became an issue of accession to WTO. After PRC concluded bilateral agreements with its major trading partners, particularly the United States and the European Union in 2000, negotiations for its accession to WTO moved into their final stage—multilateral negotiations under the auspices of WTO. A substantive agreement on the multilateral negotiations is expected to be finalized in 2001. Following this, a protocol will be prepared to reflect all the agreements reached during the multilateral negotiations. After it is reviewed and commented on by WTO members, the protocol is expected to be adopted formally in the second half of 2001 to confirm PRC's formal accession to WTO.

5. Pending PRC's accession to WTO, a tremendous amount of work is required to amend existing laws, regulations, and trade administrative practices and adopt new laws

¹ The TA first appeared in *Asian Development Bank Business Opportunities* in November 2000 as "WTO Membership and Law Reform" and was updated as "WTO Membership and Foreign Trade Law Reform".

and regulations to comply with WTO rules and obligations. The relevant legislative agencies require considerable technical assistance to complete this work on time.

6. The requirements for complying with WTO rules and obligations are derived from two major sources: (i) WTO rules governing international trade, which are applicable to all WTO members and will become binding on PRC immediately upon its accession to WTO; and (ii) PRC's commitments to its major trading partners to open markets in 3-5 years to foreign companies in various sectors, including telecommunications, distribution and wholesaling, financial services, and banking and insurance.

7. The Government is committed to change PRC's laws and regulations to comply with WTO rules upon PRC's formal accession to WTO. This includes codifying existing administrative practices into written laws and regulations to increase predictability and transparency. This demanding task will cover around 200 laws and regulations that need to be reviewed, revised, annulled, and/or incorporated into new laws or regulations.

8. The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) is in charge of regulation and supervision of foreign trade and direct investment. It is empowered to promulgate ministerial regulations regarding foreign trade and investment. It is also responsible for preparing the initial drafts of legislation governing foreign trade and investment, which will be submitted to the National People's Congress for adoption in the case of national laws and to the State Council in the case of the administrative regulations. As the front agency involved in PRC's negotiations to enter WTO and as the foreign-trade administrator, MOFTEC is primarily responsible for ensuring that the draft foreign trade legislation is consistent with WTO rules.

9. WTO's objectives are to use tariff as the only means to control imports and exports, and to negotiate between nations on tariff reduction. To ensure the effectiveness of tariff concessions, nontariff barriers have to be eliminated. WTO rules do, however, allow interventions to stop unfair competition practices such as dumping and subsidies, and permit the adoption of temporary protection measures for domestic markets and industries.

10. Under PRC's central planning system, foreign trade was administered with both tariff and nontariff controls, including quantitative controls. WTO rules require PRC to eliminate nontariff barriers and ensure compliance with tariff reduction obligations. In PRC foreign trade administration has been carried out according to a large number of ministerial rules and administrative practices. Some rules are neither transparent nor predictable—a problem that will be solved by codifying them into the revised Foreign Trade Law and new administrative regulations as consistent with WTO rules.

11. PRC will also be obligated to increase the transparency, predictability, and certainty of its legal rules. To ensure their transparency and promote predictability, they must be widely disseminated. The Government is cognizant of this need and has requested assistance for this purpose.

12. PRC's entry into WTO and law reform will not only make PRC's foreign-trade laws and administrative regime compatible with international law and practice, but will also have a significant positive impact on governance, particularly in the creation of a transparent and predictable legal regime. Supporting this process is consistent with ADB's strategic objective in PRC.

III. THE TECHNICAL ASSISTANCE

A. Objectives

13. The objectives of the TA are the following:
- (i) Help the Government make its foreign-trade laws and regulations compatible with WTO principles, rules, and obligations.
 - (ii) Help the Government determine the institutional set-up for regulating foreign trade and investment.
 - (iii) Support the Government's efforts (a) to increase transparency by making legal information public and (b) to clarify laws and regulations on foreign-trade and investment.

B. Scope

14. The TA will help the Government with the following:
- (i) modifying the Foreign Trade Law;
 - (ii) drafting regulations on (a) import and export of goods, (b) import and export of technology, (c) commodity inspection, and (d) rules of origin;
 - (iii) developing regulations relating to trade in services, including (a) drafting regulations on transnational construction project, (b) drafting regulations on transnational labor cooperation, and (c) undertaking research on legal issues related to electronic commerce;
 - (iv) developing regulations on transnational mergers and acquisitions, and transnational franchising;
 - (v) preparing regulations on anti-dumping, subsidy and countervailing, and safeguard measures and drafting implementing rules or guidelines;
 - (vi) increasing the transparency of laws and regulations on foreign trade and investment by strengthening the Government's capacity to provide legal information to the public and to clarify legal rules.
15. The TA will include the following inputs:
- (i) services of consultants who will review and comment on the draft laws and/or studies and reports on the topics as indicated in paragraph 14 above;
 - (ii) workshops, seminars, and international symposiums that will bring the best international practice to the attention of PRC decision makers;

- (iii) external study tours on institutional set-up for administration of international trade; and
- (iv) provision of equipment that will improve dissemination of legal information.

16. Before the reform of foreign trade laws inconsistencies must be identified between WTO rules and existing laws, regulations, and administrative practices. Experts will review and comment on draft legislation to ensure that revisions comply with WTO requirements and reflect PRC's status as a developing country. Research will be undertaken on the regulation of electronic commerce and foreign investment in the form of transnational mergers and acquisitions and franchising.

17. After PRC's entry into WTO, it is expected that major functional and institutional changes including restructuring of foreign trade administration system will have to be made. For example, the administration system will have to give up its functions of quantitative regulation of imports and exports, and of licensing, supervision, and regulation of specialized import and export companies. However, the system will have to take on functions such as (i) participation in global-trade negotiations; (ii) adoption of domestic rules that are consistent with WTO rules; and (iii) resolution of disputes within PRC's jurisdiction, at the bilateral level, and under WTO auspices. In order to learn from other countries' experiences and practices in the institutional set-up of administration regimes governing foreign trade and investment, a group of officials from MOFTEC, State Council's General Office and Office of the State Commission for Public Service Structure and Establishment Administration will conduct a two-week external study visit to European countries.

18. WTO requires that PRC designate a source (i) to provide an English version of laws and regulations relating to foreign trade and investment in a timely manner,² (ii) designate a government agency to clarify laws on foreign trade and investment, and provide mechanisms for hearing and deciding trade complaints and disputes. MOFTEC is expected to be named as provider of the last two services. The TA will provide equipment to (i) strengthen and expand the information dissemination capability of MOFTEC's Department of Treaty and Law through MOFTEC's web-site and (ii) strengthen and improve the department's ability to convene meetings to clarify trade rules and regulations and to hold hearings on trade disputes.

C. Cost Estimates and Financing Plan

19. The TA's total cost is \$956,000 equivalent, of which \$470,000 is the foreign exchange cost and \$486,000 equivalent is the local currency cost. ADB will provide \$700,000 on a grant basis from the ADB-funded TA program to finance the total foreign currency cost and \$230,000 equivalent of the local currency cost. ADB funds will finance (i) international and domestic consulting services; (ii) cost of services of resource persons and distinguished speakers; (iii) cost of workshops, seminars and international symposiums; (iv) support for surveys and investigations; (v) purchase of equipment; (vi)

² A loose-leaf publication containing the English translation of foreign-related laws and regulations compiled by the Office of Legislative Affairs of the State Council has been developed with ADB's support under TA No. 3000: Strengthening of the Legal Information System. This publication, to be formally launched in July 2001, is expected to be designated as the source of legal information required by WTO.

conduct of external studies; (vii) conduct of comparative studies; and (viii) administrative and office costs. The Government's contribution of \$256,000 equivalent will cover the cost of (i) counterpart staff; (ii) offices for international and domestic consultants; (iii) surveys and investigations; (iv) local communications and transportation; (v) interpretation and translation; (vi) workshops, seminars, and international symposiums (partially); and (vii) general administration. The detailed breakdown costs and financing plan for the TA is shown in Appendix 2.

D. Implementation Arrangements

20. Services of international (8 person-months) and domestic consultants (10 person-months) will be required. The international consultants will be the experts specialized in WTO rules relating to the areas described in paragraph 14 (i) to (v). The domestic experts will have expertise in WTO rules and PRC foreign trade law, regulations and administrative practices in the areas described in paragraph 14 (i) to (v). Other domestic experts (6 person-months) will carry out surveys and investigations on existing law and practice. The outline terms of reference for the consultants are attached as Appendix 3. Individual international and domestic consultants will be engaged in accordance with ADB's *Guidelines on the Use of Consultants*. A conference organizer will be engaged to organize and facilitate the workshops, seminars and international symposiums. Prior to the undertaking of the external study tour, a proposal will be submitted to ADB on the composition of the study tour group, itinerary and budget for ADB's review and approval. The equipment to be provided for improving the legal information system and implementing the TA will be procured by the EA in accordance with ADB's *Guidelines for Procurement*. An advance payment facility will be provided for the equipment, external study, workshops, seminars, and international symposiums.

21. MOFTEC will be the TA's Executing Agency (EA). An Assistant Minister of MOFTEC will lead the TA's implementation. A working group will be set up in MOFTEC, led by a project director who will be a senior official from the Department of Treaty and Law. The EA will coordinate the TA implementation with other relevant Government agencies in implementing the TA, particularly with the Customs Administration, Administration of Inspection of Goods and the Office of Legislative Affairs of the State Council. MOFTEC should provide the international and domestic consultants and resource persons for their review and comment the draft of relevant laws and regulations (and English translation thereof for foreign experts), and where required, a list of questions regarding such draft legislation and background information on the relevant laws, regulations and practices. The TA implementation is expected to commence in June 2001 and be completed in October 2002.

IV. THE PRESIDENT'S DECISION

22. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance, on a grant basis, to the Government of the People's Republic of China in an amount not exceeding the equivalent of \$700,000 for the purpose of WTO Membership and Foreign Trade Law Reform, and hereby reports such action to the Board.

PROJECT FRAMEWORK

Design Summary	Targets Performance	Monitoring Mechanisms	Assumptions and Risks
<p>Goal</p> <p>Assistance in reforming the foreign trade law to comply with WTO requirements.</p>	<p>Amendment of Foreign Trade Law</p> <p>Preparation of new laws and regulations on (i) trade of goods and technology, (ii) foreign related projects and labor cooperation, (iii) transnational mergers and acquisitions and franchising transactions, and (iv) antidumping , subsidy and countervailing, and safeguard measures.</p>	<p>Technical Assistance (TA) completion report and review missions.</p>	<p>Government commitment; and no delay in PRC's entry to WTO.</p>
<p>Objectives</p> <p>(i) Amend the foreign trade legal framework to comply with WTO rules.</p> <p>(ii) Study and draft regulations on other forms of foreign investment and e-commerce.</p> <p>(iii) Develop an institutional set-up for foreign trade administration regime compatible with WTO member status.</p> <p>(iv) Provide legal information to users to promote transparency and predictability in foreign trade transactions.</p>	<p>(i) Modifying the Foreign Trade Law;</p> <p>(ii) drafting a regulation on the import and export of goods;</p> <p>(iii) drafting a regulation on commodity inspection;</p> <p>(iv) drafting a regulation on the rules of origin;</p> <p>(v) drafting a regulation on foreign related construction projects;</p> <p>(vi) drafting of a regulation on foreign related labor cooperation; and</p> <p>(vii) drafting regulations on anti-dumping, subsidy and countervailing measures, safeguard measures and implementation rules.</p> <p>Studying legal issues on electronic commerce, transnational mergers and acquisitions, and transnational franchising.</p> <p>Assisting in determining the institutional set-up for foreign trade administration after WTO entry.</p> <p>Enhancing capacity for dissemination of legal information and issuing clarifications by MOFTEC.</p>	<p>Assessment of the impacts of TA inputs and activities on legislation preparation through TA Review Mission and consultation with the Government.</p>	<p>Capacity of the legislative agencies in handling interrelated and overlapping areas in preparation of legislation.</p>

Design Summary	Targets Performance	Monitoring Mechanisms	Assumptions and Risks
<p>Outputs</p> <p>Revised or new legislation on foreign trade and foreign trade administration.</p>		<p>TA review missions.</p> <p>Consultants' reports.</p> <p>Seminar proceedings.</p> <p>Draft legislation based on the TA inputs.</p>	
<p>Inputs and Activities</p> <p>Survey and investigations</p> <p>Experts' review and advice on the draft legislation</p> <p>Workshops/symposiums</p> <p>External study</p> <p>Provision of equipment</p>	<p>Identification in the existing laws, regulations, ministerial rules and administrative practices of provisions that are not consistent with WTO rules.</p> <p>Revised or new legislation that complies with WTO requirements and reflects PRC's status as a developing country.</p> <p>Discussion of technical issues and exchange of experiences with other WTO members.</p> <p>Assistance in the decision making process in determining institutional set-up, structural adjustment for foreign trade administration as a WTO member.</p> <p>Improved capability of MOFTEC in providing legal information and clarifications on legal provisions to satisfy the WTO requirements on legal information transparency.</p>	<p>Survey reports.</p> <p>Consultants' reports.</p> <p>Workshop and symposiums proceedings.</p> <p>External study reports.</p> <p>Improvement of legal information system for dissemination and clarification of laws and regulations.</p>	<p>Efficient organization and guidance provided by MOFTEC.</p> <p>Limited range of the surveys and investigations; lack of sufficient qualified local experts.</p> <p>Final legislation reflecting a good balance of WTO requirements, other countries' experiences, and PRC's existing laws and regulations and foreign trade administration.</p> <p>Coordination between MOFTEC and other authorities involved in legislative work.</p>

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Foreign Exchange	Local Currency	Total Cost
A. Asian Development Bank Financing ^a			
1. Consultants			
a. Remuneration and Per Diem			
i. International Consultants	188	0	188
ii. Domestic Consultants	0	74	74
iii. Honorarium and Per Diem for International and Domestic Resource Persons	36	24	60
b. International and Local Travel	99	14	113
2. Equipment ^b	60	0	60
3. Workshops, Seminars and International Symposiums ^c	0	84	84
4. Survey Support	0	5	5
5. External Study	28	0	28
6. Comparative Study	7	3	10
7. Contingency	52	26	78
Subtotal (A)	470	230	700
B. Government Financing			
1. Counterpart Staff	0	36	36
2. Office Accommodation	0	14	14
3. Local Transportation	0	3	3
4. Local Communication	0	1	1
5. Interpretation and Translation	0	12	12
6. Survey Venue and Other Costs	0	162	162
7. Seminar and Symposium			
i. Venue	0	20	20
ii. Organization and Administration	0	4	4
8. Administration	0	4	4
Subtotal (B)	0	256	256
Total	470	486	956

^a ADB-funded TA Program.

^b includes photocopy machines, scanners, multimedia projector, local area network server, CD-ROM rewritable drive, conference audio and recording system, zip drive, laptop and desktop computers, and software.

^c Includes remuneration for conference organizer.

Source: Staff estimates.

(Reference in text: page 4, para. 19)

IMPLEMENTATION ARRANGEMENTS AND TERMS OF REFERENCE

IMPLEMENTATION ARRANGEMENTS

1. The assistance will be provided through the following activities: (i) experts' inputs, (ii) meetings and discussions with the officials in the counterpart agencies in other Asian countries, and (iii) workshops, seminars and international symposium(s).

Experts' Inputs

2. Experts' inputs will be provided by international and domestic consultants, resource persons and distinguished speakers.

Meetings with Other Governments' Officials

3. The officials of MOFTEC will meet with the counterpart agencies of the selected Asian countries to learn their experience in adjusting and administering their laws and regulations in compliance with GATT and WTO rules and requirements.

Workshops, Seminars and International Symposiums

4. Workshops or seminars will be held in each area to be covered under the TA, with a focus on technical discussions. These workshops or seminars will, with the inputs of the international and domestic experts, help officials of MOFTEC and other Government agencies acquire in-depth understanding of the WTO rules and other countries' experiences, and/or provide a forum to discuss the comments of the experts on draft laws and regulations.

5. International symposiums will be held at the conclusion of the technical discussions and review of draft legislation by international and domestic consultants. In addition to the technical aspects of the draft legislation, international symposiums will focus on broader issues relating to coordination among new laws and regulations and their implementation, the policy issues involved in the adjustment to the legal systems for foreign trade, and an exchange of views and experiences with other Asian countries in revising their foreign trade legal regimes to be compliant with WTO rules and implementing them.

6. A domestic firm with the experience in organizing and conducting international workshops, seminars and international symposiums in PRC will be engaged to assist in carrying out TA activities. Under the instructions of ADB and MOFTEC, their specific tasks include:

- (i) coordinate among ADB, MOFTEC, international and domestic consultants, international and domestic resource persons, international and domestic distinguished speakers in relation to the workshops, seminars and international symposiums;

- (ii) undertake all the preparatory work for workshops, seminars and international symposiums, including venue selection, meeting room setting, arrangements for interpretation and translation, assistance in budget preparation for these events, preparation of working documents and materials, arrangements of office supply, making photo copies of the papers to be presented on these events; and
- (iii) assist ADB and MOFTEC in conducting the workshops, seminars and international symposiums, including airport greeting for international guests, provide all necessary services relating to the carrying out of the workshops, seminars and international symposiums such as registration of the participants and distribution of conference materials, and assist ADB and MOFTEC to make the necessary payments for the venue, interpretation, participants' allowance, logistic expenses, honorarium, reimbursement for travel expenses, and collect receipts and other evidences as required by ADB and MOFTEC from the payees.

OUTLINE TERMS OF REFERENCE

International and Domestic Consultants

7. The international consultants (8 person-months) will be internationally reputed experts on international trade law developed under GATT and WTO, with specialization in the detailed WTO rules, knowledge on the application of these rules in their own countries and/or other major international trading countries including Asian countries, and/or knowledge and experiences in administration of foreign trade laws in compliance with WTO rules. The experts with experiences in PRC foreign trade and investment areas and knowledge in PRC's WTO entry negotiations are preferred. In particular, the international experts will be specialized in international trade law in the following areas:

- (i) legal system and administrative regime of foreign trade under WTO rules;
- (ii) trade of goods;
- (iii) trade of technology;
- (iv) goods inspection;
- (v) trade of services, including transnational construction projects and labor cooperation, and electronic commerce;
- (vi) foreign investment, including transnational mergers and acquisitions and transnational franchising; and
- (vii) anti-dumping, subsidy and countervailing, and safeguards measures.

8. The domestic consultants (10 person-months) will be recognized experts in foreign trade law and practice, with expertise in existing PRC law and administrative practices in the areas described in paragraph 7 above, and an understanding of WTO rules.

9. The international and domestic consultants will play a key role in providing the technical inputs to assist in the development of the legal system on foreign trade in compliance with WTO rules. Their main tasks will include the following:

- (i) Help MOFTEC officials acquire a detailed understanding of the legal obligations imposed by WTO on its members in relation to (a) foreign trade regime and administration, (b) trade of goods, (c) trade of technology and services, (d) foreign investment, and (e) other related areas;
- (ii) Based on the experiences of other countries, suggest necessary measures, including amendments to existing laws and adoption new ones, to satisfy the WTO requirements;
- (iii) Suggest to MOFTEC and ADB candidates of resource persons and speakers for international symposiums, and, if requested, guide and advise the resource persons in respect to their assignments and help organize a panel of the consultants and the resource persons for the international symposiums; and
- (iv) Review draft legislation prepared by MOFTEC on foreign trade and investment areas covered under this TA, analyzing the draft legislation with a view to satisfying the WTO requirements and/or in a comparative perspective based on other countries' experiences, and providing comments and advice on the draft legislation to ensure its consistency with WTO rules.

10. The international and domestic consultants' review and comments will be presented in the form of reports. They will be required to present the reports at workshops, seminars or international symposiums organized under the TA. Prior to these events, they will be required to submit their draft reports to MOFTEC and ADB for review and comment. If requested, they will visit Beijing or Manila to have discussion sessions to review with and clarify their reports to MOFTEC and/or ADB.

Domestic Survey Consultants

11. Domestic survey and investigation experts (6 person-months), who should have expertise in PRC foreign trade law or administration, will be engaged to summarize the trade administration practices, review the existing regulations, rules and other relevant documents, and identify the issues and problems which are not consistent with WTO rules existing in the legal provisions and practices. A report should be submitted to MOFTEC summarizing the conclusions.

International and Domestic Resource Persons

12. The international resource persons will be leading experts and experienced administrators in the areas mentioned in paragraph 7 above from the leading trading partner countries and regional countries. They will participate in the workshops, seminars or international symposiums and make presentations to assist the officials of MOFTEC in acquiring in-depth understanding of the WTO rules and their implementation in relevant countries.

13. The domestic resource persons will include experts in law and foreign trade and foreign investment administration. They should contribute to the study and development of the legal system for foreign trade through participating in and making presentation at the workshops, seminars and international symposiums.

14. The international and domestic resource persons will be required to make presentations at the workshops, seminars or international symposiums on the topics designated to each of them by ADB and MOFTEC. Their presentations will mainly focus on the experiences and practices of the jurisdictions they are familiar with in the different areas relating to foreign trade law. Prior to the workshops, seminars and international symposiums, they will be provided by MOFTEC with, if needed and available, background information, list of questions or issues to be addressed, and draft legislation to be reviewed and discussed, all in English translation. The presentations should be in the form of a written report and will be provided to ADB, MOFTEC and the seminar/symposium organizer prior to the workshop, seminar or symposium.