

**CHINA – MEASURES AFFECTING IMPORTS OF  
AUTOMOBILE PARTS**

***Reports of the Panel***

Addendum

This addendum contains Annexes B, C, D and E to the Reports of the Panel to be found in documents WT/DS339/R, WT/DS340/R and WT/DS342/R. Annex A can be found in Add.1.



**ANNEX B**

**RESPONSES OF THIRD PARTIES TO QUESTIONS FROM THE PANEL**

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## ANNEX B-1<sup>1</sup>

### RESPONSES OF ARGENTINA TO QUESTIONS FROM THE PANEL

**13. Argentina considers it not to be "appropriate to make a parallelism between ordinary customs duties and anti-dumping or countervailing duties" (paragraph 20 of Argentina's written submission). It seems that Argentina makes this argument in relation to the discussion regarding "subsequent practice" under the Article II claims.**

- (a) **(Argentina)** Given your above statement, do you see any usefulness in the findings of the GATT Panel decision in *EEC – Parts and Components*, cited by the parties in their written submission, to the question of the characterization of the measures?

The Panel report in *EEC – Parts and Components* could be useful to the Panel in this case, since China uses the inconsistencies identified by the Panel in the rules to prevent circumvention of the EEC's anti-dumping duties to demonstrate that the Chinese measures are similar to the EEC's revised anti-circumvention measures, and not to those that were brought before the GATT Panel. However, even though the Panel considers that the *EEC – Parts and Components* case should be taken into account and seeks to determine whether the revised EEC measures are similar to the Chinese measures, Argentina considers that the inconsistencies detected by the Panel are reflected in the form in which the Chinese measures – in particular Decree 125 – are implemented.

China argues that "the revised anti-circumvention measure applies the anti-dumping duty to the imported parts and components *as a condition of their importation*".<sup>2</sup> China states that because of the declaration made by the importer upon importation, the importer's obligation to pay the tariff applicable to automobiles for those parts and components having the essential character of a complete motor vehicle is a condition that attaches to the entry of goods into China.<sup>3</sup> It argues that "like the EEC's revised anti-circumvention measure, the challenged measures impose duties that are conditional upon the entry of goods into China, and are therefore border measures subject to Article II of the GATT."<sup>4</sup>

However, as already explained in the written submissions not only of Argentina, but of other Members as well, the disputed measures apply a tax charge to auto parts depending on whether those auto parts, subsequent to the manufacturing process, are incorporated into complete vehicles that do not have sufficient local content. The measures impose the charge on auto parts as if they were complete motor vehicles, not upon importation or conditional upon the importation of the parts, but subsequent to verification and depending on whether the imported parts have been assembled together with other imported parts to make up a "Deemed Whole Vehicle" as described in Article 21 of Decree 125.

In other words, even if the findings of the Panel in *EEC – Parts and Components* are considered relevant, the Panel will be able to verify that the inconsistencies detected in the anti-circumvention measures originally applied by the EEC can also be found in the disputed Chinese measures.

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<sup>1</sup> Annex B-1 contains the responses by Argentina to questions posed by the Panel after the first substantive meeting. This text was originally submitted in Spanish by Argentina.

<sup>2</sup> First written submission of China, paragraph 58.

<sup>3</sup> Ibid., paragraph 60.

<sup>4</sup> Ibid., paragraph 61.

**16. In paragraph 137 of its first written submission China refers, *inter alia*, to Argentina's anti-circumvention measures in respect of anti-dumping and countervailing duties. Can Argentina confirm whether these measures are still in place and elaborate upon these and point in particular to the elements which distinguish them from the Chinese measures in question.**

The legislation cited in China's first written submission, Decree 1088/2001 of 28 August 2001 published in the Official Gazette of 30 August 2001, is no longer in force following the amendment introduced in Decree 421/2002 of 5 March 2002, published in the Official Gazette of 8 March 2002. Both decrees were notified to the WTO. Thus, the decree that regulates investigation procedures in the framework of the Agreement on Subsidies and Countervailing measures and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade is Decree 1326/98.

Anti-dumping and countervailing duties, as appropriate, are applied in addition to all of the other taxes in force with respect to the import in question, which are governed by their respective legal regimes. They are governed on a residual basis by the rules applicable to import duties.

Circumvention practices are dealt with on the basis of the chief precedents gathered in the investigation of the circumvented measure, creating for the purpose a separate procedural issue in which the interested parties are able to intervene.

In such case, the Ministry of the Economy decides whether there is a need to increase the anti-dumping or countervailing duties to be applied to imports of like products or parts thereof from the same origin as those investigated or from other origins, whatever the case.

What distinguishes the Argentine measures from the Chinese measures is that the Argentine measures are applied in the same way as an anti-dumping/countervailing duty, i.e. upon importation. Argentina's application of anti-circumvention measures does not depend on the level of local content or imported content in the end product. Moreover, under Chinese rules, if a local producer buys auto parts from a local supplier which, in its turn, has imported them, that producer will be subject to the tariff applied to complete vehicles, while anti-circumvention measures are applied upon importation. Similarly, if a Chinese producer decides to add imported parts to those previously declared, that producer will have to pay the difference in taxes under Chinese rules (Article 20 of Decree 125). This is not the case under Argentine anti-circumvention rules.

Under Argentine anti-circumvention rules, a separate procedure is conducted alongside the investigation of the anti-dumping/countervailing measure that is being circumvented. If it is confirmed that there is circumvention, the anti-dumping/countervailing duties are increased, but as anti-dumping/countervailing duties, they are applied in addition to all of the other charges in respect of the import concerned, which remain in force under their respective legal regimes. In other words, they are applied upon importation, and do not depend on a subsequent manufacturing process as in the case of the disputed Chinese measures.

**17. In paragraphs 15-16 of your written submission you state that Article 29 of Decree 125 suggest that there is an "import stages" in the procedures under the measures. It further suggests that after that "stages" all other collected charges could still not be considered as border measures. Please, elaborate on this argument?**

Argentina's argument in these paragraphs is that, contrary to what China contends, the disputed measures are not customs duties, since the tariff applicable to complete vehicles is applied to auto parts not upon importation, but at a later stage, when the manufacturing process has been

completed. This is even more obvious in the cases covered by Article 29, where the auto parts which have been imported by a supplier that paid the corresponding import duty for the parts at the import stage are subsequently purchased by a manufacturer to be used to manufacture a motor vehicle. If in the manufacturing process these imported parts are assembled with other parts used by the manufacturer, they could be considered "Deemed Whole Vehicles". Consequently, the parts sold by the supplier and used by the manufacturer are subjected to a new charge depending on their destination following importation. Contrary to what China contends, this charge is not subject to or conditional upon the import of the auto part, but the additional charge depends on the final use of the imported auto part in the manufacturing process. In other words, the condition for imposing the charge applicable to complete vehicles is based on a process which takes place locally once the goods have entered Chinese territory and once the imported auto part has been incorporated in the manufacture of a vehicle considered to be a "Deemed Whole Vehicle" by the same Chinese authorities. Consequently, the disputed measures as such cannot be considered border measures as China asserts.

## ANNEX B-2

### RESPONSES OF AUSTRALIA TO QUESTIONS FROM THE PANEL

#### I. QUESTIONS TO ALL THIRD PARTIES

1. We note that in paragraph 137 of its first written submission China refers, *inter alia*, to the anti-dumping regulations of certain third parties:

(a) Do you currently have, or have you ever had, anti-circumvention measures in place for (i) anti-dumping duties and/or (ii) ordinary customs duties? If yes, please explain your measure in detail (including the citation to any legislation or regulation that govern the application of these measures) and whether it is a border or internal measure within the meaning of Articles II and III of the GATT.

No.

(b) Are you aware of any such measures maintained by other WTO Members?

Australia prefers not to comment on measures maintained by other WTO Members in the context of the present dispute, in which China's measures are the measures at issue.

2. Do you have significantly different tariff lines for a given "complete" product and for "parts and components" thereof?

The Harmonized System generally requires parts and complete goods to be classified within different subheadings, sometimes within the same heading or chapter, other times in different headings and chapters. In Australia, the duty rates for complete motor vehicles and for motor vehicle parts are the same. The duty rates for other complete goods and their parts do differ in many cases, but usually not to any significant degree.

If yes, how would your customs authority assess and charge ordinary customs duties in relation to:

(a) "parts and components" that enter your territory from *multiple shipments* and are *imported by the manufacturer itself* and assembled together with domestic parts into a complete product for sale in the domestic market;

If the parts in any particular individual shipment in multiple shipments (i.e. a series of individual shipments), constituted an unassembled/unfinished product that had the essential character of the complete product, those parts would be classified and assessed for ordinary customs duty purposes as a complete product. The remaining parts in that particular individual shipment would be classified and assessed for ordinary customs duty purposes as parts. In addition, the parts in the remaining individual shipments would be classified and assessed for ordinary duty purposes as parts. The identity of the importer, be that a supplier or a manufacturer, has no bearing on the classification of the goods.<sup>1</sup>

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<sup>1</sup> This response does not cover the special situation of split shipments/split consignments. Australia currently has provisions to allow for split shipments to be classified as one item, in limited circumstances. See response to question 4 below.

**(b) "parts and components" that enter your territory from a single shipment and are imported by the manufacturer itself and assembled together with domestic parts into a "complete product" for sale in the domestic market;**

If the parts in a single shipment constituted an unassembled/unfinished product that had the essential character of the complete product, those parts would be classified and assessed for ordinary customs duty purposes as a complete product. The remaining parts in the shipment would be classified and assessed for ordinary customs duty purposes as parts. The identity of the importer, be that a part supplier or a manufacturer, has no bearing on the classification of the goods.

**(c) "parts and components" that enter your territory from multiple shipments and are imported by a part supplier/manufacturer and assembled together with domestic parts into a "complete product" for sale in the domestic market;**

See response to 2(a) above.

**(d) "parts and components" that enter your territory from a single shipment and are imported by a part supplier/manufacturer and assembled together with domestic parts into a "complete product" for sale in the domestic market;**

See response to 2(b) above.

**Would the duty assessment and charge of the "parts and components" in each of the scenarios cited above change if these imported goods would correspond to 100% of the "parts and components" needed to assemble the "complete product"? Would your answers in respect to the scenarios cited above involving multiple shipments change depending on the time differences between the arrival of the shipments concerned?**

The fact that the imported goods correspond to 100% of the parts needed to assemble the "complete product" would not alter the responses to 2(a)-(d) above. No regard would be had to whether the imported goods were to be assembled in Australia into a complete product without any domestic content. In addition, changes to the timing of the arrival of the multiple shipments would not alter the responses to 2(a) & (c) above.

**3. In your country, when do the customs authorities make a determination as to when a collection of parts cannot and/or should not be distinguished from the complete article that they are intended to form? How does your customs office interpret "as presented" in Rule 2(a) of General Rules for the Interpretative Notes of the HS in this relation?**

In accordance with the Harmonized System, Australian customs authorities make this determination at the time of importation. Under rule 2(a) of the *General Rules for the Interpretation of the Harmonized System* (GIR 2(a) or the "essential character" rule) parts can only be classified as completed products where, as presented, they have the essential character of the complete product. Australian custom authorities interpret "as presented" to mean as imported.

**4. Please comment on China's statement in paragraph 160 of its first written submission and in paragraph 13 of its oral statement in relation to the WCO affirmed decision concerning Rule 2(a) of the General Interpretative Rules. In particular, please clarify the legal status of this WCO decision, including whether it is binding on the parties to the WCO.**



Australia considers that China's statement in paragraph 160 of its first written submission<sup>2</sup> does not fully represent the WCO Harmonized System Committee's (the Committee) Decision concerning GIR 2(a). The extract referred to by China in relation to split consignments is *obiter dictum* that arose in relation to a Decision by the Committee interpreting the phrase "articles presented complete or unfinished." The true effect of the cited Decision is to clarify that no account is to be taken of the complexity of the assembly method in interpreting GIR 2(a).

In Australia's view, the cited Decision is not legally binding on parties to the WCO. The Committee established under the Harmonized System Convention is comprised of a representative from all contracting parties and has the role of preparing recommendations, opinions, Explanatory Notes and decisions.<sup>3</sup> On 30 June 2001 the WCO issued a *Recommendation of the Customs Co-operation Council on the Application of the Harmonised System Committee Decisions*<sup>4</sup> which recommended that decisions of the Committee become binding on parties unless they notify the Secretary General of their inability to comply within twelve months. However, a WCO recommendation is not legally binding on a WCO party unless it accepts the recommendation.<sup>5</sup> Further, the Decision referred to in paragraph 160 of China's written submission was concluded in November 1995, before the above Recommendation could have been accepted by any of the parties. Consequently, parties are not bound by the 1995 decision of the Committee concerning GIR 2(a).

Given that the Decision raises the issue of split consignments it may be helpful to briefly summarise Australian practice in this regard. Australia considers split shipments/split consignments to cover goods that are split over two or more shipments which all arrive at the border at the same time. It does not mean multiple shipments that arrive at many different times. Usually split shipments are used to transport goods which are too large to be transported on a single shipment.

**5. How should Rule 2(a) be interpreted in light of the decision cited in the preceding question?**

As noted above, Australia considers that the Decision only deals with goods that have been imported over a number of shipments that arrive at the same time, not to multiple shipments arriving at different times. As a result the decision of the Harmonized System Committee is of limited scope and its impact on the interpretation of GIR 2(a) is minimal.

The Decision does not allow WCO parties to use alleged "split-consignments" to circumvent the essential character rule (GIR 2(a)) in an attempt to alter the commitments under their tariff schedules. Such an interpretation would undermine the founding principle of the WCO and the Harmonised System, which is to create harmony and predictability in the application of tariff schedules.

**6. Please comment on China's position that Note VII of the Explanatory Notes to Rule 2(a) of the General Interpretative Rules is relevant in delineating the boundary between complete articles and parts of those articles (paragraph 100 of China's first written submission).**

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<sup>2</sup> Australia's response to this question is based solely on paragraph 160 of China's first written submission as Australia has not seen paragraph 13 of China's oral statement.

<sup>3</sup> Article 7(b) of the *International convention on the Harmonised Commodity Description and Coding System*.

<sup>4</sup> <http://www.wcoomd.org/ie/En/Recommendations/recapple.htm>

<sup>5</sup> Australia adopted this recommendation in 2001.

Australia notes that, unlike the *General Rules for the Interpretation of the Harmonized System*, the *Explanatory Notes* are not annexed to the Harmonized System Convention and are not an integral part of that Convention. The *Explanatory Notes* merely offer guidance on the interpretation of the Harmonized System. They do not amend the ordinary meaning of the terms in the Harmonized System.

Australia considers that Note VII of the *Explanatory Notes* to GIR 2(a) simply confirms that following an application of the 'essential character' rule any parts imported in excess of those necessary to form the complete article should be classified separately as parts. Note VII does not imply, as China suggests, that parts may only be classified as parts when they are not being imported for the purpose of assembling a complete article from imported parts.

**7. Could different aspects of the challenged measures be respectively considered as either internal measures or border measures? In other words, could one part of the measures be a border measure while the other an internal measure? If yes, please indicate which specific part is border measure-related and which part is internal measure-related? What factors would you take into consideration to make such determination?**

Australia does not consider that, in the circumstances of the present dispute, one part of the challenged measures could be a border measure while another part could be an internal measure.

**8. In your view, if the measures were to be considered as border measures, would the Panel still be required to address the complainants' claims under Article III of the GATT and Article 2 of the TRIMs Agreement?**

No. In this regard Australia notes the Appellate Body's comments regarding judicial economy in *Canada – Wheat Exports and Grain Imports*.<sup>6</sup>

**9. What is the difference between a charge imposed "on ... the importation" and a charge imposed "in connection with the importation" within the meaning of Article II:1(b), second sentence, of the GATT? What is the relevance of this difference, if any, to this case?**

In Australia's view the phrase "on or in connection with the importation" represents a collective and interconnected obligation that is not divisible into its constituent parts. In any event, given that Australia considers China's measures at issue to be internal measures, any alleged difference is irrelevant to the present dispute.

**10. With respect to the phrase "on their importation into the territory" of Article II:1(b), first sentence GATT 1994, should this be understood as a reference to the time of presentation at the border or to some later point in time? If later, should the charge assessed be determined on the basis of the condition of the products as presented at the border or on the basis of their inclusion in a finished product after entry?**

In Australia's view the phrase "on their importation into the territory" refers to the time of presentation of the product at the border.

**11. Do you have a formal definition of CKD and SKD in relation to your specific Schedule or, more generally, in any pertinent legislation or regulation? If yes, please provide it. If not,**

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<sup>6</sup> *Canada – Wheat Exports and Grain Imports*, WT/DS276/AB/R, para. 133.

**what is, in your opinion, the meaning of these two terms? How are CKD and SKD kits classified in your country?**

No. Australia's understanding is that Completely Knocked Down (CKD) or Semi-Knocked Down (SKD) kits usually refer to substantially complete articles that are broken down into individual parts (CKD) or sub-assemblies (SKD). Minor parts, such as batteries, windscreens or tyres, may often be omitted, but once assembled a substantially complete article would be formed. In Australia, CKD and SKD kits are generally considered as unassembled articles which, if assembled, would have the essential character of the complete article. Consequently, they are generally classified as the complete article in accordance with GIR 2(a).

**12. (All parties) The European Communities explains in paragraph 262 of its first written submission that a situation foreseen under Article 21(2)(a) of Decree 125, namely importation of both an engine assembly and a body assembly together, is far away from the categories foreseen by the Chinese tariff schedule examined in the light of the general Explanatory Notes for Chapter 87 whereby an incomplete or unfinished vehicle may be classified as the corresponding complete or finished vehicle provided it has the essential character of the latter.**

**(a) Do you consider that the two examples of incomplete or unfinished vehicles in the General Notes for Chapter 87 correspond to any of the criteria set out in Article 21 of Decree 125?; and**

Australia accepts that the criteria set out in Article 21(1) of Decree 125 in relation to complete CKD or SKD kits, if presented to Customs as such at the time of importation, would usually be considered to have the essential character of complete goods and therefore classified as complete goods in accordance with GIR 2(a). However, Australia does not accept that goods meeting the remaining criteria in Article 21 of Decree 125 would automatically be considered to have the essential character of motor vehicles. Ultimately it would depend on exactly which parts or assemblies were included and which ones were not.

**(b) In your view, what auto part products, other than those referred to the General Notes for Chapter 87, would qualify as an "incomplete or unfinished vehicle having the essential character of a complete or finished vehicle"? Please explain by referring to specific examples.**

Australia does not consider that it is possible to provide an exhaustive list of what configurations would have the essential character of a motor vehicle. This determination needs to be made on a case-by-case basis taking into account all the relevant facts and circumstances. However, Australia is able to offer the following observations by way of illustration. There must be sufficient parts to assemble a machine that had more than two wheels connected by some sort of axle system driven by some form of motive power, and more than likely, provision for a driver. Absence of a windscreen, mirrors or bumper bars would not be fatal to a determination that a configuration has the essential character of a motor vehicle. However, absence of an engine and gearbox would be.

**13. Argentina considers it not to be "appropriate to make a parallelism between ordinary customs duties and antidumping or countervailing duties" (paragraph 20 of Argentina's written submission). It seems that Argentina makes this argument in relation to the discussion regarding "subsequent practice" under the Article II claims.**

**(b) (All other third parties) Do you agree with Argentina's statement in paragraph 20 of its written submission?**

Australia supports the thrust of Argentina's concerns. In Australia's view, provisions with respect to anti-circumvention of anti-dumping and countervailing duties are not directly applicable to tariff classification. Anti-dumping duties and countervailing duties are not ordinary customs duties within the meaning of Articles I and II of *GATT 1994*. Unlike anti-dumping and countervailing duties, ordinary customs duties are not directed at remedying injury to a Member's domestic industry. However, it does not follow from this that *EEC – Parts and Components*, which dealt with an anti-circumvention provision for anti-dumping duties, is irrelevant to this dispute. Firstly, Argentina raised its concerns in the context of China's reliance on subsequent practice as a means of interpreting its tariff schedule. On the other hand, the complainants rely on *EEC – Parts and Components* in addressing the question of whether the challenged measures are border measures or internal measures. Secondly, according to the Appellate Body in *Japan – Alcoholic Beverages II*, adopted GATT Panel Reports create legitimate expectations among WTO Members and should be taken into account.<sup>7</sup>

**14. The following argument is contained in paragraph 14 of Australia's third party oral statement, which was made in relation to China's claim that a charge imposed after the time or point of importation can still be a border charge if it relates to a condition of *liability that attached at the time of importation*:**

**Presumably, in an attempt to establish a nexus with importation, the measures at issue include a declaration made at the time of importation. However, this declaration appears to be entirely focused on the way in which the imported parts will be used internally within China, rather than on the contents of a consignment upon importation. ... Therefore ... the liability attaches internally, after the vehicle has been manufactured. (emphasis added)**

**(a) (Australia) Please elaborate more on this argument.**

According to China's first written submission importers must declare, at the time of importation, whether imported parts will be used to assemble a vehicle model that has been "deemed" a complete vehicle. The declaration is secured by the provision of a bond.

These bonding requirements appear to be solely designed to assist in the collection of a tax based on the internal use of imported parts in manufacturing. Although the bonding requirements ostensibly attach at the point of entry into China, in reality they regulate the internal use of the parts and administrative procedures necessary to attach the 25% charge. The decision of whether a particular part will be charged at the higher rate of 25% is not made at the border. It can only be made post-manufacture when it can be determined whether a particular part, in combination with other imported parts, constitutes a sufficient percentage of the completed vehicle to be charged at the higher rate. Therefore, the bonding requirements do not create a nexus between importation and the 25% charge. Contrary to China's arguments, the final charge is not a condition of importation because it does not attach to the importation of all parts as they arrive at the border. It only attaches once the parts have entered the Chinese domestic market, based on their use in car manufacturing. It is for this reason that Australia considers that the liability attaches internally, after the vehicle has been manufactured.

In any event, Australia's considers that if a WTO Member imposed a condition on the end use of an import that was not contained in its Schedule, that WTO Member would be in breach of Article II *GATT 1994*.

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<sup>7</sup> *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, p. 14.

**15. In paragraph 8 of its third party oral statement, Brazil lists *some* elements of the measures that might help the Panel to assess what Brazil calls the "taxable event", which would be relevant to the characterization of the measures:**

**(b) (*All other third parties*) Do you agree with Brazil, in particular to the non-exhaustive list of elements it listed as relevant to the characterization of the measures? Which of these elements would add or subtract from that list?**

Australia considers that Brazil's notion of the 'taxable event', together with its list of elements, might provide the Panel with a helpful analytical tool when assessing the proper characterisation of China's measures at issue. Another important consideration is the substance of the measures over their form. However, ultimately in determining between the application of Article II or III of *GATT 1994* the Panel needs to look to the ordinary meaning of the terms in these provisions accordance with the *Vienna Convention on the Law of Treaties 1969*.

**(c) (*All other third parties*) Do you think these elements could be applied in general to any situation where is necessary to determine the character of a measure.**

See response to 15(b) above.

### **III. SPECIFIC QUESTIONS TO AUSTRALIA**

**18. In paragraph 22 of its oral statement Australia states that there is a fundamental principle of the Harmonized System that when goods are classified "it is always done on the basis of the objective characteristics of the product at the time of importation, that is, as imported and presented to Customs on a shipment-by-shipment basis. The intention of the importer and differing duty rates are irrelevant".**

Some of the reasoning underlying Australian practice in relation to the Harmonised System is set out below. Australia believes that this reasoning may be of assistance in considering the various WTO obligations raised in the present dispute.

**(a) Could Australia define what it means by "objective characteristics" and if there is guidance for this in the Harmonized System?**

The "objective characteristics" that might be taken into account when identifying goods were discussed by Justice Lockhart in a decision of the Federal Court of Australia as follows:

Whether the goods [fall within a particular heading of] the customs tariff is determined by an objective test not by the intentions of the manufacturer in China or of the exporter or the importer. The test is applied at the port of entry of the goods and at the time of entry. The characteristics of the goods, their get-up, colour, decoration, labelling and packaging are all relevant considerations. In some cases a visual inspection of the goods and their packaging will disclose characteristics of the goods and enable a judgement to be made as to whether they are for therapeutic or prophylactic use. But visual inspection will not necessarily provide the answer in each case. Tests may have to be carried out and enquiries made to ascertain the relevant characteristics of the goods. In the present case samples were taken and sent for chemical analysis. As the Tribunal noted, the paucity of the information

contained in the labelling of the goods necessitated further enquiries being made in respect of them.<sup>8</sup>

**(b) Does Australia have any support or citations for the premise that Customs should only do its analysis on a shipment-by-shipment basis?**

Under Australian law identification and classification of goods is carried out at the time of importation, taking into account the condition and state of the goods at that time. The Australian Tariff Act has limited provisions allowing for goods spread over split shipments to be classified as a single shipment. According to the Full Federal Court of Australia (emphasis added):

...in determining what is the essential character of goods *it is the state or condition of the goods at the time of importation that is the determining factor* and that it is wrong to classify goods or to determine their essential character by reference to the purpose of the importer or of the purchaser. Regard must be had to the characteristics of the goods themselves, as they would present themselves to an informed observer...<sup>9</sup>

**(c) How does Australia respond to China's arguments that the decision of the Harmonized System Committee on the interpretation of GIR 2(a) specifically contemplates that national authorities may determine that parts constitute the essential character of a finished product based on multiple shipments?**

Australia considers the Harmonized System Committee's Decision relates to a good split over a number of shipments that all arrive at the same time. It does not contemplate goods that are spread over a number of different shipments all arriving at different times.

Further, Australia understands that China has adopted this approach in relation to motor vehicles only. Therefore, the question arises as to why China does not use this approach for all imports.

**19. In paragraph 24 of its oral statement Australia states that in the application of the "essential character" test, the value of the parts in relation to the value of the completed good is irrelevant. Could Australia please elaborate on why it believes the value has no relevance, providing specific legal support for its reasoning.**

Australia does not consider value to be an element of tariff classification. Nowhere in the Harmonised System or in the Australian Customs Tariff Act does it require that value be taken into account when performing the classification exercise.

Just because a complete good is missing something of low value does not mean that it still has the essential character of the complete good. For example, a collection of parts for a Central Processing Unit (CPU) of a computer would not have the essential character of a CPU if they did not include the processor, regardless of the value of the processor and whether it was worth 5% or 95% of the CPU.

In Australia's view, the value of goods or their parts has no place in an objective international trading classification system. Customs valuation is distinct from tariff classification as evidenced by

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<sup>8</sup> Chinese Food & Wine Supplies Pty Ltd v Collector of Customs (Vic) (1987) 72 ALR 591 at 599.

<sup>9</sup> Times Consultants Pty Ltd v Collector of Customs (1987) 76 ALR 313 at 327.

the existence of the *Customs Valuation Agreement*.<sup>10</sup> Values are subjective and can change according to factors such as seasons, fashion, exchange rates and fuel prices. This could lead to inconsistent classification of essentially the same goods from different sources. Under the Harmonised System, goods and their parts should be classified consistently based on what they are, not on how much they are worth.

When exploring the concept of "essential character" under GIR 2(a), Australian courts and tribunals have found that value has no relevance. Rather, they have found that the term "essential character" is concerned with the physical characteristics of the goods. The courts have used ordinary dictionary definitions to determine the meaning of "essential character".

In *Re Renault (Wholesale) Pty Ltd and Collector of Customs* Australia's Administrative Appeals Tribunal (AAT), dealing with the precursor to the current GIR 2(a), attempted to define 'essential character'. The goods requiring classification were parts for Renault and Peugeot motor cars, which were to be used to assemble complete vehicles. The only parts missing were the fanbelts of the Renaults and the gearboxes of the Peugeots. The AAT said:

The Oxford Dictionary gives a meaning to the words [essential character] as follows:

"Essential (2) of or pertaining to essence, specific being, or intrinsic nature. Differentia: - essential character: in scientific classification the marks which distinguish a species, genus, etc. from the others included with it in the next superior division."

Thus the term points to the characteristics, which distinguish the goods as belonging to a genus or a sub-genus. It is true this use of the words is ordinarily a scientific use. However, we are of the view that the term is not so limited and that it is appropriately so used in interpretative rule 2(1)(a).

The question thus arises whether the goods, though incomplete and unfinished, have a character which is sufficient to distinguish them, firstly, as belonging to the genus motor vehicles, secondly, as belonging to the sub-genus motor vehicles for the transport of persons, goods or materials of a kind operated by self-contained power and, thirdly, as belonging to the further sub-category unassembled motor vehicles of this type.

... On the evidence, we are of the view that the subject goods had the essential character of motor vehicles for the transport of persons, goods or materials of a kind operated by self-contained power, albeit unassembled motor vehicles. We are of the view that the type and quantity of work required to be done in Australia to the imported goods to form motor vehicles was consistent with the identity of the goods being unassembled motor vehicles, though unfinished vehicles. ... We are of the view that, looked at collectively, the goods were sufficiently committed to assembly into motor vehicles of the designated type and were sufficiently complete to be identified as belonging to the specified class and to no other.<sup>11</sup>

In *Re Phillips and House Group and Collector of Customs* the AAT found that it was more than the visual appearance of the goods which determined their essential character. Although the

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<sup>10</sup> *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.*

<sup>11</sup> *Re Renault (Wholesale) Pty Ltd and Collector of Customs (No 3)* (1978) 2 ALD 111 at 116.

Tribunal agreed with the definition adopted in Renault they also applied the following definition of essential character, saying:

We ... would refer also to the Random House Dictionary of the English Language where one meaning assigned to the word "essential" is "pertaining to or constituting the essence of a thing", and where the word "essential" and its synonyms "inherent" and "intrinsic" are said to refer to "that which is in the natural composition of a thing", and where "essential" is said to suggest "that which is in the very essence or constitution of a thing". It follows that we consider that the adoption of the phrase "essential character" indicates clearly that the mere visual apparent character of an article was not the concept to which the attention of the By-Law was being directed. Rather a concept of essentiality was involved, in which it is necessary to establish what the article really is.<sup>12</sup>

In the cases of *Putale* and *Zyfert*<sup>13</sup> in the Federal Court of Australia the goods requiring classification were cars which were complete except for gear boxes and engines. Sheppard J said:

... the bodies in the *Zyfert* case lack motive power. They have no engines or gearboxes. ... how can it be said, incomplete or unfinished though the vehicles may be, that they have the essential character of assembled motor vehicles? They have no motive power, which by any dictionary definition such vehicles must have ...

Both *Putale* and *Zyfert* were appealed and separate benches of the Full Federal Court of Australia upheld the decision of Sheppard J.

**20. In footnote 21 to paragraph 24, in describing the essential character of a motor vehicle, Australia cites to two Australian federal court decisions. Could Australia please provide copies of these decisions.**

Copies of these decisions attached.<sup>14</sup>

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<sup>12</sup> *Re Phillips and House Group and Collector of Customs* (1979) 2 ALD 704 at 708.

<sup>13</sup> *Putale Pty Ltd v Collector of Customs (N.S.W.)* (1982) 5 ALD 156; *Zyfert v Minister for Industry and Commerce* (1982) 5 ALD 156.

<sup>14</sup> Exhibit ALA-1 and ALA-2



### ANNEX B-3

#### RESPONSES OF BRAZIL TO QUESTIONS FROM THE PANEL

##### I. QUESTIONS TO ALL THIRD PARTIES

1. We note that in paragraph 137 of its first written submission China refers, *inter alia*, to the anti-dumping regulations of certain third parties:

(a) Do you currently have, or have you ever had, anti-circumvention measures in place for (i) anti-dumping duties and/or (ii) ordinary customs duties? If yes, please explain your measure in detail (including the citation to any legislation or regulation that govern the application of these measures) and whether it is a border or internal measure within the meaning of Articles II and III of the GATT.

(b) Are you aware of any such measures maintained by other WTO Members?

Brazil does not have any anti-circumvention measures in place for anti-dumping duties or ordinary customs duties. Brazil is not aware of any such measures maintained by other WTO Members other than those mentioned by China in its written submission.

2. Do you have significantly different tariff lines for a given "complete" product and for "parts and components" thereof? If yes, how would your customs authority assess and charge ordinary customs duties in relation to:

(a) "parts and components" that enter your territory from *multiple shipments* and are *imported by the manufacturer itself* and assembled together with domestic parts into a complete product for sale in the domestic market;

(b) "parts and components" that enter your territory from *a single shipment* and are *imported by the manufacturer itself* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

(c) "parts and components" that enter your territory from *multiple shipments* and are *imported by a part supplier/manufacturer* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

(d) "parts and components" that enter your territory from *a single shipment* and are *imported by a part supplier/manufacturer* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

Would the duty assessment and charge of the "parts and components" in each of the scenarios cited above change if these imported goods would correspond to 100% of the "parts and components" needed to assemble the "complete product"? Would your answers in respect to the scenarios cited above involving *multiple shipments* change depending on the time differences between the arrival of the shipments concerned?

Brazil has significantly different tariff lines for a given "complete" product and for "parts and components" thereof. With regard to questions (a) through (d), if shipments were declared by the

importer as containing "parts and components", the customs authority, in principle, would classify the mentioned products as "parts and components" and charge the corresponding ordinary customs duties. These imports, however, are subject to fiscal laws and other regulations enacted to hinder fraudulent declaration.

**3. In your country, when do the customs authorities make a determination as to when a collection of parts cannot and/or should not be distinguished from the complete article that they are intended to form? How does your customs office interpret "as presented" in Rule 2(a) of General Rules for the Interpretative Notes of the HS in this relation?**

As a general rule, verification of products for classification purposes and for collection of duties is made at the time that the products being imported into Brazil are presented to the customs authorities – i.e., before clearing customs.

**4. Please comment on China's statement in paragraph 160 of its first written submission and in paragraph 13 of its oral statement in relation to the WCO affirmed decision concerning Rule 2(a) of the General Interpretative Rules. In particular, please clarify the legal status of this WCO decision, including whether it is binding on the parties to the WCO.**

Brazil notes that it has not had access to China's oral statement, since it was delivered during the meeting of the parties with the Panel, at which third parties were not allowed to be present. Nor has Brazil received a copy of this statement. As a result, Brazil is not in a position to comment on China's statement.

On the basis of paragraph 160 of China's first written submission, Brazil comments as follows. Brazil understands that irrespective of the legal status of Decision HSC/16/Nov.95, or of any other Decision adopted by the Contracting Parties to the World Customs Organisation, WTO Members are bound by the obligations assumed under the WTO covered agreements, including the Schedules of Concessions.

Brazil also notes that, in *EC – Computer Equipment*, the AB stated that Explanatory Notes and decisions of the WCO may be relevant in interpreting the covered agreements. The panel in *EC – Chicken Cuts* reached a similar conclusion regarding the Explanatory Notes and General Rules of Interpretation, finding that WCO decisions can be a useful source of information on subsequent practice by WTO Members.

**5. In any event, although the Explanatory Notes, GRI and WCO decisions may be relevant to the interpretation of WTO Agreements, they are not "binding". How should Rule 2(a) be interpreted in light of the decision cited in the preceding question?**

Rule 2(a) refers to incomplete or unfinished articles that, as presented, have the essential character of the complete or finished article, whether assembled or disassembled. Decision HSC/16/Nov.95 addresses the acceptance of split consignments and the classification of goods assembled from elements originating in or arriving from different countries. Although the Decision recognizes the possibility that WCO members will accept split consignments, it does not modify or waive the "essential character" requirement articulated in Rule 2(a).

**6. Please comment on China's position that Note VII of the Explanatory Notes to Rule 2(a) of the General Interpretative Rules is relevant in delineating the boundary between complete articles and parts of those articles (paragraph 100 of China's first written submission).**

The *Explanatory Notes* clarify the meaning of the General Rules for the Interpretation of the Harmonised System. In this sense, *Note VII* may be relevant to determining the appropriate classification procedures for articles "presented unassembled or disassembled" within the meaning of Rule 2(a), the components of which shall not be subjected to any further working operation or completion into the finished state.

**7. Could different aspects of the challenged measures be respectively considered as either internal measures or border measures? In other words, could one part of the measures be a border measure while the other an internal measure? If yes, please indicate which specific part is border measure-related and which part is internal measure-related? What factors would you take into consideration to make such determination?**

In theory, different parts or sections of a given measure could be subject to different WTO obligations. The separate analysis of the specific components of a measure should not, in any case, impair the overall conclusions reached regarding the WTO consistency of the measure in light of the claims made.

A measure, or parts thereof, may be considered as a border measure or as an internal measure according to the conditions governing the application of the measure. In paragraph 8 of its third party oral statement, Brazil presented an indicative, non-exhaustive list of elements that may assist the Panel in determining whether the measures at issue are internal measures or border measures.

**9. What is the difference between a charge imposed "on ... the importation" and a charge imposed "in connection with the importation" within the meaning of Article II:1(b), second sentence, of the GATT? What is the relevance of this difference, if any, to this case?**

In Article II:1(b), the words "on" and "in" are separated by the word "or", which may be taken to infer that the words have a different meaning. However, in both cases, the imposition of a duty or charge "on ... the importation" or "in connection with the importation" of a product suggests a causal relationship between the act of importation and the collection of the duty or charge—*i.e.*, the event triggering the imposition of duties is the importation of the product.

The report of the GATT panel in *EEC – Parts and Components* (L/6657), adopted on 16 May 1990, concluded that anti-circumvention duties on finished products assembled or produced in the EEC were not levied "on or in connection with the importation" within the meaning of Article II:1(b), and consequently did not constitute customs duties within the meaning of that provision (paras. 5.4 - 5.8).

**10. With respect to the phrase "on their importation into the territory" of Article II:1(b), first sentence GATT 1994, should this be understood as a reference to the time of presentation at the border or to some later point in time? If later, should the charge assessed be determined on the basis of the condition of the products as presented at the border or on the basis of their inclusion in a finished product after entry?**

The phrase "on their importation into the territory" seems to suggest a temporal link between the act of importation and the collection of the duty or charge. Nonetheless, even if a given duty is not levied when products are presented at the time of importation, this is not necessarily dispositive of whether that duty is a "border" or "internal" measure. As Brazil observed in its oral statement, the timing of the collection of duties is one of several factors that a panel may consider when defining the nature of the "taxable event," and thus determining whether a measure falls within Article II or Article III of the GATT (Brazil oral statement, para. 8).

When duties are imposed or collected *after* importation, as a result of an assessment made "*on*" importation, the customs classification of the imported goods must be based on the condition of the goods "*on*" importation, i.e., *as presented* to the customs authorities.

**11. Do you have a formal definition of CKD and SKD in relation to your specific Schedule or, more generally, in any pertinent legislation or regulation? If yes, please provide it. If not, what is, in your opinion, the meaning of these two terms? How are CKD and SKD kits classified in your country?**

Mercosur's Common External Tariff and Nomenclature are based on the Harmonised Commodity Description and Coding System. Neither provides a formal definition of Completely Knocked Down (CKD) or Semi Knocked Down (SKD) products.

**15. In paragraph 8 of its third party oral statement, Brazil lists *some* elements of the measures that might help the Panel to assess what Brazil calls the "taxable event", which would be relevant to the characterization of the measures:**

**(a) (Brazil) You have mentioned that in examining these elements the Panel should consider them "in their appropriate context". Please elaborate on this.**

Brazil hopes that the elements listed in paragraph 8 of its third party oral statement may assist the Panel in determining what Brazil referred to as the "taxable event," or the event or events that trigger the application of the measures at issue. This analysis may be useful in determining whether the measures qualify as border or internal measures under GATT Articles II or III, respectively. As explained by Brazil, the elements referred to are not exhaustive and should not be regarded in an isolated manner. On the contrary, they should be considered as a group, taking into account all relevant facts, including the relevant Chinese legislation and WTO provisions.

## ANNEX B-4

### RESPONSES OF JAPAN TO QUESTIONS FROM THE PANEL

#### I. QUESTIONS TO ALL THIRD PARTIES

1. We note that in paragraph 137 of its first written submission China refers, *inter alia*, to the anti-dumping regulations of certain third parties:

(a) Do you currently have, or have you ever had, anti-circumvention measures in place for (i) anti-dumping duties and/or (ii) ordinary customs duties? If yes, please explain your measure in detail (including the citation to any legislation or regulation that govern the application of these measures) and whether it is a border or internal measure within the meaning of Articles II and III of the GATT.

Japan does not have or has never had any anti-circumvention measures for (i) anti-dumping duties or (ii) ordinary customs duties.

(b) Are you aware of any such measures maintained by other WTO Members?

As far as Japan understands, the US, the EC, Malaysia, Mexico, Venezuela and Iceland maintains such measures. However, Japan considers that the WTO consistency of the measures of other WTO Members is irrelevant for the purpose of this dispute.

2. Do you have significantly different tariff lines for a given "complete" product and for "parts and components" thereof?

If yes, how would your customs authority assess and charge ordinary customs duties in relation to:

(a) "parts and components" that enter your territory from *multiple shipments* and are *imported by the manufacturer itself* and assembled together with domestic parts into a complete product for sale in the domestic market;

(b) "parts and components" that enter your territory from *a single shipment* and are *imported by the manufacturer itself* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

(c) "parts and components" that enter your territory from *multiple shipments* and are *imported by a part supplier/manufacturer* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

(d) "parts and components" that enter your territory from *a single shipment* and are *imported by a part supplier/manufacturer* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

Would the duty assessment and charge of the "parts and components" in each of the scenarios cited above change if these imported goods would correspond to 100% of the "parts and components" needed to assemble the "complete product"? Would your answers in respect to the scenarios cited above involving *multiple shipments* change depending on the time differences between the arrival of the shipments concerned?

With regard to the products concerned in this case, Japan has different tariff lines for a complete product and for parts and components thereof. As stated in paragraph 31 of Japan's written submission, as a rule, Japan's customs authorities conduct an assessment of imported products at the time of customs clearance. They assess imported goods in the same manner regardless of whether those goods are imported by a manufacturer or by a part supplier/manufacturer.

With regard to scenarios (b) and (d) cited in Question 2, parts and components in a single shipment are assessed based on the criterion whether those parts and components have the essential character of a complete or finished article under the General Interpretative Rule 2(a) and its Explanatory Note VII.

With regard to scenarios (a) and (c) cited in Question 2, parts and components in multiple shipments are, as a rule, assessed at the time of customs clearance of each shipment separately.

The only cases in which parts and components arriving in multiple shipments may be treated as a single entry into Japan are limited to the imports of goods classified under Section XVI of the HS nomenclature.

For example, Regulation for Chap. XVI:2 of Tariff Nomenclature, a Notification of Director General for Customs Bureau of Japan, provides as follows;

*"[w]hen an importer makes or requests to make import declarations, in several installments, for machineries under a single contract for reasons of their transportations, subject to conditions that the consignment under the import declaration is a part of the contract concerned and has the essential character of the machinery concerned, such split consignments could be classified jointly into the subheading for the concerned machinery after the arrival of the last consignment."*

In Japan, it is not relevant for the duty assessment of parts and components whether or not those imported goods "correspond to 100% of the parts and components needed to assemble the complete product".

The time differences between the arrivals of shipments do not affect the above-mentioned manner of assessment of parts and components from multiple shipments. Japan would like to recall, however, if shipments are not presented at the same time, they will normally not be considered simultaneously and duties will be assessed separately on each individual shipment. In other words, time differences do matter.

**3. In your country, when do the customs authorities make a determination as to when a collection of parts cannot and/or should not be distinguished from the complete article that they are intended to form? How does your customs office interpret "as presented" in Rule 2(a) of General Rules for the Interpretative Notes of the HS in this relation?**

As stated in paragraph 31 of Japanese written submission, as a rule, Japan's customs authorities decides the classification of imported products at the time of customs clearance; goods imported in different consignments are classified separately in principle but jointly only in exceptional cases as mentioned in the answer to Question 2.

Japan customs authorities understands that "as presented" means as the time when objects for duty assessment are determined for purpose of Article 4 of the Customs Law of Japan, i.e. in general, the time when import declaration for respective goods is made.

**4. Please comment on China's statement in paragraph 160 of its first written submission and in paragraph 13 of its oral statement in relation to the WCO affirmed decision concerning Rule 2(a) of the General Interpretative Rules. In particular, please clarify the legal status of this WCO decision, including whether it is binding on the parties to the WCO.**

Japan considers that the decision of the WCO Harmonized System Committee, which is referred to in paragraph 160 of the Chinese first written submission is not legally binding. In general, in the light of the Appellate Body's reports in *EC - Computer Equipments* and *EC - Chicken Cuts*, they need to be considered because they may be relevant as one of the "context" and/or subsequent practices under the Vienna Convention for the purpose interpreting the WTO consistency of the concerned measures, as well as General Rules of Interpretation and Explanatory Notes.

**5. How should Rule 2(a) be interpreted in light of the decision cited in the preceding question?**

The HS Committee is silent on the application of "split consignment". China indicated that split consignment was a situation where "an importer imports in multiple shipments an item (or group of items) that is the subject of a single contract, invoice, or transaction."<sup>1</sup>

In addition, as touched upon in paragraph 32 of Japan's written submission, rules of the US and the EC on split consignments, which are referred to by China in its submission, are exceptional provisions. First, treatment as a single consignment is given at the request of an importer, and it is not unilaterally decided by customs or any other government authorities. Second, Japan understands that, under the US rules, "such split shipments must be accommodated on a single conveyance and delivered to and accepted by the carrier in the exporting country under one bill of lading or waybill."

Because of the reasons stated above, Japan considers that without the above conditions being met for "split consignments," Rule 2(a) should be interpreted that, (a)s a rule, ... customs authorities should decide the classification of the imported products at the time of customs clearance.

**6. Please comment on China's position that Note VII of the Explanatory Notes to Rule 2(a) of the General Interpretative Rules is relevant in delineating the boundary between complete articles and parts of those articles (paragraph 100 of China's first written submission).**

Based on the last paragraph of Note VII of the Explanatory Note, China insists that "a collection of parts is first classified as the total number of complete articles that can be assembled from those parts.(emphasis added)"

However, Japan understands Note VII of the Explanatory Note should be read as a whole, and not be interpreted in a selective manner. The first paragraph of the Note provides that "[f]or the purposes of this Rule, 'articles presented unassembled or disassembled' means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved."

After finding a collection of parts as "articles presented unassembled or disassembled" based on the first paragraph of the Note, the last paragraph of the same Note could be applied for the first time. In other words, the paragraph cited by China will be applied to a collection of parts without further working operation for completion into the finished state other than those provided at the first paragraph.

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<sup>1</sup> See para.156 of China's written submission.

**7. Could different aspects of the challenged measures be respectively considered as either internal measures or border measures? In other words, could one part of the measures be a border measure while the other an internal measure? If yes, please indicate which specific part is border measure-related and which part is internal measure-related? What factors would you take into consideration to make such determination?**

Japan notes that internal charges falling under Article III of the GATT are not considered to be customs duties falling under Article II, or vice versa.

**8. In your view, if the measures were to be considered as border measures, would the Panel still be required to address the complainants' claims under Article III of the GATT and Article 2 of the TRIMs Agreement?**

Japan is of the opinion that the issue, whether the concerned measures are measures under GATT Article III or not, should also be considered following TRIMs Agreement.

In this regard, Japan notes that the issue of whether the *duties* imposed under the Chinese measures are domestically categorized as customs duties and that of whether the *scheme of local content requirements* under the measures fall under the TRIMs Agreement should be examined separately. Japan would like to recall that, in *Indonesia – Autos*, the panel found that "[t]he lower duty rates are clearly 'advantages' in the meaning of the chapeau of the Illustrative List to the TRIMs Agreement". As such, the panel found that the Indonesian measures fell within the scope of the TRIMs<sup>2</sup>. In this dispute, China's measures, which consist of relevant laws and regulations as specified in panel requests, can also be considered as TRIMs when it were considered to provide advantages, lower customs duty rates of 10% only to auto parts meeting the criteria of Decree 125.

**9. What is the difference between a charge imposed "on ... the importation" and a charge imposed "in connection with the importation" within the meaning of Article II:1(b), second sentence, of the GATT? What is the relevance of this difference, if any, to this case?**

As Japan has stated in its submission, it believes that the duties imposed under the Chinese measures are internal charges under Article III:2 GATT and that the measures are internal regulations under Article III:4 GATT. Fundamentally, the issue is whether the duties or taxes at issue are triggered or conditioned by importation. Japan supports the complainants in saying that these are internal taxes as they depend, not on how the parts are presented at the time they enter the customs territory of China, but on their combination with other parts at the time vehicles are assembled within the customs territory of China. In other words, one does not reach Article II:1(b), including the language "in connection with importation" in the second part of Article II:1(b).

However, even if the Panel were to characterize the charges deriving from China's measures as customs duties, Japan believes that such duties are inconsistent with Article II GATT and that they are covered either by the first part of Article II:1(b) (duties in excess of ordinary customs duties "on their importation"), as China argues, or by the second part of the provision (other duties and charges "on or in connection with the importation").

Article II:1(b) makes a distinction between ordinary customs duties and other charges. It stipulates that goods shall not be subject to other customs duties 'on importation'. Customs duties by definition are assessed 'on importation'. Accordingly, there is no need to consider customs duties that are assessed 'in connection' with importation.

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<sup>2</sup> Panel Report, *Indonesia – Autos*, para.14.89.



In respect of the more broadly cast group of "all other duties and charges", the second part of Article II:1(b) ensures that they do not escape the discipline of scheduled concessions by covering not only charges that are assessed 'on importation', but also 'in connection with importation'. If charges 'in connection with importation' would not have been covered explicitly, one can imagine lengthy debates as to whether charges that were conditioned by importation but not assessed 'on importation' could be added to bound duties. One could think, for example, of such issues as customs warehousing requirements. A proposed 1955 amendment to the GATT would have clarified the phrase by adding an explicit reference to charges on international transfers of payments.<sup>3</sup> In other words, the term 'in connection with importation' is broader than 'on importation' to ensure full coverage of border measures and avoid a loophole for certain customs-related charges.

In sum, Japan believes that the Chinese measures violate Article III GATT. However, to the extent that the Panel decides to review the duties imposed under the measures under Article II GATT, they are covered by the first and/or second part of Article II:1(b) GATT. The broader 'in connection with the importation' language of the second part of that provision serves to ensure that no measure that results in a financial burden on imported goods in excess of that to which a WTO Member committed in its Schedule shall be imposed.

**10. With respect to the phrase "on their importation into the territory" of Article II:1(b), first sentence GATT 1994, should this be understood as a reference to the time of presentation at the border or to some later point in time? If later, should the charge assessed be determined on the basis of the condition of the products as presented at the border or on the basis of their inclusion in a finished product after entry?**

As a rule, customs authorities need to decide the classification of imported products at the time of customs clearance<sup>4</sup> for the purpose of appropriate imposition of customs duties; therefore it is reasonable to understand that the phrase "on their importation into the territory" of Article II:1(b) is a reference to the time of presentation at the border.

In this regard, China asserts that customs practices of several countries demonstrate that "Article II is not limited to charges that are collected 'on or at the time of importation.'"<sup>5</sup> It is important to note, however, that the practices of other countries are inherently different from the Chinese measures concerned. Although Japan is not in a position to evaluate the measures of other countries it notes, for example, as a matter of facts that Japan is aware that Australia allows its customs office to reexamine the duty amount, only when "any duty has been short levied or erroneously refunded." Also in New Zealand, the customs office can amend the assessment, only in case "the entry or any declaration made in relation to the goods was fraudulent or willfully misleading."

**11. Do you have a formal definition of CKD and SKD in relation to your specific Schedule or, more generally, in any pertinent legislation or regulation? If yes, please provide it. If not, what is, in your opinion, the meaning of these two terms? How are CKD and SKD kits classified in your country?**

Japan does not have any specific tariff lines for or the formal definitions of CKD or SKD. With regard to our views on the meanings of CKD and SKD, Japan reiterates that WTO members should fully respect GIR 2(a). This means that, for example, if imported parts "as presented" possess the "essential character" of auto parts such as "chassis fitted with engine" and not that of complete

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<sup>3</sup> See Jackson, *World Trade and the Law of GATT* (1969), p. 209.

<sup>4</sup> See para. 31 of Japan's written submission.

<sup>5</sup> See para. 64 and below of China's written submission.

vehicles, they should be considered as auto parts covered by heading 8706. Once such imported parts are classified as auto parts, it is not appropriate to reclassify the parts as complete vehicles covered by HS 8702-04 retrospectively just because such auto parts are assembled into a complete vehicle later.

**12. (All parties)** The European Communities explains in paragraph 262 of its first written submission that a situation foreseen under Article 21(2)(a) of Decree 125, namely importation of both an engine assembly and a body assembly together, is far away from the categories foreseen by the Chinese tariff schedule examined in the light of the general Explanatory Notes for Chapter 87 whereby an incomplete or unfinished vehicle may be classified as the corresponding complete or finished vehicle provided it has the essential character of the latter.

**(a)** Do you consider that the two examples of incomplete or unfinished vehicles in the General Notes for Chapter 87 correspond to any of the criteria set out in Article 21 of Decree 125?; and

In order to fulfill essential character of motor vehicles, any combinations of imported auto parts which are deemed to be complete vehicles under Article 21 of the Decree 125 still requires considerable assembling work by hiring skilled labor forces and introducing facilities with depreciable assets which are designed for the local production in China. Japan, therefore, considers that *any of the criteria set out in Article 21 of Decree 125 does not correspond to the conditions of incomplete or unfinished vehicles in the General Notes for Chapter 87.*

**(b)** In your view, what auto part products, other than those referred to the General Notes for Chapter 87, would qualify as an "incomplete or unfinished vehicle having the *essential character* of a complete or finished vehicle"? Please explain by referring to specific examples.

Japan notes that it was discussed, in *Indonesia – Autos*<sup>6</sup>, that an "incomplete or unfinished vehicle having the *essential character* of a complete or finished vehicle" should contain "almost all" the parts and components necessary for assembling the car.

**13.** Argentina considers it not to be "appropriate to make a parallelism between ordinary customs duties and antidumping or countervailing duties" (paragraph 20 of Argentina's written submission). It seems that Argentina makes this argument in relation to the discussion regarding "subsequent practice" under the Article II claims.

**(b) (All other third parties)** Do you agree with Argentina's statement in paragraph 20 of its written submission?

In Japan's view, the antidumping/countervailing duty measures referred to are not relevant as the WTO consistency of those measures themselves is not undisputed.

**14.** The following argument is contained in paragraph 14 of Australia's third party oral statement, which was made in relation to China's claim that a charge imposed after the time or point of importation can still be a border charge if it relates to a condition of *liability that attached at the time of importation*:

Presumably, in an attempt to establish a nexus with importation, the measures at issue include a declaration made at the time of importation. However, this declaration appears to be entirely focused on the way in which the imported parts will be used internally within China, rather than on the contents of a consignment upon importation.

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<sup>6</sup> WT/DS54, 55, 59, 64 at para. 14.195.

**... Therefore ... the liability attaches internally, after the vehicle has been manufactured. (emphasis added)**

**(b) (All other third parties) Do you agree with Australia?**

Japan agrees with Australia and considers that the timing of the declaration does not demonstrate that the duties imposed under the measures are customs duties, and not internal charges. It is important to note that the challenged measures require a declaration on the content of a completed auto vehicle after it is manufactured in China, not on the contents of a particular consignment upon importation.<sup>7</sup>

**15. In paragraph 8 of its third party oral statement, Brazil lists *some* elements of the measures that might help the Panel to assess what Brazil calls the "taxable event", which would be relevant to the characterization of the measures:**

**(b) (All other third parties) Do you agree with Brazil, in particular to the non-exhaustive list of elements it listed as relevant to the characterization of the measures? Which of these elements would add or subtract from that list?**

Japan agrees with Brazil in that whether a charge in question is subject to Article II:1(b) or Article III:2 should be examined based on a non-exhaustive list, subject to the following considerations.

It is worth recalling that, although all the criteria enumerated by Brazil may seem to relate to "customs practices" for domestic regulatory or administrative purposes, domestic practices are not determinative as to whether charges imposed under a measure are covered by Article II or Article III of GATT.<sup>8</sup> The GATT Panel in *EEC – Parts and Components* expressed its concern that if the description or categorization of a charge under domestic law were relevant to whether the charge is covered by Article III of GATT, a Member could in particular impose charges on products after importation simply by assigning the collection of these charges to the customs administration and allocating the revenue generated to their customs revenue<sup>9</sup>.

Therefore, Japan considers that it is important to consider factors which are not determined by the choice of Members, such as the timing of the assessment of the amounts of the duties. In the present case, a duty imposed on an imported part is assessed following assembly and production, rather than directly upon importation.<sup>10</sup> The final duties imposed on imported parts are assessed only after their assembly into complete automobiles and this fact shows that the measures concerned should be categorized as internal regulations.

**(c) (All other third parties) Do you think these elements could be applied in general to any situation where is necessary to determine the character of a measure?**

These elements may be applied when the above stated points are kept in mind. In addition, Japan considers that depending on the nature of a particular case, the relative weight of each of these elements could be different from case to case. Thus, not only the mere fact that some action is required at the time of importation, but also substantive roles/meaning of each action in the entire administration of the measures concerned should be examined.

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<sup>7</sup> See para. 16 of Japan's written submission, “

<sup>8</sup> See paras. 8 of Japan's oral statement.

<sup>9</sup> See GATT Panel Report, *EEC – Parts and Components*, para. 5.7

<sup>10</sup> See para. 11 of Japanese submission.

As pointed out by Australia, China attempts to establish a nexus with importation, by showing that "the measure at issue includes a declaration made at the time of importation."<sup>11</sup> However, if one reviews the procedure established by Decree 125 in their entirety, it becomes clear that the declaration made at the time of importation is but an administrative formality. What really matters is the Chinese authorities' evaluation of the domestic manufacturing process within China of the foreign-owned car manufacturers. This evaluation does not depend on who imports the parts (e.g., the manufacturer or an independent importer), or on how these parts are presented at the border.

#### **IV. SPECIFIC QUESTIONS TO JAPAN**

**21. China has asserted in this dispute that the charges are imposed after the parts have conditionally entered (instead of unconditionally entered) in its territory to support its claim that they are ordinary customs duties. Please elaborate on your statement that the challenged measures fall under Article III of the GATT because they are not imposed conditional "merely" on importation of the parts (paragraph 10 of Japan's written submission).**

In paragraph 68 of China's first written submission, China asserts that "the challenged measures are border measures within the scope of Article II," because "(t)hey impose a condition upon the entry of auto parts and components into the customs territory of China, based upon a prior determination that the parts and components form part of a larger collection of imported parts and components having the essential character of a motor vehicle."

Japan considers that, however, under the Chinese measures, the charges are not imposed conditional "merely" on importation of the parts but rather conditional on factors unrelated to importation of the parts because of the following reasons. Article 28 of Decree 125 provides that "(a)n automobile manufacturer shall declare duty payments to the customs after imported automobile parts are assembled into complete vehicles." (emphasis added) In other words, under Decree 125, the duty on a part is assessed and imposed following assembly and production, rather than directly upon importation. As clearly stated in Articles 21 and 22 of Decree 125, if the imported parts are incorporated in a car which is not deemed to have sufficient local contents, the imported parts will be subject to customs duties that are normally payable on a imported complete vehicle. Therefore, Japan considers that charges in question are not imposed upon the importation under the measures concerned and subject to Article III:2 of GATT.

**22. Please elaborate on your statement that "the fact that the measures require some action at the time of importation does not mean that they are border measures". (paragraph 16 of Japan's written submission, emphasis added).**

In paragraphs 45 and below of China's first written submission, China enumerates three reasons why it believes its measures should be classified as border measures as follows; (a) the importers are required to make declarations at the time of importation, (b) auto parts that enter China pursuant to such a declaration remain in a bonded status, and (c) the measures are administered by the Customs Administrations of China.

China enumerates these actions and attempts to argue that when something is domestically categorized as a customs rule, the imposition of charges under the rule should be considered to be covered by Article II. However, the fact that a WTO Member treats certain measures as "customs practices" for its domestic regulatory or administrative purposes does not have a bearing on the issue of whether the measures are within the scope of Article II or Article III of the GATT. In addition, when reviewing the administration of the Chinese measures in their entirety, it becomes clear that the

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<sup>11</sup> See, para. 14 of Australian oral statement.

actions taken at the time of importation are relatively unimportant compared to the assessment by the Chinese authorities of the manufacturing process within China by foreign-owned car manufacturers. This assessment is key, and triggers the application of a higher or lower duty or tax (corresponding with incomplete vehicle or with parts). See also above answer to question 15(c).

**23. Please elaborate on your statement in paragraph 41 of your written submission, in particular on the issue of how much value is added to the assembling process of CKD or SKD kits. How is your answer relevant to the question of whether certain imported parts and components have the "essential character" of a complete product pursuant to Rule 2(a) of the General Rules for the Interpretation of the HS?**

As stated in paragraph 41 of Japan's written submission, since cars have become extremely complex objects, when SKD and CKD kits are assembled, this regularly involves more than screwing some parts together including a variety of steps, ranging from painting to testing of complicated electronics. With regard to the question on the relation with the "essential character," Japan notes that it was discussed in *Indonesia – Autos* that CKD kits including "almost all" the parts and components necessary for assembling the cars had "characteristics closely resembling those of a completed car, which had clearly the "essential character" of a complete vehicle.

**24. Paragraph 9 of the oral statement of Japan indicates that "the test concerning Article II and III is an autonomous test the outcome of which is not determined by the choice of Members to treat the measures as "customs measures" or "internal regulations" for domestic administrative or regulatory purposes." Which components are considered relevant for this test? In this respect, in your view, are the elements provided by Brazil in paragraph 8 of its oral submission helpful and/or comprehensive?**

Please see the Japan's answer to Question 15 (b).

## ANNEX B-5<sup>1</sup>

### RESPONSES OF MEXICO TO QUESTIONS FROM THE PANEL

#### I. QUESTIONS TO ALL THIRD PARTIES

1. We note that in paragraph 137 of its first written submission China refers, *inter alia*, to the anti-dumping regulations of certain third parties:

(a) Do you currently have, or have you ever had, anti-circumvention measures in place for (i) anti-dumping duties and/or (ii) ordinary customs duties? If yes, please explain your measure in detail (including the citation to any legislation or regulation that govern the application of these measures) and whether it is a border or internal measure within the meaning of Articles II and III of the GATT.

(i) The following anti-circumvention measures for anti-dumping duties are currently in force in Mexico:

- Imports of grade 55 high fructose corn syrup (HFCS):<sup>2</sup> The investigating authority concluded that the importation of grade 90 HFCS (enriched HFCS) constituted a circumvention of payment of countervailing duties, since this type of HFCS was a concentrated version of the HFCS that was subject to countervailing duties (HFCS 42 and HFCS 55). Following an analysis of the production processes, the investigating authority concluded that by importing enriched HFCS and then diluting it in the national territory, certain companies were circumventing the payment of the countervailing duty imposed on HFCS 42 and HFCS 55.
- Imports of technical grade methyl parathion:<sup>3</sup> The investigating authority concluded that imports of a type of methyl parathion classified under a separate tariff heading (3808.10.99) were circumventing the countervailing duties imposed on the type of methyl parathion subject to countervailing duties (2920.10.02), since both types of methyl parathion were in reality the same product. This was based on an analysis of the chemical composition of the two products which revealed that they both contained the same principal component O, O-dimethyl-O-(4-nitrophenyl)-phosphorothioate. Consequently, the obligation to pay countervailing duties extended to the other type of methyl parathion.

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<sup>1</sup> Annex B-5 contains comments by Mexico to questions posed by the Panel after the first substantive meeting. This text was originally submitted in Spanish by Mexico.

<sup>2</sup> Final resolution of the investigation of circumvention of the payment of countervailing duties imposed on imports of grade 55 high fructose corn syrup (merchandise classified under tariff heading 1702.60.01 of the General Import Tax Law) exported from the United States, irrespective of the country of provenance, published in the *Diario Oficial de la Federación* (Official Journal) of 8 September 1998.

<sup>3</sup> Final resolution of the investigation of circumvention of payment of the final countervailing duty on imports of technical grade methyl parathion (merchandise classified under tariff heading 2920.10.02 of the General Import Tax Law) exported from the People's Republic of China, irrespective of the country of provenance, published in the *Diario Oficial de la Federación* (Official Journal) of 18 January 1999.

- Imports of cuts of bovine meat, boneless and with bone in:<sup>4</sup> The investigating authority concluded that there was a trading company that exported to Mexico bovine meat produced by enterprises that were subject to countervailing duties. The investigating authority determined that the bovine meat imported by that trading company would be exempted from payment of countervailing duties only where the bovine meat had been produced by enterprises that did not engage in dumping under the original anti-dumping resolution.

The three cited anti-circumvention measures were issued in conformity with the Foreign Trade Act that was in force from 1993 to 2003. In particular, Article 71 of that Act stated that:

"In cases where parts or components are introduced into the national territory for the purpose of assembly on that territory of goods subject to provisional or final duties with a view to eluding payment of such duties, the duty in question shall be imposed on the importation of the said parts or components. The same rule shall apply to cases where parts or components are assembled in a third country and the finished product is introduced into the national territory, or to the exportation of products having relatively slight physical differences in comparison with those subject to provisional or final countervailing duties."

The current provision governing circumvention is Article 89B of the Foreign Trade Act as amended (see the *Diario Oficial de la Federación* of 13 March 2003):

"ARTICLE 89B – The following are deemed to constitute circumvention of countervailing duties or safeguard measures:

- I. Introduction into the national territory of inputs, parts or components for production or assembly of a product subject to a countervailing duty or safeguard measure;
- II. Introduction into the national territory of goods subject to a countervailing duty or safeguard measure that contain inputs, parts or components integrated or assembled in a third country;
- III. Introduction into the national territory of goods from the same country of origin as the product subject to a countervailing duty or safeguard measure that have relatively slight differences from the product in question;
- IV. Introduction into the national territory of goods subject to a countervailing duty or safeguard measure and imported at a rate lower than the applicable duty or measure; or
- V. Any other action resulting in failure to pay the countervailing duty or safeguard measure.

Goods imported under such conditions shall be subject to payment of the countervailing duty or to the corresponding safeguard measure. Circumvention of provisional or final countervailing duties or safeguard measures shall be determined through proceedings initiated ex officio or at the request of an interested party."

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<sup>4</sup> Final resolution of the investigation of the circumvention of payment of countervailing duties on imports of cuts of bovine meat, boneless and with bone in (merchandise classified under tariff headings 0201.20.99, 0202.20.99, 0201.30.01, 0202.30.01 of the General Import Tax Law) exported from the United States, regardless of the country of provenance, published in the *Diario Oficial de la Federación* (Official Journal) of 22 May 2001.

The three above-mentioned anti-circumvention measures are deemed to be border measures, not internal measures.

(ii) Mexico does not have any anti-circumvention measures for customs duties.

**(b) Are you aware of any such measures maintained by other WTO Members?**

No.

**2. Do you have significantly different tariff lines for a given "complete" product and for "parts and components" thereof? If yes, how would your customs authority assess and charge ordinary customs duties in relation to:**

(a) "Parts and components" that enter your territory from *multiple shipments* and are *imported by the manufacturer itself* and assembled together with domestic parts into a complete product for sale in the domestic market;

(b) "parts and components" that enter your territory from a *single shipment* and are *imported by the manufacturer itself* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

(c) "parts and components" that enter your territory from *multiple shipments* and are *imported by a part supplier/manufacturer* and assembled together with domestic parts into a "complete product" for sale in the domestic market;

(d) "parts and components" that enter your territory from a *single shipment* and are *imported by a part supplier/manufacturer* and assembled together with domestic parts into a "complete product" for sale in the domestic market.

Would the duty assessment and charge of the "parts and components" in each of the scenarios cited above change if these imported goods would correspond to 100 per cent of the "parts and components" needed to assemble the "complete product"? Would your answers in respect to the scenarios cited above involving *multiple shipments* change depending on the time differences between the arrival of the shipments concerned?

In accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, which are mandatory in Mexico by virtue of their publication in the Diario Oficial de la Federación of 6 March 2006, if the product imported has the essential character of the vehicle, i.e. the driveline (made up of the chassis, engine, steering, axel, suspension and breaks), then it is subject to the tariff for a complete vehicle and not the tariff applied to parts and/or components thereof, regardless of whether the autoparts in question arrive in multiple shipments or in a single shipment.

**3. In your country, when do the customs authorities make a determination as to when a collection of parts cannot and/or should not be distinguished from the complete article that they are intended to form? How does your customs office interpret "as presented" in Rule 2(a) of General Rules for the Interpretative Notes of the HS in this relation?**



This question is related to the previous one, in that the importation of the essential part of the vehicle (driveline) is considered tantamount to importing the complete vehicle (see interpretation of Mexico).

**4. Please comment on China's statement in paragraph 160 of its first written submission and in paragraph 13 of its oral statement in relation to the WCO affirmed decision concerning Rule 2(a) of the General Interpretative Rules. In particular, please clarify the legal status of this WCO decision, including whether it is binding on the parties to the WCO.**

Mexico declines to take a position on this question.

**5. How should Rule 2(a) be interpreted in light of the decision cited in the preceding question?**

Mexico declines to take a position on this question.

**6. Please comment on China's position that *Note VII of the Explanatory Notes* to Rule 2(a) of the General Interpretative Rules is relevant in delineating the boundary between complete articles and parts of those articles (paragraph 100 of China's first written submission).**

Mexico declines to take a position on this question.

**7. Could different aspects of the challenged measures be respectively considered as either internal measures or border measures? In other words, could one part of the measures be a border measure while the other an internal measure? If yes, please indicate which specific part is border measure-related and which part is internal measure-related? What factors would you take into consideration to make such determination?**

Mexico declines to take a position on this question.

**8. In your view, if the measures were to be considered as border measures, would the Panel still be required to address the complainants' claims under Article III of the GATT and Article 2 of the TRIMs Agreement?**

Mexico declines to take a position on this question.

**9. What is the difference between a charge imposed "on ... the importation" and a charge imposed "in connection with the importation" within the meaning of Article II:1(b), second sentence, of the GATT? What is the relevance of this difference, if any, to this case?**

Mexico declines to take a position on this question.

**10. With respect to the phrase "on their importation into the territory" of Article II:1(b), first sentence GATT 1994, should this be understood as a reference to the time of presentation at the border or to some later point in time? If later, should the charge assessed be determined on the basis of the condition of the products as presented at the border or on the basis of their inclusion in a finished product after entry?**

Mexico declines to take a position on this question.

12. *(All parties)* The European Communities explains in paragraph 262 of its first written submission that a situation foreseen under Article 21(2)(a) of Decree 125, namely importation of both an engine assembly and a body assembly together, is far away from the categories foreseen by the Chinese tariff schedule examined in the light of the general Explanatory Notes for Chapter 87 whereby an incomplete or unfinished vehicle may be classified as the corresponding complete or finished vehicle provided it has the essential character of the latter.

(a) Do you consider that the two examples of incomplete or unfinished vehicles in the General Notes for Chapter 87 correspond to any of the criteria set out in Article 21 of Decree 125?; and

(b) in your view, what auto part products, other than those referred to the General Notes for Chapter 87, would qualify as an "incomplete or unfinished vehicle having the *essential character* of a complete or finished vehicle"? Please explain by referring to specific examples.

Mexico declines to take a position on this question.

13. Argentina considers it not to be "appropriate to make a parallelism between ordinary customs duties and antidumping or countervailing duties" (paragraph 20 of Argentina's written submission). It seems that Argentina makes this argument in relation to the discussion regarding "subsequent practice" under the Article II claims.

(a) *(Argentina)* Given your above statement, do you see any usefulness in the findings of the GATT Panel decision in *EEC – Parts and Components*, cited by the parties in their written submission, to the question of the characterization of the measures?

(b) *(All other third parties)* Do you agree with Argentina's statement in paragraph 20 of its written submission?

Mexico declines to take a position on this question.

14. The following argument is contained in paragraph 14 of Australia's third party oral statement, which was made in relation to China's claim that a charge imposed after the time or point of importation can still be a border charge if it relates to a condition of liability that attached at the time of importation:

Presumably, in an attempt to establish a nexus with importation, the measures at issue include a declaration made at the time of importation. However, this declaration appears to be entirely focused on the way in which the imported parts will be used internally within China, rather than on the contents of a consignment upon importation. ... Therefore ... the *liability attaches internally*, after the vehicle has been manufactured. (emphasis added)

(b) *(All other third parties)* Do you agree with Australia?

Mexico declines to take a position on this question.

15. In paragraph 8 of its third party oral statement, Brazil lists *some* elements of the measures that might help the Panel to assess what Brazil calls the "taxable event", which would be relevant to the characterization of the measures:

- (a) **(Brazil)** You have mentioned that in examining these elements the Panel should consider them "in their appropriate context". Please elaborate on this.
- (b) **(All other third parties)** Do you agree with Brazil, in particular to the non-exhaustive list of elements it listed as relevant to the characterization of the measures? Which of these elements would add or subtract from that list?
- (c) **(All other third parties)** Do you think these elements could be applied in general to any situation where it is necessary to determine the character of a measure.

Mexico declines to take a position on this question.

## **V. SPECIFIC QUESTIONS TO MEXICO**

**25. In paragraph 137 of its first written submission China refers, *inter alia*, to Mexico's anti-circumvention measures in respect of anti-dumping and countervailing duties. Can Mexico confirm whether these measures are still in place and elaborate upon these and point in particular to the elements which distinguish them from the Chinese measures in question.**

**Are you aware of any such practice maintained by any other WTO Members?**

The document to which China refers is Mexico's notification of the amendments to the Foreign Trade Act submitted on 11 April 2003 to the Committees on Anti-Dumping Practices, on Subsidies and Countervailing measures, and on Safeguards. The notified amendments are still in place. With regard to the circumvention of countervailing measures, Article 89B states the following:

"ARTICLE 89B – The following are deemed to constitute circumvention of countervailing duties or safeguard measures:

- I. Introduction into the national territory of inputs, parts or components for production or assembly of a product subject to a countervailing duty or safeguard measure;
- II. Introduction into the national territory of goods subject to a countervailing duty or safeguard measure that contain inputs, parts or components integrated or assembled in a third country;
- III. Introduction into the national territory of goods from the same country of origin as the product subject to a countervailing duty or safeguard measure that have relatively slight differences from the product in question;
- IV. Introduction into the national territory of goods subject to a countervailing duty or safeguard measure and imported at a rate lower than the applicable duty or measure; or
- V. Any other action resulting in failure to pay the countervailing duty or safeguard measure.

Goods imported under such conditions shall be subject to payment of the countervailing duty or to the corresponding safeguard measure. Circumvention of provisional or final countervailing duties or safeguard measures shall be determined through proceedings initiated ex officio or at the request of an interested party."

**26. The Panel notes Mexico's statement in paragraph 3 of its written submission that the challenged measures violate, *inter alia*, the SCM Agreement. However, unlike the claims under**

**GATT, TRIMs and the Accession Protocol of China, Mexico does not elaborate on its arguments in relation to the SCM claims. Could Mexico please elaborate on its assertion that the measures violate the SCM Agreement?**

Mexico agrees with the arguments put forward by the United States<sup>5</sup> and the European Communities<sup>6</sup> that China's measures constitute a prohibited subsidy under Article 3.1(b) of the Agreement on Subsidies and Countervailing measures (SCM Agreement).

The measures adopted by China meet both of the conditions set forth in the definition of a subsidy in Article I of the SCM Agreement: (i) financial contribution; (ii) benefit.

The financial contribution in the case at issue fits the conditions set forth in Article 1.1(a)(1)(ii) of the SCM Agreement, according to which a financial contribution exists when government revenue that is otherwise due is foregone. By providing for the collection of a 25 per cent charge on domestic auto parts and a 10 per cent charge on imported auto parts, the measures in question effectively forego collection of the difference between the two charges, and this amounts to a financial contribution.

Foregoing government revenue clearly provides the recipient with a benefit, since it places the recipient in a better position than it would have had if the financial contribution had not existed.

According to Article 3.1(b) of the SCM Agreement, this subsidy is deemed to be prohibited in that it is contingent upon the use of domestic over imported goods. Similarly, since this subsidy is a prohibited subsidy, it is also deemed to be specific under Article 2.3 of the SCM Agreement.

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<sup>5</sup> First written submission of the United States, paragraphs 122-126.

<sup>6</sup> First written submission of the European Communities, paragraphs 282-299.

**ANNEX C**

**CORRESPONDENCE BETWEEN THE PANEL AND THE  
WORLD CUSTOMS ORGANISATION**

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## ANNEX C-1

### LETTER DATED 7 JUNE 2007 FROM THE PANEL TO THE SECRETARIAT OF THE WORLD'S CUSTOMS ORGANISATION

At its meeting of 26 October 2006, the WTO Dispute Settlement Body established the Panel on *China – Measures Affecting Imports of Automobile Parts* pursuant to requests by the European Communities in document WT/DS339/8, the United States in document WT/DS340/8, and Canada in document WT/DS342/8 (please see attached documents), in accordance with Article 9 of the Dispute Settlement Understanding. On 27 January 2007, a Panel was composed to examine this complaint (please see the attached document with the triple symbol WT/DS339/9, WTDS340/9, and WT/DS342/9).

In these proceedings, issues relating to the Harmonised System, in particular tariff headings 8702, 8703, and 8704 of Chapter 87, have been raised in connection with the interpretation of China's tariff Schedule under the GATT 1994. Given that the WCO is responsible for the administration of the Harmonized System, the purpose of this letter is to request, on behalf of the Panel, the assistance of the WCO in the form of any factual information available to it with respect to the relevance and application of General Interpretative Rule 2(a) and the Harmonized System Committee Decision on the Interpretation of General Interpretative Rule 2(a) in interpreting the tariff headings in question.

The specific questions regarding which the Panel would like to seek the assistance from the WCO at this stage are as follows:

1. **Rule 2(a) of the General Rules for the Interpretation of the HS:**

- Rule 2(a) states, *inter alia*, that "[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article." What does "*as presented*" mean as referred to in Rule 2(a)?;
- How should Rule 2(a) be interpreted in light of the below referenced Harmonized System Committee Decision on the Interpretation of General Interpretative Rule 2(a)?;
- Is Rule 2(a), including its Explanatory Notes, relevant in delineating the boundary between complete products and parts of those products for tariff classification purposes?;
- How should Rule 1 and Rule 2(a) be applied to the interpretation of Chapter 87 of the HS?
- Article II of the GATT 1994, obligates WTO Members to apply tariffs to imported goods of other Members in accordance with the terms and conditions contained in their tariff Schedules. In light of this, can a Member's application of General Interpretative Rule 2(a) in interpreting their tariff Schedules coexist with this obligation under the GATT 1994? Assuming so, how much flexibility does a Member have in applying the principles of Rule 2(a)?
- Under the measure at issue in this case, China treats the following combinations of auto parts, whether shipped together or separately, as complete vehicles:

- (1) Complete Knocked-Down ("CKD") or Semi Knocked-Down ("SKD") kits imported for assembling vehicles;
- (2) certain combinations of assemblies (i.e. 8 assemblies are distinguished: body, engine, transmission, driving axle, driven axle (non-drive axle), frame, steering system and braking systems) imported for assembling vehicles:
  - (a) Body + Engine;
  - (b) Body *or* Engine + at least 3 other imported Assemblies; and
  - (c) No less than 5 imported Assemblies other than the Body or Engine; *or*
- (3) the total price of imported parts account for at least 60% of the total price of a complete vehicle of that vehicle model.

In your view, are the criteria listed above, which are used for classifying parts of a product as a complete product, consistent with General Interpretative Rule 2(a) and within the scope of discretion permitted to national authorities?

2. **Harmonized System Committee Decision on the Interpretation of General Interpretative Rule 2(a) (HCS/16/Nov. 95, Annex IJ/7 To Doc. 39.600E):**

- What is the current legal status of this WCO decision? Is the decision binding on the parties to the WCO and has there been any subsequent discussions relating to or modifications to the decision?;
- Paragraph 10 of this WCO decision refers to the questions of "split consignments" and "the classification of goods assembled from elements originating in or arriving from different country". What do these phrases mean and are there any differences between these two situations?;
- Paragraph 11 of this WCO decision refers to an additional study on the interpretation of General Interpretative Rule 2(a) to be undertaken by the WCO Secretariat. It also instructs the Secretariat to prepare a draft Explanatory Note. Could you please clarify whether there has been any developments in this respect; and
- In paragraph 12 of this WCO decision, Administrations were invited to send comments. Have there been any developments in this respect?

3. **General Classification Practices:**

- Is it a common practice for customs authorities to impose tariff duties based on the determination that separate parts of a product constitute the complete product?; and
- If so, is there a common practice among national customs authorities regarding what point in time a determination is made whether the parts of a product constitute the complete product for tariff classification purposes? In other words, do national customs authorities make such determinations beyond the point of importation (i.e. at the border) and/or after the parts are assembled into a complete product within the importing country?

4. **Auto Parts:**

- With respect to CKD and SKD kits, is there any difference between "manufacturing" and "assembling"? If so, what is the difference and how is such difference relevant to understanding General Interpretative Rule 2(a)?; and
- What degree of fitting or equipping of auto parts do you consider as necessary for such parts to be classified as complete vehicles within the meaning of the General Notes for Chapter 87?

The Panel would like to thank you in advance for your cooperation and assistance in this important matter. The information provided by the WCO will be of utmost assistance to the Panel in coming to a positive solution to the dispute between the parties. It would be greatly appreciated if the information requested in this letter could be made available by 26 June 2007.



## ANNEX C-2

### LETTER DATED 20 JUNE 2007 FROM THE SECRETARIAT OF THE WORLD CUSTOMS ORGANISATION TO THE PANEL

I am pleased to respond to your inquiry of 7 June 2007, in which you requested technical advice regarding certain issues before Dispute Settlement Panel DS339/340/342. The focus of your inquiry is General Interpretative Rule (GIR) 2 (a) of the Harmonized System and its impact on the specific dispute at hand.

As requested, please find attached to this letter the Secretariat's response to the raised questions. Should you have any further questions or wish to obtain additional information, please do not hesitate to contact me.

The following information is provided in the sequence of your letter of 7 June 2007.

#### **"Rule 2 (a) of the General Rules for the Interpretation of the HS"**

1. *Interpretation of "as presented"* : Firstly, I should explain that the HS was developed from the Customs Co-operation Council Nomenclature (CCCN) and that General Interpretative Rule 2 (a) to that previous nomenclature used the term "imported" in the English version. This GIR formed the basis for GIR 2 (a) of the HS.

When the HS was developed, the word "imported" in the CCCN was replaced with "presented" in the English version of the HS. The French version of the CCCN already used the word "présenté", and was not modified. The change was originally intended for a proposed Rule covering goods shipped with their accessories, and the change was considered to be a modification that "would align the two versions of the Rule and, at the same time, make it applicable to exported articles if necessary" (Annex F/2 to Doc. 25.300E (NC/42/Apr. 79)). Although that proposed Rule did not become part of the HS, the Nomenclature Committee (the Committee established under the CCCN Convention) noticed that the misalignment also existed in General Interpretative Rule 2 (a), and decided to replace "imported" with "presented" throughout the English versions of the Nomenclature and Explanatory Notes, aligning it on the French word "présenté".

In this context, I would like to remind you that, unlike the CCCN, which was a Nomenclature for the classification of goods in Customs Tariffs, the HS is used as a basis for Customs tariff and statistical nomenclatures. The latter is emphasized in Article 3.1.b of the HS Convention, which stipulates that "Contracting Parties shall make publicly available its import and export trade statistics in conformity with the six-digit codes of the HS". Consequently, it appears that the term "imported" would not have been appropriate for the application of the HS.

Returning to your question regarding the interpretation of the expression, "as presented", the Committee has not considered its meaning except in the context of the issue of split consignments, which I will discuss below in response to your specific question on that matter.

That being said, in the view of the Secretariat, the term "as presented" could be understood to mean the moment at which the goods are presented to Customs or other officials with a view to classifying the goods concerned in the Customs tariff or in the trade statistics nomenclatures. However, the HS is silent on this point and the HSC has not considered any related modifications to the HS; your organisation may wish to raise the issue before the Committee for consideration.

2. *HSC Decision on interpretation of GIR 2 (a)* : You refer to Annex IJ/7 to Doc. 39.600E, the Report of the 16<sup>th</sup> Session of the Harmonized System Committee (Nov. 1995). During that Session, the Committee discussed some of the standards to be applied to the classification of unassembled or disassembled goods pursuant to GIR 2 (a). The focus of the Committee's consideration was the nature of the individual parts that could compose unassembled or disassembled articles that would be eligible for classification as entities under GIR 2 (a). The Committee decided that the GIR would be applicable only to kits or other collections of parts that could be combined into the finished article by means of simple assembly operations, and would not be applicable to parts that required further working or forming. This principle was embodied in the Explanatory Note to GIR 2 (a), which states on page GIR-2, in paragraph (VII),

For the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.

The Committee also reaffirmed the October 1963 decision of the former Nomenclature Committee (reported in paragraph 81 of Doc. 11.000) that, "the question of split consignments and the classification of goods assembled from elements originating in or arriving from different countries are matters to be settled by each country in accordance with its own national regulations." In the Secretariat's experience -- based on informal classification inquiries from customs administrations over the years -- national regulations and laws appear to differ with respect to the applicability of GIR 2 (a) to split consignments. Your organisation may wish to suggest that the HSC charge the Secretariat with further research on this issue, including possibly an informal survey of administrations regarding their application of GIR 2 (a) for split consignments. I would, however, expect that those administrations which permit such consolidation of entries would consider requests for that treatment on a case by case basis, applying standards set forth in national laws and regulations.

3. *Relevance of GIR 2 (a) in determining the boundary between complete products and parts of those products for tariff classification purposes* : I believe that your question focuses on the meaning of the clause, "the article has the essential character of the complete or finished article" as it appears in GIR 2 (a). The Nomenclature and Explanatory Notes are largely silent regarding the meaning of this expression, although several examples are cited among the Explanatory Notes to certain areas of the HS; a notable example is the General Explanatory Note to Chapter 87 which states on page XVII-87-1 that :

**An incomplete or unfinished vehicle** is classified as the corresponding complete or finished vehicle **provided** it has the essential character of the latter (see Interpretative Rule 2 (a)), as for example :

(A) A motor vehicle, not yet fitted with the wheels or tyres and battery.

- (B) A motor vehicle not equipped with its engine or with its interior fittings.
- (C) A bicycle without saddle and tyres.

The question at what point a collection of parts can be considered to substantially compose a complete motor vehicle is one that must be considered on a case by case basis. The Committee has not formally developed principles, nor has the Committee ruled formally on the classification of unassembled sets of parts for motor vehicles of Chapter 87. However, I would note that Chapter 87 presents unique classification challenges because in addition to headings describing complete motor vehicles (headings 87.01 – 87.05) and a heading for parts and accessories (heading 87.08), the Chapter also provides a separate heading for motor vehicle chassis fitted with engines (heading 87.06) and a heading for motor vehicle bodies (including cabs) (heading 86.07).

I mention these because, in the view of the Secretariat, some sets of parts may be classifiable by application of GIR 2 (a) in either of those headings. In this connection I should note that heading 87.07 would cover only those sets in which the engine is already fitted into the chassis, and such assemblies that include cabs are classified in the headings for complete motor vehicles (See Note 3 to Chapter 87).

Therefore, the treatment of collections of parts of motor vehicles could range from individual classification of each part in heading 87.08 or other *eo nomine* provisions in the Nomenclature (see Note 2 to Section XVII), through headings 87.06 and 87.07, to headings 87.01 – 87.05. The borderlines among these headings have not been tested in the Committee with respect to unassembled sets of parts.

That having been said, and although we are not in a position to give you specific advice on some of the questions you raised regarding concrete cases of importations, I shall note below the principles that would come into play in making such determinations.

4. *Application of GIR 1 and GIR 2 (a) in HS Chapter 87* : I would like to note first, that GIR 2 (a) can only be applied in conjunction with GIR 1. As I stated in the previous two paragraphs, when applying GIR 2 (a) to sets of unassembled parts, it is important to keep in mind not only the exclusions contained in Note 2 to Section XVII, which would be applicable pursuant to GIR 1, but also the texts of headings 87.06 and 87.07 (including Note 3 to Chapter 87). As an additional GIR 1 consideration, I would point out the important effect of Note 3 to Section XVII, which requires that,

References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

5. *Impact of GATT Article II on application of GIR 2 (a)* : Article 3 of the HS Convention obligates Contracting Parties to use the GIRs, Legal Notes and texts of the headings and subheadings in their national nomenclatures, along with the relevant numerical codes. Your organisation is the repository for bindings with respect to tariffs, and I would expect that the schedules of concessions deposited with the WTO by Contracting Parties to the HS would conform to the HS legal texts.

The nature of the commitments posed by Explanatory Notes, Classification Opinions and other advice rendered by the Committee, even when specifically approved by the Council pursuant to Article 8 of the HS Convention, is in the nature of advisory rather than conventional. The WCO has

in place procedures for notification by national administrations when they are unable to apply, for example, a particular decision. Beyond these considerations, I would defer to your organisation the assessment of the relationship between GATT Article II and the GIR 2 (a).

6. *Application of GIR 2 (a) to certain specific collections of parts* : The examples you cited address the question whether certain collections of parts could be considered to have "the essential character of the complete or finished article", in terms of GIR 2 (a). Short of providing a specific classification advice, I can offer the following principles that would affect a decision on application of GIR 2 (a) your decision :

- a. **CKD and SKD kits** : During the above mentioned HSC/16 consideration of GIR 2 (a) (Annex IJ/7 to Doc. 39.600E), the Committee agreed that the HS should not impose a requirement that the subsequent assembly of the parts be "simple". For that reason the HS does not limit the scope of GIR 2 (a) to sets of parts for which the required assembly operation falls below a certain level of complexity. Note the second part of paragraph (VII) to the General Explanatory Note to GIR 2 (a), quoted above in my response to point 0 above;
- b. **Certain sets of subassemblies** : As above, the HS criterion is whether the specific collection of parts presented has the essential character of the complete or finished article. I remind you also, in this connection, of headings 87.06 and 87.07, and suggest that you may wish to submit certain examples to the Committee for classification advice, which could also eventually become embodied in the Explanatory Notes or in the Compendium of Classification Opinions;
- c. **Sets of parts composing 60 percent or more the "total price" of the comparable complete vehicle** : Again, this would be a matter for the Committee to consider.

To respond to your question whether application of GIR 2 (a) to the above kinds of products is within the scope of discretion permitted to national authorities, I would merely say that absent specific guidance from the Nomenclature (i.e., legal provisions) or the Committee (i.e., interpretation of the Nomenclature), it is within the purview of national customs administrations to interpret these provisions. I should stress, however, that under the provisions of the HS Convention (i.e., Article 10), any dispute between Contracting Parties concerning the interpretation or application of the HS Convention shall, so far as possible, be settled by negotiation between them. If it is not possible to settle the dispute, it shall be referred to the HSC to consider the dispute and to make recommendations for its settlement.

**"Harmonized System Committee Decision on the Interpretation of General Interpretative Rule 2 (a) (HCS/16/Nov. 95, Annex IJ/7 to Doc. 39.600E)"**

7. *Current legal status and possible modifications* : The Committee decision that GIR 2 (a) should imply a certain range of expected assembly operations, was embodied in the Explanatory Note to GIR 2 (a). Note that decisions of the HS Committee, including the Explanatory Notes and any amendments thereto, are not binding (See Article 3.1(a) of the Convention). Contracting Parties to the HS are requested to inform the Secretariat in case they are not able to implement any decision by the HS Committee. The Secretariat has not received such a notification with respect to the decision at hand.

8. *Codification and further consideration of HS treatment of split consignments* : During the above mentioned HSC/16 discussions, the Committee reaffirmed its earlier decision (reported in

paragraph 81 of Doc. 11.000, NC/11/Oct. 63) that the possible treatment of split consignments as a single entity for purposes of Interpretative Rule 2 (a) was a matter to be handled exclusively at the discretion of each individual administration, taking into account national laws and regulations. From time to time the Committee informally noted this decision but it was never codified in legal or Explanatory Note texts. The phrase "elements originating in or arriving from different countries" encompasses the possibility of goods being of (preferential or non-preferential) **origin** from the country of shipment or from another country.

9. *Secretariat study on possible modification of GIR 2 (a) or the related Explanatory Note* : During each review cycle, possible Explanatory Note revisions have always included the GIRs. Following the conclusions at the 16<sup>th</sup> Session, the Committee continued discussions at its 17<sup>th</sup> and 18<sup>th</sup> Sessions, resulting in an amendment to the Explanatory Note to GIR 2 (a). With that amendment Item (VII), first paragraph, was replaced by the following text :

"(VII) For the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state." (Annexes H/25 and L/6 to Doc. 40.600E – HSC/18/Nov. 96)

10. *Input from member administrations to possible legal or EN changes related to GIR 2 (a)* : See paragraph 9 above.

### **"General Classification Practice"**

11. *Impose tariff duties based on application of GIR 2 (a)* : The application of tariff duties is outside the legal purview of WCO. In this context I would like to draw your attention to Article 9 of the HS Convention, which stipulates that "The Contracting Parties do not assume by this Convention any obligation in relation to rates of Customs duty."

12. *Timing of customs determination of final assembly for purposes of application of GIR 2 (a)* : I would like to refer to my remarks in paragraph 1 above. That having been said, the Secretariat is aware that at least one Contracting Party has introduced legal provisions in Section XVI (i.e., Chapters 84 and 85) and for headings 86.08, 88.05, 89.05 and 89.07, stipulating that "The provisions of General Rule 2 (a) are also applicable, at the request of the declarant and subject to conditions stipulated by the competent authorities, to [machines] [goods of headings 86.08, 88.05, 89.05 and 89.07] imported in split consignments."

In this context, it is also to be noted that the term "importation" is denoted as "the act of bringing or causing any goods to be brought into a Customs territory" (*Glossary of International Custom Terms*).

### **"Auto parts"**

13. *Difference between "manufacturing" and "assembling" of CKD/SKD kits, and the relevance thereof to application of GIR 2 (a)* : In my view, although the term "manufacturing" does not occur in the text of GIR 2 (a) or in the related Explanatory Notes, it includes but is not restricted to "assembling". According to the Explanatory Note to GIR 2 (a), the assembling process is restricted to

actions which involve means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example. No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state. See also paragraph 9 above.

14 *Degree of fitting or equipping necessary for a vehicle to be considered complete within the meaning of the Notes to Chapter 87 :* Firstly, I would reiterate the point I stated under items 6b and 12 above -- that we would interpret GIR 2 (a) to call for an analysis of the susceptibility of the subject collection of parts to be assembled in accordance with the guidelines set forth in paragraph (VII) on Explanatory Notes page GIR-2 and quoted under item 2 above. This analysis would not rely upon observation or certification of actual assembly procedures, but would depend on the kinds of operations that would be necessary in order to transform the parts into an article that would have the essential character of the complete or finished article of an appropriate heading.

Finally, it would be appreciated if the content of this submission is not made available to the general public without prior approval from this side.

**ANNEX C-3**

**LETTER DATED 16 JULY 2007 FROM THE PANEL TO THE SECRETARIAT  
OF THE WORLD CUSTOMS ORGANISATION**

I would like to take this opportunity to thank you again for your response to our inquiry of 7 June 2007 with respect to the Panel proceedings on *China – Measures Affecting Imports of Automobile Parts*. Your reply has proven very helpful in understanding various issues relating to the Harmonized System presented in this case.

In this regard, the Panel would like to seek further clarifications on this issue with respect to the additional questions that follow below, including issues relating to the "Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures" and the WCO's "Glossary of International Customs Terms."

**Rule 2(a) of the General Rules for the Interpretation of the HS:**

5. Concerning the determination of the "essential character" of an incomplete or unfinished article as envisaged under GIR 2(a), can such a determination be made on a case-by-case basis only? In other words, in your view, can customs authorities have a set of pre-determined criteria that will be used in determining whether certain imported parts and components have the essential character of a complete article?

6. Following up on your response in paragraph 4 of your reply that GIR 2(a) must be applied together with GIR 1, does this mean that GIR 2(a) can only be taken into consideration after applying GIR 1?

7. Are the six General Interpretative Rules applied in a hierarchical order? If the classification can be determined according to the terms of the headings and any relative Section or Chapter notes, are other rules simply not applicable?

8. Is it within customs authorities' discretion to classify parts as a complete article to ensure the collection of a higher rate of duty applicable for complete articles regardless of the manner in which the importer wishes to structure and document its imports? In this connection, what is the pertinence, if any, of the second sentence of Explanatory Note V to GIR 2(a), which states that "it is usually for reasons such as requirements or convenience of packing, handling or transport"?

9. Could you explain what are the circumstances in which a need for customs authorities to apply the principles of GIR 2(a) arises. In this regard, what are the differences between the first and second sentences of GIR 2(a)?

10. Does the principle of the *second* sentence of GIR 2(a) with respect to "articles presented unassembled or disassembled" cover only situations where parts necessary to assemble a complete article arrive at the border in one shipment at once or does it also cover situations where parts to assemble a complete article arrive separately in multiple shipments, including those arriving at different times in different ports from different places of origin?

11. Following up on Question 2 (second bullet point) in our previous letter to you, could you please advise us whether the type of goods mentioned in paragraph 10 of the HS Committee Decision, namely "the classification of goods assembled from elements originating in or arriving from different

countries", refers to goods that have arrived at the border in already assembled form from such elements? In other words, what does "goods assembled" mean in this context, goods already assembled when presented at the border or goods to be assembled in the importing country?

12. Is the Nomenclature Committee's decision cited in paragraph 10 of the HS Committee Decision (HSC/16/Nov. 95) an indication that matters involving goods of mixed origin are beyond the scope of GIR 2(a)? Does paragraph 10 of the HS Committee decision address the question relating to the rules of origin rather than tariff classification issues? Please provide a copy of the Nomenclature Committee's decision (NC/11/Oct. 63 – Report) cited in paragraph 10 of the HS Committee Decision.

13. Paragraph 11 of the HS Committee Decision states that "Mr. Kusahara pointed out that the legal text of General Interpretative Rule 2(a) was open to different interpretations." To what extent is the legal text of General Interpretative Rule 2(a) open to different interpretations by the WCO Members?

14. When parts and components are imported and subsequently assembled into a complete article, what should be shown in the import statistics of the importing country? For example, should it be different origins of the parts and components that make up the complete article?

15. Is it a norm for customs authorities to presume that the information on the importer's declaration form is correct and accept it as declared by the importer unless such information can be proven incorrect by customs authorities?

16. In applying the principle of GIR 2(a), how should parts generally used in the assembly of various goods such as nuts and bolts be classified? Are these connecting parts also taken into account in determining whether certain parts have the essential character of a complete article?

17. Is the concept of "consignments" as in "split consignments" any different from the concept of "shipment"?

**Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures (the "Kyoto Convention"):**

18. Does the *Kyoto Convention* contain any reference to the *time and place* of the collection or assessment of duties? Is there any other supplemental material informing the meaning of the *time and place* of the collection or assessment of duties? Is there any relevant information in the negotiating history of the *Kyoto Convention* on the meaning of these terms?

19. Chapter 2 of the *Kyoto Convention* contains the following definition:

- E8./ F11. "**Customs duties**": means the duties laid down in the Customs tariff to which goods are liable on entering or leaving the Customs territory;
- E20./ F14. "**import duties and taxes**": means Customs duties and all other duties, taxes or charges which are collected on or in connection with the importation of goods, but not including any charges which are limited in amount to the approximate cost of services rendered or collected by the Customs on behalf of another national authority.

Are there any supplemental materials informing the meanings of respectively "liable on entering (...) the Customs territory" and "on or in connection with the importation" referred to above?



Is there any relevant information in the negotiating history of the Kyoto Convention on the meanings of "liable on entering (...) the Customs territory" and "on or in connection with the importation" referred to above? Has the language of Article II:1(b) of the GATT 1994 been in any manner mentioned in the negotiating history of the Kyoto Convention in the context of these definitions?

20. What is the relationship between the respective definitions of "*Customs duties*" and "*import duties and taxes*" in Chapter 2 of the *Kyoto Convention*? In particular, what is the difference between the expression "liable on entering" used in the former and the expression "on or in connection with the importation" used in the latter?

**World Customs Organization, Glossary of International Customs Terms, Brussels, May 2006 (The "GLOSSARY"):**

21. In the "Recommendations of the Customs Co-operation Council concerning the use of the Glossary of International Customs Terms" of 6 July 1993, it is stated that "though the Glossary does not in itself have the legal status of an international instrument, it has been approved by the Council and certain definitions within it have been accepted by the Contracting Parties to the principal international Customs Conventions." Would it be possible for the WCO to indicate which are the definitions of the Glossary that "have been accepted by the Contracting Parties to the principal international Customs Conventions" and/or whether the above-mentioned two definitions are included in the scope of such definitions that have been accepted by the Contracting Parties?

The Panel would be very grateful if the information requested in this letter could be made available by **30 July 2007**. Also, taking this opportunity, I would like to assure you that the parties to the dispute have been reminded of the confidentiality of your letter dated 20 June 2007. If you have questions and/or concerns in this matter, please don't hesitate to let us know.

#### ANNEX C-4

### LETTER DATED 30 JULY 2007 FROM THE SECRETARIAT OF THE WORLD CUSTOMS ORGANISATION TO THE PANEL

I am pleased to respond to your follow-up inquiry of 16 July 2007, regarding certain issues before Dispute Settlement Panel DS339/340/342 and my earlier correspondence (07NL0408).

As requested, please find attached to this letter the Secretariat's response to the questions that have been raised. Should you have any further questions or wish to obtain additional information, please do not hesitate to contact me.

#### **Rule 2(a) of the General Rules for the Interpretation of the HS :**

**5. Question: Concerning the determination of the "essential character" of an incomplete or unfinished article as envisaged under GIR 2(a), can such a determination be made on a case-by-case basis only ? In other words, in your view, can customs authorities have a set of pre-determined criteria that will be used in determining whether certain imported parts and components have the essential character of a complete article?**

There is nothing in the Convention or policy decisions of the HS Committee that would preclude an administration from establishing formal criteria for determining when GIR 2 (a) is to be applied. Indeed, interpretation of the HS is the right of every Contracting Party (CP), and such interpretations could conceivably take the form of advance classification rulings (binding tariff information or BTI), individual classification determinations upon liquidation of a specific formal entry, national court rulings, regulations or statutes.

Of course, such actions could result in interpretations that differ among countries. When a CP requests that the Committee consider the classification of a specific article (or group of articles presented together), and the Committee makes a determination and issues a Classification Opinion (CO), it is not uncommon for the resulting CO to be at variance with one or more national classification rulings, BTIs, or other administrative or statutory rules. CPs are expected to seek a way to modify their internal instruments so as to permit application of the CO, and they are obligated to inform the Committee when they are unable to do so.

**6. Question: Following up on your response in paragraph 4 of your reply that GIR 2(a) must be applied together with GIR 1, does this mean that GIR 2(a) can only be taken into consideration after applying GIR 1?**

My statement in response to your initial question #4 was that, "GIR 2 (a) can only be applied in conjunction with GIR 1." As stated in the legal text of GIR 1,

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions : "

The words "and,..., according to the following provisions" requires that all the GIRs be consulted when classifying articles in the HS. However, GIRs 3 and 4 begin with text that clearly

makes them applicable only when GIRs 1, 2, 5 and 6 do not provide a unique classification for the subject article. Not being introduced by such conditional text, GIR 2 must always be considered *provided the headings and legal notes do not otherwise require*.

The italicised text in the preceding sentence means that a heading providing specifically for a collection of unassembled parts or an incomplete article would prevail by application of GIR 1 because GIR 2 would not apply (that is, because **such headings or Notes ...otherwise require.**) Examples of such are headings 87.06 and 87.07, as I pointed out in my letter of 20 June 2007. This principle is expounded in paragraph (V) of the Explanatory Note to GIR 1 (ENs page GIR-1):

"In provision (III) (b), the expression " provided such headings or Notes do not otherwise require " is intended to make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount, i.e., they are the first consideration in determining classification. For example, in Chapter 31, the Notes provide that certain headings relate only to particular goods. Consequently those headings cannot be extended to include goods which otherwise might fall there by reason of the operation of Rule 2 (b)."

**7. Question: Are the six General Interpretative Rules applied in a hierarchical order? If the classification can be determined according to the terms of the headings and any relative Section or Chapter notes, are other rules simply not applicable ?**

It is common practice to explain the application of the GIRs as sequential. The Secretariat itself has provided classification advice to customs administrations in which we stated that classification is by GIR 1 (and 6, of course) and that GIRs 2 – 5 do not apply. However, you can see from my previous response that to be precise, when classification is by GIRs 1 and 6, it does not mean that other GIRs have not been consulted. It merely means that application of the text of GIR 1, in particular the phrase, "provided such headings or Notes do not otherwise require," makes GIR 2 inapplicable.

A Classification Opinion promulgated by the HSC includes a statement of applicable GIRs. For the reasons enumerated above, the Committee now includes GIR 1 in every statement of applicable GIRs (Other Section or Chapter Notes are sometimes also cited.)

**8. Question: Is it within customs authorities' discretion to classify parts as a complete article to ensure the collection of a higher rate of duty applicable for complete articles regardless of the manner in which the importer wishes to structure and document its imports? In this connection, what is the pertinence, if any, of the second sentence of Explanatory Note V to GIR 2(a), which states that "it is usually for reasons such as requirements or convenience of packing, handling or transport"?**

Article 9 of the HS Convention states that "**The Contracting Parties do not assume by this Convention any obligation in relation to rates of Customs duty.**" That strong statement makes it clear that the purview of the WCO, its instruments and its Committees does not extend to tariff-based issues. Therefore, the Secretariat is not in a position to respond to questions related to such issues. I would refer you to my response to question 5 above regarding national authorities' discretion in classification.

However, I should also note that the preamble to the original BTN Convention (15 December 1950) notes the desirability of "a common basis for the classification of goods in customs tariffs."

As for the cited EN text, it is the Secretariat's understanding that the text is merely an explanation of historical reasons for articles being shipped unassembled or disassembled. The ENs are merely advisory in nature and not dispositive, and are therefore neither prescriptive nor, by reverse analogy, proscriptive.

**9. Question: Could you explain what are the circumstances in which a need for customs authorities to apply the principles of GIR 2(a) arises. In this regard, what are the differences between the first and second sentences of GIR 2(a) ?**

Based on my previous responses above, it follows that GIR 2 (a) should always be applied when all three of the following conditions are met :

- (i). the entry under consideration is presented incomplete, unfinished, unassembled or disassembled **and**
- (ii). as presented it has the essential character of the complete or finished article, **and**
- (iii). the heading and Legal Notes of the HS do not otherwise provide for the entry.

As regards the difference between the first and second sentences of GIR 2 (a), the first sentence provides for classification, as an entity, of articles presented incomplete or unfinished, while the second sentence provides for classification, as an entity, of certain collections of individual articles (commonly referred to as "parts"). The second sentence also clarifies that in order to qualify for classification as an entity, the actual collection of "parts" does not have to be sufficient to assemble a complete or finished articles, so long as the "parts" can be assembled into an incomplete or unfinished article that has the essential character of a complete or finished article.

Please note that the use of the terms "entity" and "parts" in the above paragraph is not intended to be construed in any particular legally binding way but merely as a generic informational concept.

**10. Question: Does the principle of the second sentence of GIR 2(a) with respect to "articles presented unassembled or disassembled" cover only situations where parts necessary to assemble a complete article arrive at the border in one shipment at once or does it also cover situations where parts to assemble a complete article arrive separately in multiple shipments, including those arriving at different times in different ports from different places of origin ?**

I would use the expression "split consignments" to identify the kinds of shipments you describe. "Split consignments" is not formally defined but is used widely to describe a range of trading practices. As I noted in paragraph 8 of my June 20 letter, the HSC, which determines the scope of the HS, has decided "that the possible treatment of split consignments as a single entity for purposes of Interpretative Rule 2 (a) was a matter to be handled exclusively at the discretion of each individual administration, taking into account national laws and regulations."

This would not preclude the Committee from considering a modification to the legal or Explanatory texts to provide a rule for such situations, but so far the Committee has not elected to do so.

**11. Question: Following up on Question 2 (second bullet point) in our previous letter to you, could you please advise us whether the type of goods mentioned in paragraph 10 of the HS Committee Decision, namely "the classification of goods assembled from elements originating in**

**or arriving from different countries", refers to goods that have arrived at the border in already assembled form from such elements? In other words, what does "goods assembled" mean in this context, goods already assembled when presented at the border or goods to be assembled in the importing country ?**

The Session in question occurred in 1995, and the sole guidance we have is the Summary Record (Doc. 39.600) itself.

The entire sentence from which you quoted reads,

"Thus, the Committee decided that the questions of split consignments and the classification of goods assembled from elements originating in or arriving from different countries are matters to be settled by each country in accordance with its own national regulations."

The HS does not direct CPs to classify entries differently or alike at the HS level on the basis of single origin as opposed to multiple origin. I would be inclined to regard the passage you quoted rather as referring to the classification of a collection of articles based on their susceptibility to further assembly, and reflecting the Committee's view that the determination whether multiplicity of origin shall affect applicability of GIR 2 (a) is a matter left to each CP.

Again, this would not preclude the Committee from considering a modification to the legal or Explanatory texts to provide a rule for such situations, but the Committee has not elected to do so in the past.

**12. Question: Is the Nomenclature Committee's decision cited in paragraph 10 of the HS Committee Decision (HSC/16/Nov. 95) an indication that matters involving goods of mixed origin are beyond the scope of GIR 2(a) ? Does paragraph 10 of the HS Committee decision address the question relating to the rules of origin rather than tariff classification issues ? Please provide a copy of the Nomenclature Committee's decision (NC/11/Oct. 63 – Report) cited in paragraph 10 of the HS Committee Decision.**

I would respond to your first question by stating that the Nomenclature Committee's decision cited in paragraph 10 of the HS Committee Decision (Annex II/7 to Doc. 39.600, HSC/16/Nov. 95) appeared to be an indication that the HS does not address the applicability of GIR 2 (a) to the classification of goods of mixed origin.

I would respond to your second question by stating that it seems that paragraph 10 of the HS Committee decision connotes that, in their view, whether multiple origin should affect the classification of unassembled or disassembled articles is a matter to be handled exclusively at the discretion of each individual administration, taking into account national laws and regulations.

At the end of this response you will find a copy of the relevant excerpt from the Summary Record of the 11<sup>th</sup> Session of the Nomenclature Committee (Doc. 11.000, Oct. 1963).

**13. Question: Paragraph 11 of the HS Committee Decision states that "Mr. Kusahara pointed out that the legal text of General Interpretative Rule 2(a) was open to different interpretations." To what extent is the legal text of General Interpretative Rule 2(a) open to different interpretations by the WCO Members ?**

The point raised by the Director of Nomenclature reflects the general concept I stated in my response to question #5 above, that interpretation of the HS is the right of every CP, and such interpretations could conceivably take the form of BTIs, individual classification determinations upon liquidation of a specific formal entry, national court rulings, regulations or statutes.

Of course, such actions could result in interpretations that differ among different countries. When a CP requests that the Committee consider the classification of a specific article (or group of articles presented together), and the Committee makes a determination and issues a CO, it is not uncommon for the resulting Classification Opinion (CO) to be at variance with one or more national classification rulings, BTIs, or other administrative or statutory rules. CPs are expected to seek a way to modify their internal instruments so as to permit application of the CO, and they are obligated to inform the Committee when they are unable to do so.

**14. Question: When parts and components are imported and subsequently assembled into a complete article, what should be shown in the import statistics of the importing country? For example, should it be different origins of the parts and components that make up the complete article ?**

Article 1 (b) of the HS Convention provides that :

Each Contracting Party shall also make publicly available its import and export trade statistics in conformity with the six-digit codes of the Harmonized System, or, on the initiative of the Contracting Party, beyond that level, to the extent that publication is not precluded for exceptional reasons such as commercial confidentiality or national security.

The HS therefore does not preclude CPs from publishing data reflecting origin. However, as I noted in my response to question #11 above, the HS does not direct CPs to treat entries differently or alike on the basis of single origin as opposed to multiple origin.

The 1 July 2006 WCO Recommendation on The Use of Standard Units of Quantity to Facilitate the Collection, Comparison and Analysis of International Statistics Based on the Harmonized System specifies, for parties that apply the Recommendation, a unique unit of quantity for each subheading as the minimum quantitative data reported by that administration in its national trade statistics. As of 13 March 2007, 52 (out of 128) CPs and three non-contracting parties have notified the Secretariat that they are applying that particular Recommendation.

However, those units of quantity represent an aggregate figure for an entire HS subheading, so the impact of a particular administration's policy regarding multiple origin and GIR 2 (a) might not be evident from the quantitative data, and again the HS does not specify how multiple origin would affect reporting of the standard unit of quantity, thereby leaving it to each administration to decide and implement its own methodology for dealing with that issue.

**15. Question: Is it a norm for customs authorities to presume that the information on the importer's declaration form is correct and accept it as declared by the importer unless such information can be proven incorrect by customs authorities ?**

The HS is silent with respect to presumption of correctness. From time to time, the members of the WCO meet in several fora to discuss matters of Customs technique and procedure. There are several international instruments, such as the Valuation Agreement and the (Revised) Kyoto

Convention through which Contracting Parties agree to disclose and/or harmonize certain aspects of their procedures, and you may be interested in examining those Conventions.

**16. Question: In applying the principle of GIR 2(a), how should parts generally used in the assembly of various goods such as nuts and bolts be classified ? Are these connecting parts also taken into account in determining whether certain parts have the essential character of a complete article?**

In practice, many automotive fittings, such as those described in headings 73.17 or 73.18, are considered **parts of general use** as defined by Note 2 to Section XVI. Pursuant to Note 3 to Section XVII, such articles when presented separately are not classifiable in the provisions for parts of automotive vehicles.

However, that would not preclude them from being included among the components covered by GIR 2 (a), since the GIRs are applicable to the entire HS – unless, of course, the legal text of any headings or Notes otherwise requires.

**17. Question: Is the concept of "consignments" as in "split consignments" any different from the concept of "shipment"?**

None of those terms has conventional status in the HS, and therefore there would be no official interpretation of any of them. However, I would expect that because of the wide use of such terms, with widely differing meanings among different customs administrations, national laws and regulations, and the trade, in the future the HS Committee would either avoid such expression in any documents that might have precedent value (Classification Opinions, Recommendations, Conventions), or else define the term rigidly.

**Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures (the "Kyoto Convention") :**

General comments : China became a Contracting Party to the Revised Kyoto Convention by depositing its instrument of accession to the Protocol of Amendment on 15 June 2000 and the Revised Kyoto Convention entered into force on 3 Feb 2006. Accordingly, the Definitions provided for in Chapter 2 of the General Annex to the Revised Kyoto Convention became effective on that day. Nevertheless, Definitions *per se* did not establish obligations on the Contracting Parties. China has a period of three years (or five years for certain provisions) from the date of entry into force of the Revised Kyoto Convention to fully implement substantive provisions (i.e., 3 Feb 2009 = three years after the entry into force of the convention).

In order to avoid any misunderstanding between the original Kyoto Convention (1973) and the Revised Kyoto Convention (1999), the abbreviation of RKC is used for the latter convention in this response.

The texts of the Kyoto Convention and the RKC are available on the WCO public web site at:

<http://www.wcoomd.org/ie/En/Conventions/conventions.html>

The RKC Guidelines are not legally binding instruments, but they provide useful information which can be used by WCO Members as interpretative notes and guidance by indicating best practices. If you do not have access to the Guidelines, please contact us. (The Guidelines are copyright protected and are normally sold to the public on payment of a fee).

The interpretative authority for the RKC is its Contracting Parties collectively. Any expression of views in this note are those of the WCO Secretariat.

**18. Question: Does the Kyoto Convention contain any reference to the time and place of the collection or assessment of duties? Is there any other supplemental material informing the meaning of the time and place of the collection or assessment of duties? Is there any relevant information in the negotiating history of the Kyoto Convention on the meaning of these terms ?**

The RKC legal texts provide that national legislation shall specify the circumstances concerning the assessment and collection of Customs duties. It does not therefore specify the time and place of the collection or assessment of duties. The relevant RKC General Annex Chapter is Chapter 4.

With respect to the assessment, the relevant Standards are 4.1, 4.2, 4.3 and 4.5 of the General Annex, and supplementary information is found in their Guidelines (General Annex Chapter 4 – Guidelines on Duties and Taxes, 1.2 Background, 2.1 Assessment and collection of duties and taxes, 2.1.1. Assessment).

The RKC provisions distinguish collection from payment: the former is an action by the Customs while the latter is an action by the trade. Your question specifies collection. With respect to collection, the relevant Standards are 4.10. Supplementary information may be found in its Guideline (General Annex Chapter 4 – Guidelines on Duties and Taxes, 2.1 Assessment and collection of duties and taxes, 2.1.4. Collection).

With respect to the payment, the relevant Standards are 4.8 and 4.9 of the General Annex. The 'due date' is defined in Chapter 2 of the General Annex as "the date when payment of duties and taxes is due". Its Guideline also specifies that duties and taxes are usually paid at the Customs office where the Goods declaration was lodged or in some cases one Customs office may be selected for payment of duties and taxes for all shipments, regardless of where they were cleared.

**19. Question : Chapter 2 of the Kyoto Convention contains the following definition :**

- **E8./ F11. "*Customs duties*":** means the duties laid down in the Customs tariff to which goods are liable on entering or leaving the Customs territory;
- **E20./ F14. "*import duties and taxes*":** means Customs duties and all other duties, taxes or charges which are collected on or in connection with the importation of goods, but not including any charges which are limited in amount to the approximate cost of services rendered or collected by the Customs on behalf of another national authority.

**Are there any supplemental materials informing the meanings of respectively "liable on entering (...) the Customs territory" and "on or in connection with the importation" referred to above ? Is there any relevant information in the negotiating history of the Kyoto Convention on the meanings of "liable on entering (...) the Customs territory" and "on or in connection with the importation" referred to above ? Has the language of Article II:1(b) of the GATT 1994 been in any manner mentioned in the negotiating history of the Kyoto Convention in the context of these definitions ?**



With respect to the phrase "on or in connection with the importation", this phrase is not new. For example, it was used in the definition of the term "import duties and taxes" in the original Kyoto Convention Annex B.1 (Formalities for home use: entered into force in 1977) and the UN/TIR Convention (1975). The Commentary to the original Kyoto Convention with respect to the definition of the term "import duties and taxes" explains that "(t)his Definition also covers Value Added Tax collected in connection with the importation of goods." Accordingly, we interpret this phrase to covers not only Customs duties but also a wide range of domestic taxes.

With respect to the scope of "all other duties or charges of any kind imposed on or in connection with the importation" provided for in GATT Article II 1(b), in the GATT Council's decision of March 1980 (BSID 27S/22), the GATT Council stated that the term refers in principle only to those duties and charges that discriminate against imports. GATT Article II:2 made it clear that they concern neither charges equivalent to internal taxes, nor anti-dumping or countervailing duties, nor fees or other charges commensurate with the cost of services rendered.

**20. Question: What is the relationship between the respective definitions of "Customs duties" and "import duties and taxes" in Chapter 2 of the Kyoto Convention ? In particular, what is the difference between the expression "liable on entering" used in the former and the expression "on or in connection with the importation" used in the latter?**

Customs duties = duties laid down in the Customs tariff to which goods are liable on entering ... the Customs territory

Import duties and taxes = [Customs duties] + [all other duties, taxes or charges which are collected on or in connection with the importation of goods]

Domestic taxes may be charged on the goods (excise duty) or sales transaction (VAT). In our view, the phrase "on or in connection with the importation" refers to the imposition of domestic taxes on the imported products.

**World Customs Organization, Glossary of International Customs Terms, Brussels, May 2006 (The "GLOSSARY") :**

**21. Question: In the "Recommendations of the Customs Co-operation Council concerning the use of the Glossary of International Customs Terms" of 6 July 1993, it is stated that "though the Glossary does not in itself have the legal status of an international instrument, it has been approved by the Council and certain definitions within it have been accepted by the Contracting Parties to the principal international Customs Conventions." Would it be possible for the WCO to indicate which are the definitions of the Glossary that "have been accepted by the Contracting Parties to the principal international Customs Conventions" and/or whether the above-mentioned two definitions are included in the scope of such definitions that have been accepted by the Contracting Parties ?**

General Comments: WCO Recommendations (CCC Recommendations) are not legally binding instruments.

WCO Recommendations are available on the WCO's public web site

<http://www.wcoomd.org/ie/En/Recommendations/recommendations.html>

The Glossary of International Customs Terms is available in electronic form on the WCO Members' web site. Please let me know if your staff do not have access to the site and would like copies (French and/or English).

<http://members.wcoomd.org/Procedures/Glossary.pdf>

The Glossary contains several notes explaining the reference to international conventions, notably the Revised Kyoto Convention and the TIR Convention.

The key phrase is the one you quote, namely 'though the Glossary does not in itself have the legal status of an international instrument, it has been approved by the Council and certain definitions within it have been accepted by the Contracting Parties to the principal international Customs Conventions as part thereof.'

As mentioned before, the WCO Recommendations are not legally binding instruments. In addition, China has not accepted the Recommendation in question.

In our view, a particular word or phrase, even if used in different conventions, will have the meanings assigned to it in the Convention in question.

I hope that this information is useful to you. It would be appreciated if the content of this submission is treated as confidential as we agreed in the letter of 20 June 2007, and that it not be made available outside your Organisation except under the conditions we agreed to in your e-mail of 22 June 2007 and my reply (07NL0449) of 25 June 2007.

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NOMENCLATURE COMMITTEE  
11th session

11.000 E

30 October 1963

## REPORT

- (a) Articles imported unassembled or disassembled (Doc. 8179, 8333, 8917, 9386, 9550, 9732, 10.195, 10.313 and 10.829)

79. The Committee pursued its examination of this item on the basis of Member Administrations' observations concerning the Draft Interpretative Rule on the classification of articles imported unassembled or disassembled.

80. The following decisions were taken:

- (1) The Committee confirmed, by a two-thirds majority its decision to insert a new General Interpretative Rule in the Nomenclature rather than introducing individual Section or Chapter Notes, since it was agreed that that procedure of issuing Classification Opinions would not provide a satisfactory solution for the problem.
- (2) The Committee agreed that, since an Interpretative Rule should apply throughout the Nomenclature, the new Rule should contain no provision restricting its scope. In compliance with the request of certain Delegations, it was, however, decided to maintain the phrase "falling within Sections VII and XXI of the Nomenclature" (placing it between square brackets), pending further progress in the study.
- (3) Since Interpretative Rule 1 already includes an equivalent provision covering all the following Rules, it was considered unnecessary to include the phrase "unless otherwise provided" in the new Draft Rule.
- (4) As requested by Members using the English version of the Nomenclature, the Committee decided to substitute the word "goods" for "articles" in the English text.
- (5) In order to give the proposed Rule the same scope as the various Section and Chapter Notes which it will replace, the Committee decided that it should not contain a restriction limiting it to those goods which are imported unassembled or disassembled mainly for reasons of convenience of handling, packing or transport.
- (6) It was agreed that the new Rule should also apply to parts imported unassembled or disassembled; this will be made clear in the Explanatory Notes.
- (7) The Committee decided to maintain the reference to "goods regarded as being complete", since the question of a Rule for the classification of incomplete or unfinished articles is being studied separately.

81. It was further agreed that the questions of split consignments and the classification of goods assembled from elements originating in or arriving from different countries are matters to be settled by each country in accordance with its own national regulations.

82. Having regard to the decisions taken, the draft Interpretative Rule now reads as follows:

English version:

"Goods which are complete or are regarded as being complete [falling within Sections VII to XXI of the Nomenclature], imported unassembled or disassembled, are to be classified as assembled goods of the corresponding kind".

French version:

"Tout article complet ou considéré comme tel [, relevant des Sections VII à XXI de la Nomenclature,] doit, lorsqu'il est présenté à l'état démonté ou non monté, être classé de la même manière que l'article monté."

83. This text will be re-examined by reference, in particular, to the results of the current study on the rule for the classification of incomplete and unfinished goods (see paragraphs 85 to 87 below).

The Secretariat will, however, commence as of now the preparation of draft consequential amendments to the Explanatory Notes for submission to a future Session.

## ANNEX C-5

### CHINA'S COMMENTS ON THE RESPONSE OF THE WORLD CUSTOMS ORGANIZATION DATED 30 JULY 2007

1. China considers that the response of the World Customs Organization to the Panel's second set of questions definitively resolves the issue of whether customs authorities can apply General Interpretative Rule 2(a) to multiple shipments of parts and components that have the essential character of the complete article. As China has maintained throughout these proceedings, the answer to that question is that the application of GIR 2(a) to multiple shipments of parts and components is a matter to be resolved by each member of the Harmonized System in accordance with its national laws and regulations. Contrary to the complainants' repeated and unsubstantiated assertions, the application of GIR 2(a) to multiple shipments is not precluded by the rules of the Harmonized System and is, in fact, expressly contemplated by the 1995 decision of the Harmonized System Committee.

2. In response to question 10, concerning the application of GIR 2(a) in "situations where parts to assemble a complete article arrive separately in multiple shipments, including those arriving at different times in different ports from different places of origin," the WCO explains that these types of shipments would be described as a type of split consignment.<sup>1</sup> The WCO refers the Panel to its letter of 20 June 2007, in which it explains that the Harmonized System Committee "has decided 'that the possible treatment of split consignments as a single entity for purposes of Interpretative Rule 2(a) was a matter to be handled exclusively at the discretion of each individual administration, taking into account national laws and regulations.'"<sup>2</sup>

3. The discretion of national authorities to apply GIR 2(a) to multiple shipments of parts and components is further confirmed by the WCO's response to questions 11 and 12. The WCO explains that the reference in the HS Committee Decision to "the classification of goods assembled from elements originating in or arriving from different countries" is likewise a matter "to be settled by each country in accordance with its own national regulations."<sup>3</sup> The WCO views this statement "as referring to the classification of a collection of articles based on their susceptibility to further assembly, and reflecting the Committee's view that the determination whether multiplicity of origin shall affect applicability of GIR 2(a) is a matter left to each [Contracting Party to the Harmonized System]."<sup>4</sup> Thus, it is within the discretion of the members of the Harmonized System to apply GIR 2(a) to parts and components that originate in or arrive from different countries – which necessarily means that the components arrived in more than one shipment.<sup>5</sup>

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<sup>1</sup> WCO second response at para. 10. The WCO notes that term "'split consignment' is not formally defined but is used widely to describe a range of trading practices." *Id.* It is clear that the WCO understands the term "split consignment" in a broad sense, to encompass circumstances in which the parts and components that make up the entity were not necessarily the subject of the same transaction (*e.g.*, because they arrived from different places of origin).

<sup>2</sup> WCO second response at para. 10 (quoting WCO First Response at para. 8).

<sup>3</sup> WCO second response at para. 11.

<sup>4</sup> WCO second response at para. 11.

<sup>5</sup> This explanation by the WCO refutes the US contention that the HS Committee Decision pertained to a Rules of Origin issue. The WCO explains that "[t]he HS does not direct CPs to classify entries differently or alike at the HS level on the basis of single origin as opposed to multiple origin." WCO second response at para. 11. That is, origin and classification are unrelated to each other. The classification of parts and components under GIR 2(a) is the same, without regard to whether they originated in a single country or multiple countries. The HS Committee Decision clarifies that the classification of parts and components that

4. These responses by the WCO confirm China's position that the application of GIR 2(a) to multiple shipments of parts and components is not inconsistent with the Harmonized System, and is indeed within the discretion of each member of the Harmonized System. The complainants' repeated efforts to contradict this understanding of the HS Committee Decision have been in error. In addition, the WCO's response confirms that this understanding of GIR 2(a) and its application to multiple shipments has existed since at least 1963, when GIR 2 was first adopted.<sup>6</sup>

5. The complainants will undoubtedly contend that the WCO's response to question 6 supports their view that the classification of auto parts and components is resolved entirely by GIR 1, and that the application of GIR 2(a) does not arise if the article in question has its own HS heading (e.g., under 87.06 or 87.07). However, this is not the case if the national customs authority classifies multiple shipments of parts and components as a single entity (which, the WCO has confirmed, is within its discretion under GIR 2(a)). In that event, customs authorities may validly consider, in accordance with GIR 2(a), whether the parts and components that make up the single entity have the essential character of the complete article. This is a necessary consequence of the authority that members of the Harmonized System have to apply GIR 2(a) to multiple shipments of parts and components.

A. IMPLICATIONS OF THE WCO'S SECOND RESPONSE

6. China considers that the WCO's resolution of the applicability of GIR 2(a) to multiple shipments of parts and components has important implications for the present dispute. The principal implications are as follows:

- It is consistent with the context provided by the Harmonized System for China to interpret the term "motor vehicles" in its Schedule of Concessions to encompass parts and components of motor vehicles that have the essential character of a motor vehicle under GIR 2(a), whether those parts and components arrive in one shipment or in multiple shipments.
- Because it is consistent with the rules of the Harmonized System to apply GIR 2(a) to multiple shipments of parts and components, it follows that Members may adopt customs procedures to provide for classification on this basis. This necessarily entails a customs process for determining whether multiple shipments of parts and components are related to each other through their common assembly into a finished article. The classification of multiple shipments of parts and components on this basis is not a classification based on the *end-use* of those parts and components in the importing Member's customs territory. Rather, it is, to use the WCO's words, "the classification of a collection of articles based on their susceptibility to further assembly" into the complete article.<sup>7</sup> This is a legitimate basis for classification under GIR 2(a).
- The complainants have argued that Decree 125 does not result in the collection of ordinary customs duties because, in their view, Members can only assess ordinary customs duties based on the contents of a single shipment. In the same vein, the complainants have argued that the term "as presented" in GIR 2(a) means "as presented

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arrive from multiple origins – i.e., in multiple shipments – is a matter to be decided by each member of the Harmonized System.

<sup>6</sup> The WCO provided the report of the Nomenclature Committee dated 30 October 1963 (Doc. 11.000). The language in paragraph 81 of this report is identical to the language adopted by the HS Committee in 1995.

<sup>7</sup> WCO second response at para. 11.

*in a single shipment.*" The WCO's response confirms that these assertions are without basis.

- The charges that China collects pursuant to Decree 125 are the ordinary customs duties for motor vehicles that China is allowed to collect under its Schedule of Concessions. As Canada notes, "[t]ariff treatment commitments under a Member's Schedule are always linked to tariff classification."<sup>8</sup> China agrees. Because China may apply GIR 2(a) to classify multiple shipments of parts and components as having the essential character of a motor vehicle, China is entitled to collect the customs duties for motor vehicles that result from this classification, consistent with its tariff commitments.
- For these reasons, the challenged measures are within the scope of Article II:1(b), first sentence, and are consistent with China's rights and obligations thereunder. China has explained that a charge is collected on goods "on their importation" into a Member's customs territory if it is a charge that arose by reason of the entry of the goods into its customs territory and fulfils a valid customs liability.<sup>9</sup> This conclusion is supported, *inter alia*, by the ordinary meaning of the word "on", which, as several panels have found, denotes a *relationship* between the measure or charge and the relevant event (*i.e.*, importation).<sup>10</sup> That relationship plainly exists under the challenged measures, as the charges that China collects pursuant to Decree 125 are the ordinary customs duties for motor vehicles for which importers are liable under China's tariff schedule when they enter auto parts and components that have the essential character of a motor vehicle, whether in one shipment or in multiple shipments.

7. There are two other important implications of the WCO's response. The first concerns the proper allocation of the burden of proof in this dispute. The complainants have repeatedly asserted, in various formulations, that the challenged measures do not result in the collection of ordinary customs duties because the charges that China imposes are not based on the condition of auto parts and components "as presented at the border," or on "the condition of the goods at the border," or "based on their state in a single shipment."<sup>11</sup> The United States has argued, in this connection, that the term

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<sup>8</sup> Canada responses after second meeting at p. 40. See also Canada rebuttal submission at para. 44 ("[c]lassification is relevant in interpreting the obligation in Article II:1(b) not to charge duties greater than the amount set out in China's Schedule because classification of the proper category is an essential first step for assessing duty on it.").

<sup>9</sup> See, e.g., China's answers to questions 179, 203; China rebuttal submission at paras. 100-104. To quote the United States, "the relevant consideration is whether China's measures enforce the collection of a customs duty under China's tariff schedule for which an auto part was liable when it entered the customs territory of China." US answers after second meeting at para. 30. See also EC second written submission at para. 41 ("The material aspect of 'on importation' means that a charge is imposed 'on importation' if it is due *because of* importation of the product ...") (emphasis added).

<sup>10</sup> See China's answer to questions 203 and 246 (discussing *India – Autos*, *EC – Sugar Subsidies*, and *Dominican Republic – Cigarettes*).

<sup>11</sup> See, e.g., Canada second written submission at para. 20 ("ordinary customs duties may only be imposed on products based on their state as presented at the border"); *id.* at para 23 ("the term 'as presented' refers to the state of a product upon arrival at the border ..."); *id.* at para. 26 ("ordinary customs duties must be applied under Article II:1(b), first sentence, only based on the state of a product as it arrives at the border ..."); *id.* at para. 39 ("[I]liability to pay an ordinary customs duty must attach to this single event of importation."); Canada responses after second meeting at p. 7 ("[duty] rates are based upon the proper classification of an imported product in its state as it arrive at the border."); *id.* at 8 ("Canada has shown that the practice of WTO Members is to classify goods based on their state in a single shipment as presented at the border."); *id.* at 10 ("Canada submits that ordinary customs duties must crystallize based upon the status of goods the moment they enter the territory of a Member ..."); US rebuttal submission at para. 41 ("GIR 2(a) applies to goods as

"as presented" in GIR 2(a) "explicitly preclud[es] the application of GIR 2(a) to shipments of goods that are not imported together," while the EC has argued that "[i]t is inherent in the ordinary meaning of the words 'as presented' that it cannot include multiple shipments of goods presented to customs at different times, different places, from different origins ..."<sup>12</sup>

8. The complainants have failed to substantiate their position that, in arriving at a proper classification and assessment of duty, customs authorities are precluded from taking into account whether a shipment of parts and components is related to other shipments of parts and components through their common assembly into a single article. The WCO has now confirmed that the complainants' position is incorrect – it is, in fact, within the discretion of national customs administrations, and consistent with the rules of the Harmonized System, for customs authorities to apply GIR 2(a) to classify multiple shipments of parts and components as a single entity.

9. This confirmation by the WCO further highlights the complainants' inability to meet their burden of proof in identifying and proving the specific circumstances in which the challenged measures "will necessarily be inconsistent" with China's WTO obligations.<sup>13</sup> Plainly, there are circumstances in which customs authorities can classify multiple shipments of parts and components as having the essential character of the complete article, and to assess the corresponding duties for the complete article. As China has explained, one aspect of the state or condition of an entry at the time of importation is that it is one of a series of related shipments of parts and components – a fact that may be evident, for example, from the customs declaration. The importer's obligation to pay the duty rates applicable to the complete article arises from what it has imported – parts and components that have the essential character of the complete article. This application of GIR 2(a) to classify entries and assess duties is entirely consistent with the decision of the HS Committee that the classification of goods arriving in multiple shipments is a matter to be resolved by each member of the Harmonized System under its national laws and regulations.

10. What, then, are the specific respects or circumstances in which the challenged measures "will necessarily be inconsistent" with China's obligations under Article II to classify entries in accordance with the rules of the Harmonized System and to assess the corresponding rates of duty found in its Schedule of Concessions? The complainants have failed to answer this question, let alone provide any support for an answer. Their categorical position that customs authorities can never apply GIR 2(a) to classify multiple shipments of parts and components is clearly without basis. Having failed to articulate and substantiate a valid position on this key issue, the complainants cannot

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presented upon importation"); US responses after second meeting at para. 7 ("customs duties must be based on the condition of the article as imported"); *id.* at para. 16. ("a relationship between the charge and the condition of the goods at the border, at the time of importation, must be present in order for the charge to be an ordinary customs duty covered by Article II:1(b)"); *id.* at para. 30 ("the relevant consideration is whether China's measures enforce the collection of a customs duty under China's tariff schedule for which an auto part was liable when it entered the customs territory of China."); *id.* at para. 50 ("The United States interprets the term 'as presented' as explicitly precluding the application of GIR 2(a) to shipments of goods that are not imported together."); EC second written submission at para. 73 ("It is of paramount importance to underline that when goods are classified in the Harmonised System it is always done on the basis of the objective characteristics of the product at the time of importation, that is, as imported and presented to customs on a shipment-by-shipment basis."); EC responses after second meeting at para. 44. ("It is inherent in the ordinary meaning of the words 'as presented' that it cannot include multiple shipments of goods presented to customs at different times, different places, from different origins and destined for different importers.").

<sup>12</sup> US responses after second meeting at para. 50; EC responses after second meeting at para. 44.

<sup>13</sup> *United States – OCTG* at para. 172. China discusses the complainants' burden of proof in response to question 228 from the Panel.



demonstrate that the challenged measures are, as such, necessarily inconsistent with China's rights and obligations under Article II of the GATT 1994.

11. Finally, the WCO's response to the Panel's second set of questions has important implications concerning the facts and circumstances surrounding the negotiation of China's Schedule of Concessions and its accession to the WTO. The WCO has confirmed that, since at least 1963, the parties to the Harmonized System (and its predecessors) have understood that the application of GIR 2(a) to the classification of multiple shipments of parts and components is a matter to be resolved under national law. The HS Committee specifically reaffirmed this understanding of GIR 2(a) in 1995. When the complainants negotiated a Schedule of Concessions with China that included a significant tariff rate differential between motor vehicles and parts of motor vehicles, they were aware of this interpretation, and aware of the possibility that China would decide, consistent with the decision of the HS Committee, to apply GIR 2(a) to classify multiple shipments of parts and components as having the essential character of a complete vehicle.

12. Under Article 32 of the Vienna Convention, the Panel may draw upon these circumstances to confirm the interpretation that results from the application of Article 31. If the complainants had an understanding that China would not apply GIR 2(a) to classify multiple shipments of parts and components as a single entity, it was incumbent upon them to negotiate and document this understanding. It was not China's obligation to reserve its right to classify entries in a manner consistent with the rules of the Harmonized System. As the Appellate Body has repeatedly affirmed, Members negotiate Schedules of Concessions in the context of the Harmonized System, including its General Interpretative Rules and interpretations of the GIRs adopted by the WCO and the HS Committee.<sup>14</sup> Accordingly, Members may classify entries in accordance with the rules of the Harmonized System, unless they undertake a specific obligation not to do so in a particular circumstance. China undertook no such obligation. These facts and circumstances surrounding the negotiation of China's Schedule of Concessions confirm that China may interpret the term "motor vehicles" to include auto parts and components that have the essential character of a motor vehicle, and that enter China in multiple shipments.

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<sup>14</sup> China discusses the role of the Harmonized System as context in response, *inter alia*, to questions 54, 68, and 112.

## ANNEX C-6

### OBSERVATIONS OF THE EUROPEAN COMMUNITIES ON THE LETTER OF THE SECRETARIAT OF THE WORLD CUSTOMS ORGANIZATION OF 30 JULY 2007

#### Question 5

**Concerning the determination of the "essential character" of an incomplete or unfinished article as envisaged under GIR 2(a), can such a determination be made on a case-by-case basis only? In other words, in your view, can customs authorities have a set of pre-determined criteria that will be used in determining whether certain imported parts and components have the essential character of a complete article?**

1. The reply of the WCO secretariat should first be put in its context. Under point 3 of its reply of 20 June 2007 ("first letter"), the secretariat states that "the question at what point a collection of parts can be considered to substantially compose a complete motor vehicle is one that must be considered on a case by case basis". The reply of the WCO secretariat to question 5 must be understood in this light. Indeed, the reply refers to a "specific article (or group of articles presented together)". The possibility to use a set of predetermined criteria relates therefore to a clearly identified article or a group of articles and the determination is therefore still made on a case by case basis. This is in line with the position of the European Communities as set out *inter alia* in its second written submission (paragraphs 92 to 99) and its reply to question 209 of the Panel.

2. The European Communities would like to also note that question 5 put by the Panel to the WCO secretariat appears to assume a distinction between a case-by-case analysis and the adoption of predetermined criteria. This is not the case if the predetermined criteria identify a specific article or group of articles that are assumed to be presented together.

#### Question 6

**Following up on your response in paragraph 4 of your reply that GIR 2(a) must be applied together with GIR 1, does this mean that GIR 2(a) can only be taken into consideration after applying GIR 1?**

3. The reply of the secretariat of the WCO is entirely in line with the position of the European Communities as set out *inter alia* in its second written submission (paragraphs 75 to 91).

#### Question 7

**Are the six General Interpretative Rules applied in a hierarchical order? If the classification can be determined according to the terms of the headings and any relative Section or Chapter notes, are other rules simply not applicable?**

4. The reply of the secretariat of the WCO is entirely in line with the position of the European Communities as set out *inter alia* in its second written submission (paragraphs 75 to 91).

#### Question 8

**Is it within customs authorities' discretion to classify parts as a complete article to ensure the collection of a higher rate of duty applicable for complete articles regardless of the manner in which the importer wishes to structure and document its imports? In this**

**connection, what is the pertinence, if any, of the second sentence of Explanatory Note V to GIR 2(a), which states that "it is usually for reasons such as requirements or convenience of packing, handling or transport"?**

5. As the Secretariat declines to answer the question, there is no need to comment further.

#### **Question 9**

**Could you explain what are the circumstances in which a need for customs authorities to apply the principles of GIR 2(a) arises. In this regard, what are the differences between the first and second sentences of GIR 2(a)?**

6. The three staged test for applying GIR 2 (a) is in line with the position of the European Communities (see *inter alia* paragraphs 92 to 96 of its second written submission and its reply to question 218 of the Panel). However, the European Communities would like to emphasise that in the context of chapter 87 of the HS nomenclature, the state of "fitting" of the product is a very important criterion as illustrated by the General Explanatory note to chapter 87, which is a "*lex specialis*" application of GIR 2 (a) in the context of the chapter. Therefore, and although the WCO secretariat was not asked to address this specific issue, the European Communities is of the view that the Panel should consider the WCO secretariat's reply in this light.

#### **Question 10**

**Does the principle of the *second* sentence of GIR 2(a) with respect to "articles presented unassembled or disassembled" cover only situations where parts necessary to assemble a complete article arrive at the border in one shipment at once or does it also cover situations where parts to assemble a complete article arrive separately in multiple shipments, including those arriving at different times in different ports from different places of origin?**

7. The reply of the WCO secretariat should first of all be put in its context. In its reply to question 2 from the Panel (concerning the 1995 HS committee decision), the WCO secretariat stated that "I would, however, expect that those administrations which permit such consolidation of entries, would consider requests for that treatment on a case by case basis, applying standards set forth in national laws and regulations" (emphasis added). When replying to the question the WCO secretariat has presumably had in mind specific instances where for transportation etc. reasons a given consignment is split into several shipments upon request of the importer. This corresponds to the ordinary meaning of the word "split".

8. Second, the reply confirms that there is no accepted definition of "split consignments". The WCO secretariat confirms that the notion is "used widely to describe a range of trading practices".

9. Third, it would seem to the European Communities that the WCO secretariat's reply does not address the situations foreseen by the contested Chinese measures, which do not fall within the understanding of the notion of "split consignments" that seems to form the premise of the reply. For the situations foreseen by the contested measures, Rule 1 applies and is sufficient in the overwhelming majority of situations that come within the scope of the measures. This is illustrated by the replies to questions 5 and 6.

10. Fourth, the reply demonstrates that the HS nomenclature does not have a rule for "split consignments" in the sense that seems to form the premise of the WCO secretariat's reply. Therefore, such a situation is not covered by the HS nomenclature. Consequently Rule 2 (a) does not apply and

the Harmonised System cannot provide context for the interpretation of such a situation under Article II of the GATT 1994. To the extent such issues are before the Panel in the first place, it is therefore for the Panel to decide the question in the light of the Appellate Body's jurisprudence according to which "in characterizing a product for purposes of tariff classification, it is necessary to look exclusively at the 'objective characteristics' of the product in question when presented for classification at the border" (*EC – Chicken Cuts*, paragraph 246).

#### **Question 11**

**Following up on Question 2 (second bullet point) in our previous letter to you, could you please advise us whether the type of goods mentioned in paragraph 10 of the HS Committee Decision, namely "the classification of goods assembled from elements originating in or arriving from different countries", refers to goods that have arrived at the border in already assembled form from such elements? In other words, what does "goods assembled" mean in this context, goods already assembled when presented at the border or goods to be assembled in the importing country?**

11. The reply to question 11 illustrates very clearly the nature of the 1995 'decision'. Even the secretariat of the WCO is obliged to essentially guess what the HS committee actually decided. In the view of the European Communities such a 'decision' cannot provide any guidance to the Panel in adjudicating the dispute between the Parties. However, the reply demonstrates that the Harmonised System does not address the applicability of GIR 2 (a) to the classification of goods of single or multiple origin.

#### **Question 12**

**Is the Nomenclature Committee's decision cited in paragraph 10 of the HS Committee Decision (HSC/16/Nov. 95) an indication that matters involving goods of mixed origin are beyond the scope of GIR 2(a)? Does paragraph 10 of the HS Committee decision address the question relating to the rules of origin rather than tariff classification issues? Please provide a copy of the Nomenclature Committee's decision (NC/11/Oct. 63 – Report) cited in paragraph 10 of the HS Committee Decision.**

12. Again, the reply of the WCO secretariat is essentially an 'informed guess'. However, the reply suggests that the Harmonised System does not address the applicability of GIR 2 (a) to the classification of goods of mixed origin. The European Communities does not consider that such issues are before the Panel. To the extent the Panel would consider that such issues need to be addressed, the reply demonstrates that the Harmonised System does not provide context for the analysis.

#### **Question 13**

**Paragraph 11 of the HS Committee Decision states that "Mr. Kusahara pointed out that the legal text of General Interpretative Rule 2(a) was open to different interpretations." To what extent is the legal text of General Interpretative Rule 2(a) open to different interpretations by the WCO Members?**

13. As the reply cross-refers to question 5, the European Communities refers to its observations under question 5 (paragraphs 1 and 2).

#### Question 14

**When parts and components are imported and subsequently assembled into a complete article, what should be shown in the import statistics of the importing country? For example, should it be different origins of the parts and components that make up the complete article?**

14. It is not entirely clear whether the reply reflects the question. The European Communities has no observations on the reply.

#### Question 15

**Is it a norm for customs authorities to presume that the information on the importer's declaration form is correct and accept it as declared by the importer unless such information can be proven incorrect by customs authorities?**

15. As the reply does not address the substantive issue raised by the question, the European Communities does not have any observations on the reply.

#### Question 16

**In applying the principle of GIR 2(a), how should parts generally used in the assembly of various goods such as nuts and bolts be classified? Are these connecting parts also taken into account in determining whether certain parts have the essential character of a complete article?**

16. The reply demonstrates clearly that bulk shipments of parts must be classified according to the specific headings for such parts. Parts of general use, when presented separately and even when used for motor vehicles, cannot even be classified under the provisions for parts of automotive vehicles let alone as complete vehicles, which is the case under the Chinese measures.

#### Question 17

**Is the concept of "consignments" as in "split consignments" any different from the concept of "shipment"?**

17. The reply demonstrates that the 1995 HS committee 'decision' cannot be used as context in the present Panel proceedings. The 'decision' is not a document that could have "precedent value" and the language used under paragraph 10 of the 'decision' has no conventional status in the HS nomenclature. Indeed, the WCO secretariat confirms that the notions of "consignments", "split consignments" and "shipment" are widely used with widely differing meanings among different customs administrations.

A. REVISED KYOTO CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES (THE "KYOTO CONVENTION");

#### Question 18

**Does the *Kyoto Convention* contain any reference to the *time and place* of the collection or assessment of duties? Is there any other supplemental material informing the meaning of the *time and place* of the collection or assessment of duties? Is there any relevant information in the negotiating history of the *Kyoto Convention* on the meaning of these terms?**

18. Although the question emphasises the time and place, the language that follows ("collection and assessment") may have accidentally mislead the secretariat of the WCO since the reply does not appear to be particularly relevant for the case. In view of the European Communities, the crucial difference between the Parties in relation to "time and place" concerns not only the collection or assessment of duties, but first and foremost the time and place of the determination of the actual product and the nature of the charge that is imposed on the product. For adjudicating these questions, the time and place of the collection and assessment of duties may not be as relevant as the time and place where the actual product is identified in order to be subject to the relevant charge or duty.

#### Question 19

Chapter 2 of the *Kyoto Convention* contains the following definition:

- E8./ F11. "*Customs duties*": means the duties laid down in the Customs tariff to which goods are liable on entering or leaving the Customs territory;
- E20./ F14. "*import duties and taxes*": means Customs duties and all other duties, taxes or charges which are collected on or in connection with the importation of goods, but not including any charges which are limited in amount to the approximate cost of services rendered or collected by the Customs on behalf of another national authority.

Are there any supplemental materials informing the meanings of respectively "liable on entering (...) the Customs territory" and "on or in connection with the importation" referred to above? Is there any relevant information in the negotiating history of the *Kyoto Convention* on the meanings of "liable on entering (...) the Customs territory" and "on or in connection with the importation" referred to above? Has the language of Article II:1(b) of the GATT 1994 been in any manner mentioned in the negotiating history of the *Kyoto Convention* in the context of these definitions?

19. The European Communities does not consider that the reply from the WCO secretariat provides for any guidance for the Panel in this dispute. In particular, it is a matter of WTO law to interpret Article II:1 (b) of the GATT 1994. This concerns in particular any general statements made by the GATT Council in 1980 under the GATT 1947.

#### Question 20

**What is the relationship between the respective definitions of "*Customs duties*" and "*import duties and taxes*" in Chapter 2 of the *Kyoto Convention*? In particular, what is the difference between the expression "liable on entering" used in the former and the expression "on or in connection with the importation" used in the latter?**

20. The European Communities does not consider that the reply from the WCO secretariat provides for any guidance for the Panel in this dispute. At most, the fact that under chapter 2 of the *Kyoto Convention* "on or in connection with the importation" refers to the imposition of domestic taxes on the imported products demonstrates that the *Kyoto Convention* cannot be used as context for the purposes of interpreting Article II of the GATT, where the notions of "on or in connection with importation" are considerably narrower than under the *Kyoto Convention*.

- B. WORLD CUSTOMS ORGANIZATION, GLOSSARY OF INTERNATIONAL CUSTOMS TERMS, BRUSSELS, MAY 2006 (THE "GLOSSARY"):

**Question 21**

**In the "Recommendations of the Customs Co-operation Council concerning the use of the Glossary of International Customs Terms" of 6 July 1993, it is stated that "though the Glossary does not in itself have the legal status of an international instrument, it has been approved by the Council and certain definitions within it have been accepted by the Contracting Parties to the principal international Customs Conventions." Would it be possible for the WCO to indicate which are the definitions of the Glossary that "have been accepted by the Contracting Parties to the principal international Customs Conventions" and/or whether the above-mentioned two definitions are included in the scope of such definitions that have been accepted by the Contracting Parties?**

21. The European Communities does not consider that the reply from the WCO secretariat provides for any guidance for the Panel in this dispute. This is in particular, since China has not even accepted the Recommendation in question.

**ANNEX C-7**

**CANADA'S COMMENTS ON THE WORLD CUSTOM  
ORGANISATION'S RESPONSES**

Canada does not provide any detailed comments on the responses provided by the WCO, as it considers that those responses in all material respects are consistent with Canada's arguments. In particular, the WCO letter does not support China's arguments on the relevance of the Harmonized System to the interpretation of a Member's obligations in relation to the imposition of ordinary customs duties under GATT Article II:1(b), first sentence. As Canada has shown through detailed references to State practice and documents of the WCO and its predecessor, and as revealed in the WCO's responses, there is no evidence to support China's position that the Harmonized System allows classification as contemplated by the measures. Notably, there is no support for the view that China may ignore intermediate categories (such as 87.06), or may classify based on the state of products as used in manufacturing (rather than as they arrive at the border).



**ANNEX D**

**CORRESPONDENCE BETWEEN THE PANEL AND UNOG**

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## ANNEX D-1

### LETTER DATED 15 AUGUST 2007 FROM THE PANEL TO UNOG

At its meeting of 26 October 2006, the WTO Dispute Settlement Body established the Panel on *China – Measures Affecting Imports of Automobile Parts* pursuant to requests by the European Communities in document WT/DS339/8, the United States in document WT/DS340/8, and Canada in document WT/DS342/8, in accordance with Article 9 of the Dispute Settlement Understanding. On 27 January 2007, a Panel was composed to examine this complaint (please see triple symbol document WT/DS339/9, WTDS340/9, and WT/DS342/9). These proceedings involve three Chinese measures: Policy Order No. 8, Decree No. 125 and Public Announcement No. 4.

In these proceedings, issues relating to the translation of these Chinese measures into English were raised and the parties were able to agree on a common English translation of the three measures, with the exception of a single provision (first paragraph of **Article 28 of Decree No. 125**). Given that Chinese and English are both official languages of the United Nations and given that all parties of the proceedings are UN Members, the purpose of this letter is to request, on behalf of the Panel, the assistance of the United Nations Office at Geneva in this matter.

The Panel would therefore be grateful if the Conference Services Division's Languages Service of UNOG could provide the Panel with the Chinese-English translation of the first paragraph of Article 28 of Decree No. 125.

In order to assist UNOG's translators on this task, the Panel has attached to this letter the following set of documents:

- The three measures and their common English translation as agreed by the parties (including the two different versions of Decree No. 125's first paragraph of Article 28); and
- the two different versions of Decree No. 125's first paragraph of Article 28, as an excerpt.

The Panel would greatly appreciate UNOG's understanding in not making public this request or any of the attached documents, as the proceedings of this dispute are strictly confidential.

The Panel would like to thank you in advance for your cooperation and assistance in this important matter. It would be greatly appreciated if the information requested in this letter could be made available by 23 August 2007.

**ANNEX D-2**

**LETTER DATED 16 AUGUST 2007 FROM UNOG TO THE PANEL**

Reference is made to your letter of 15 August 2007 addressed to the Director-General of UNOG, Mr. Sergei Ordzhonikidze, requesting UNOG Conference Services Division to provide the WTO Panel on China-Measures Affecting Imports of Automobile Parts with a Chinese-English translation of the first paragraph of Article 28 of Decree NO.125.

On behalf of the Director-General, I am pleased to inform you that UNOG Conference Services Division has acceded, on an exceptional basis, to your request. However, it should be clearly understood that the Division vouches only for the grammatical accuracy of the translation and not for any legal construction anyone might wish to place upon it.

Please find the translation attached.

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Article 28.

After the imported automobile parts have been assembled into complete vehicles, the automobile manufacturer shall make a declaration of duty payable to Customs and Customs shall, in accordance with the relevant provisions of the Customs Law of the People's Republic of China (hereinafter referred to as the "Customs Law"), the Import-Export Tariff Regulations of the People's Republic of China and the Import-Export Tax Regulations of the People's Republic of China, proceed with classification and duty collection.



**ANNEX E**

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## ANNEX E-1

### TRANSLATION OF POLICY ORDER 8 AS AGREED BY THE PARTIES

#### Policy on Development of the Automotive Industry

Promulgation date:	05-21-2004
Effective date:	05-21-2004
Department:	NATIONAL DEVELOPMENT AND REFORM COMMISSION
Subject:	OTHER PROVISIONS

#### Order of the National Development and Reform Commission (No.8)

The Policy on Development of the Automotive Industry, which has been deliberated and adopted at the executive meeting of the National Development and Reform Commission and has been reported to and approved by the State Council, is hereby promulgated, and shall come into force as of the date of promulgation. The implementation of the Policy on Automotive Industry promulgated in 1994 shall be stopped this very day according to the official reply of Letter No. 30 [2004] of the State Council.

Director of the National Development and Reform Commission MaKai  
May 21, 2004

#### Policy on Development of the Automotive Industry

The Policy on Development of the Automotive Industry is formulated in order to meet the need to continuously improve the socialist market economy system as well as the new circumstances for the development of the automotive industry at home and abroad following accession to the World Trade Organization; in order to promote the structural adjustment and upgrading of the automotive industry, and comprehensively improve the international competitiveness of the automotive industry; and in order to satisfy the ever-increasing demand from consumers for automotive products, and foster the healthy development of the automotive industry. Through the implementation of this Policy, our country's automotive industry is to develop into a pillar industry of the national economy by 2010, and to make greater contributions towards realizing the objective to comprehensively build a fundamentally prosperous society.

#### Chapter I: Policy Objectives

**Article 1.** Maintain the principle to let the market play its fundamental role in allocating resources, combined with macro-economic controls by the government; create a market environment of fair competition and integration, and shape an administration system for the automotive industry based on law. The functional government departments carry out the administration of vehicle manufacturers, transport vehicles for agricultural use (hereinafter low-speed lorries as well as three-wheel vehicles), motorcycles and parts, as well as products thereof, in accordance with the compulsory requirements of administrative laws and regulations and technical norms, to regulate the market behaviour of each type of economic entity in the field of the automotive industry.

**Article 2.** Foster the coordinated development of the automotive industry with related industries, urban traffic infrastructure and environmental protection. Create an environment favourable to

automobile use, nurture a healthy automobile consumer market, protect consumers' rights and promote private consumption of automobiles. By 2010, our country is to become a major global automotive manufacturing country, with automotive products that are able to satisfy most of the domestic market's demand and that have entered the international market in large volumes.

**Article 3.** Provide incentives to vehicle manufacturers to improve research & development ability and technical innovation ability, to actively develop products with indigenous intellectual property rights, and to carry out brand sales strategies. In 2010 vehicle manufacturers shall have forged a number of well-known brands in automobile, motorcycle and parts products.

**Article 4.** Promote structural adjustments and restructuring in the automotive industry, increase enterprises' economies of scale, improve industrial concentration, avoid a dispersed, chaotic, low-grade and redundancy-prone build-up.

Through market competition, form several internationally competitive large vehicle manufacturers, and strive to make them into the list of the world's top 500 enterprises by 2010.

Encourage vehicle manufacturers to enter into enterprise alliances in accordance with market rules, to accomplish synergies of strengths and sharing of resources, and to increase the scale of their operations.

Nurture a group of relatively strong auto-parts manufacturers to achieve large-scale production such that they are able to participate in the global auto parts supply chain as well as be internationally competitive.

## **Chapter II: Development Planning**

**Article 5.** The State directs the formulation of the industry's development planning in accordance with the Policy on Development of the Automotive Industry. The development planning includes medium- and long-term development planning for the industry and development planning for large vehicle manufacturers. Medium- and long-term development planning for the industry are drawn up by the National Development and Reform Commission ("NDRC") jointly with other relevant departments on the basis of widely solicited opinions, and submitted to the State Council for approval and implementation. Large vehicle manufacturers are to formulate the corporation's proper development planning in conformity with the medium- and long-term development planning for the industry.

**Article 6.** A corporation with characteristics including unified planning, autonomously developed products, an independent product trademark and brand and an integrated sales and services system management, and of which, moreover, the automotive products produced by its core enterprise and/or wholly-owned subsidiaries, holding companies and Sino-foreign joint venture enterprises have a domestic market share of 15% or more, or whose annual sales revenue from whole vehicles accounts for 15% or more of the entire industry's annual whole vehicles sales revenue, is entitled, as a "large automotive enterprise corporation", to draw up and submit the corporation's development planning independently, for implementation after validation and approval by NDRC.

## **Chapter III: Technical Policies**

**Article 7.** Maintain the principle of combining imported technology and autonomous development. Keep track of and study international advanced technologies, actively carry out international cooperation to develop advanced and applicable technologies with indigenous intellectual property rights. Products with imported technology need to be demonstrably internationally competitive, as well as meet the evolving requirements of the international automotive industry's compulsory

technological standards. Products developed indigenously should strive to attain international technical levels and to participate in international competition. The State provides support to R&D activities that are in line with the technical policies, in the form of fiscal policy.

**Article 8.** The State guides and encourages the development of energy-saving, environmental, low-emission vehicles. The automotive industry should, in conjunction with the State's strategy to structurally adjust energy as well as the requirements on emission standards, actively engage in research and industrialization of electric vehicles, power cells for automotive use and other new power trains, and give priority to the development of hybrid-power vehicle technology and diesel engine technology for passenger vehicles. The State will take measures in scientific research, technological innovation, industrialization of new technologies, and policy environment, in order to promote the production and use of hybrid-power vehicles.

**Article 9.** The State supports research and development of alcohol fuels, natural gas, hybrid fuels, hydrogen fuel, and other new vehicle fuels, and encourages vehicle manufacturers to develop and produce vehicles powered with new fuels.

**Article 10.** The automotive industry and related industries should put emphasis on the development and application of new technologies, in order to increase vehicles' fuel economy. By 2010, the average fuel consumption of passenger vehicles should decrease by more than 15% compared to the year 2003. In accordance with the compulsory requirements of technical norms regarding energy-saving, a system is to be established to display vehicle fuel consumption.

**Article 11.** Actively carry out research into new materials for use in vehicles, such as lightweight materials, recyclable materials, and environmentally-friendly materials. The State will in due time set requirements for the minimum rate of recyclable materials to be used.

**Article 12.** The State supports research and production of automotive electronic products and actively develops the automotive electronics industry, so as to accelerate the application of electronic information technology in automotive products, in sales logistics and in the production enterprises, and so as to promote the development of the automotive industry.

#### **Chapter IV: Structural Adjustments**

**Article 13.** The State encourages automotive enterprises to develop into corporations and so to form a new competitive configuration. Through a strategic restructuring between enterprises on the basis of market competition combined with macro-economic controls, an optimization and an upgrading of the automotive industrial structure is to be achieved.

The objective of strategic restructuring is to support vehicle manufacturers in developing into large-scale vehicle manufacturers by means of assets restructuring, to encourage them to join in enterprise alliances by means of cooperation involving the pairing of their respective strengths and the sharing of resources, so to create an industrial configuration in which large-scale vehicle manufacturers, enterprise alliances and manufacturers of vehicles for special use may develop in a coordinated way.

**Article 14.** Manufacturers of whole vehicles should in the process of structural adjustment increase their level of specialized production, and gradually transform parts-producing units supplying in-house needs into open market-oriented, independent specialized parts-manufacturers.

**Article 15.** Enterprise alliances should, in the fields of product research and development, collaboration in production, and sales and services, extensively pursue cooperation, achieve adjustments in product mix, optimize the allocation of resources, and reduce operating costs, so as to



realize economies of scale and integrated development. An enterprise joining one enterprise alliance should not form alliances with other enterprises, so as to consolidate the enterprise alliance's stability and market position. The State encourages enterprise alliances to form economic entities linked by assets as soon as possible. If the cooperative development plan of an enterprise alliance foresees the establishment of a new vehicle manufacturer or a project to produce cross-category vehicles, this is to be implemented in accordance with the relevant provisions of this Policy.

**Article 16.** The State encourages automobile- and motorcycle-manufacturers to develop international cooperation, to give full play to their comparative advantages, and to participate in the international division of industrial tasks; it supports large-scale vehicle manufacturers and foreign automotive corporations merging and acquiring vehicle manufacturers domestically and abroad, so as to expand their market and business scope and so as to adapt to the globalizing trend in automobile production.

**Article 17.** Establish an exit mechanism for automotive whole vehicle- and motorcycle-manufacturers by introducing special notification for vehicle manufacturers (including existing enterprises undertaking the production of reassembled vehicles) that are unable to maintain normal production operations. Enterprises of this kind are not to be allowed to transfer their qualifications for producing automobiles or motorcycles to non-automobile or motorcycle-manufacturers or individuals. The State encourages enterprises of this kind to shift their business towards special-use vehicles or auto parts, or to engage in assets restructuring with another whole vehicle-manufacturer. Vehicle manufacturers are not allowed to buy or sell their production qualifications, and bankrupt vehicle manufacturers will have their registration on the Bulletin annulled.

## **Chapter V: Access Management**

**Article 18.** Formulate "Regulations on the Management of Road Motorized Vehicles". The functional government departments shall, in accordance with these "Regulations", carry out the management of road motorized vehicles with regard to their design, manufacturing, certification, registration, inspection, defect management, maintenance and upkeep, scrapping and recycling. Such management has to clearly distinguish rights and responsibilities, procedures should be transparent, simple to operate, and easy to supervise by society.

**Article 19.** Formulate compulsory requirements in the form of technical norms for safety, environmental friendliness, energy saving and anti-theft properties of road motorized vehicles. For all road motorized vehicles, compulsory requirements in the form of technical norms formulated in a unified manner are to be applied. These should be in line with our country's national conditions and at the same time pro-actively link up with the compulsory requirements of international automotive technical norms, so as to foster technical progress in the automotive industry. Road motorized vehicles not in conformity with the compulsory requirements of the relevant technical norms are not allowed to be produced and sold. Transport vehicles for agricultural use are only allowed to drive on roads of Class 3 (inclusive) or below, and are to follow the compulsory requirements of technical norms formulated accordingly.

**Article 20.** Establish a unified access management system for road motorized vehicle-manufacturers and products, in accordance with this Policy as well as the State certification and accreditation rules. Road motorized vehicle products that are conform to the regulations of the access management system as well as the compulsory requirements of the relevant laws and regulations and technical norms, and pass the compulsory product certification, are recorded in the "Bulletin of Road Motorized Vehicle-Manufacturers and Products" jointly published by NDRC and the State Administration for Quality Supervision, Inspection and Quarantine (AQSIQ). Products in the Bulletin must be marked with the China Compulsory Certification (3C) marking. Imported vehicles and vehicles assembled

with imported vehicle bodies shall not be substituted for self-produced products for the purpose of certification. Products illegally assembled and that violate intellectual property rights are prohibited from entering the market.

**Article 21.** The Public Security Traffic Management Departments handle the registration of vehicles based on the "Bulletin of Road Motorized Vehicle-Manufacturers and Products" and the China Compulsory Certification (3C) marking.

**Article 22.** The relevant government functional departments shall, according to the access management system, set the conditions for granting enterprises access to production per category of product – for vehicles, transport vehicles for agricultural use, and motorcycles – and shall carry out a dynamic management over manufacturers and their products so that any enterprise or product that fails to meet with regulations shall have its entry into the "Bulletin of Road Motorized Vehicle-Manufacturers and Products" removed. Amongst the conditions for an enterprise's access to production should be included the ability to design and develop products, capability in terms of product production facilities, the ability to ensure conformity of production of the products and quality control, and capability in terms of product sales and after-sales service.

**Article 23.** Certification bodies and inspection bodies for road motorized vehicle products are designated by AQSIQ after consultation with NDRC, and shall carry out their certification and testing tasks in accordance with the specific stipulations of the market access management system. Certification bodies and inspection bodies must have third-party impartial status and may not have any shared interests with vehicle manufacturers in terms of assets or management, nor may they engage in repeated inspections and repeated charging of fees for one and the same product. The State supports the regulated development of automotive, motorcycle and key parts inspection bodies with third-party impartial status.

## **Chapter VI: Trademarks and Brands**

**Article 24.** Automotive, motorcycle, engine and parts manufacturers should all strengthen enterprise and product brand awareness, actively develop products with autonomous intellectual property rights, pay attention to the protection of intellectual property rights, strive to enhance the enterprise's brand recognition in their production and business activities, and safeguard the manufacturer's brand image.

**Article 25.** Automotive, motorcycle, engine and parts manufacturers shall all register the manufacturer's self-owned product trademark and service trademark according to the "Trademark Law". The State encourages manufacturers to formulate plans for brand development and protection so as to endeavour to implement brand sales strategies.

**Article 26.** As from 2005, all domestically-produced vehicles, assemblies and parts have to be marked with the manufacturer's registered product trademark; whole vehicle products sold on the domestic market shall indicate, on a conspicuous place on the exterior of the vehicle body, the manufacturer's product trademark and the enterprise's name or the product's place of production; if the product trademark already includes a geographical reference to the manufacturer, it is allowed not to indicate the product's place of production. All brand dealerships shall place the manufacturer's service trademark in a visible place on their sales and service premises.

## **Chapter VII: Product Development**

**Article 27.** The State supports automotive, motorcycle and parts-producing manufacturers in establishing a product development structure and so to form product innovation capabilities and autonomous development capabilities. Autonomous development can take several forms including independent development, joint development, and development by delegation to others. In all cases where an investment made for establishing research and development facilities for a manufacturer's autonomously-developed products meets the State's relevant fiscal regulations aimed at fostering enterprises' technological progress, such investment can be accounted for as a pre-tax expense. The State shall bring out policies to encourage manufacturers' autonomous development as soon as possible.

**Article 28.** Vehicle manufacturers shall strive to master vehicle body development technology, emphasize the development of product manufacturing technology, and develop as quickly as possible a capability in chassis and engine development. The State will support the transformation of industrializing large scale vehicle manufacturers, enterprise alliances or parts manufacturers to develop state-of-the-art whole vehicle or parts assemblies with their own intellectual property rights.

**Article 29.** Automotive, motorcycle and parts-producing manufacturers should actively participate in major technological research projects organized by the State and strengthen research in partnership with research institutions, universities and colleges, emphasizing the application and conversion to industrial purposes of research results.

## **Chapter VIII: Parts and Related Industries**

**Article 30.** Auto parts manufacturers should adapt to international industrial development trends and actively participate in product development work done by the manufacturers of complete vehicles and assemblies. In the field of key auto parts, systematic development capabilities should progressively be formed, while in the field of general autoparts, capabilities for the development and manufacturing of advanced products should be formed, so as to meet domestic and foreign market demand and to strive to enter the international purchasing system for auto parts.

**Article 31.** Formulate specific development plans for parts, give different guidance and support depending on the category of auto parts, bring it about that capital in society is invested in the field of auto parts production, impel auto parts manufacturers that have comparative advantages to form the capability to specialize, mass-produce and modularize supply. Auto parts manufacturers capable of supplying several independent manufacturers that undertake the production of whole vehicles and of entering the international purchasing system for auto parts shall be given priority support by the State with respect to introduction of technology, technological upgrading, financing and merging and restructuring. Manufacturers that undertake the production of whole vehicles should progressively procure parts from the open market by adopting e-commerce and online purchasing methods.

**Article 32.** In line with the requirements of the automotive industry development plan, manufacturers in fields related to the automotive industry such as metallurgy, petrochemistry and chemistry, machinery, electronics, light industry, textile and building materials, should put emphasis on improving product levels and the ability to compete on the market for metallurgical materials, mechanical equipment, industrial moulds, automotive electronics, rubber, engineering plastics, textiles, glass, oil products for automotive use etc., so as to keep pace with the development of the automotive industry. Give priority support to iron and steel-manufacturers in achieving the ability to supply sheet metal for use in passenger vehicles; support the creation of centers for the design and manufacturing of specialized moulds, and improve capabilities in automotive mould design and

manufacturing; support petrochemical enterprises to make technological progress and product upgrading so as to improve oil products such as refined oil and lubricating oil, attain international advanced levels and meet the needs of the automotive industry's development.

### **Chapter IX: Distribution Networks**

**Article 33.** The State encourages automotive, motorcycle and parts manufacturers as well as financial, service and trade enterprises to actively develop automotive services and trade by learning from internationally mature automotive sales methods, management experiences and service and trade concepts.

**Article 34.** In order to protect the lawful rights and interests of automotive consumers, and to ensure that they obtain quality service in the process of purchasing and using a vehicle, every domestic as well as foreign vehicle manufacturer selling its self-produced automotive products on the domestic market must, as soon as possible, establish a sales and services system for its self-produced vehicle brands. This system may be established by the domestic or foreign vehicle manufacturer either by investing itself or by authorizing dealers to invest. Both domestic and foreign investors may engage in brand sales and after-sales service activities in China for domestic as well as for imported vehicles, once they have been authorized by the vehicle manufacturer as well as handled the necessary procedures in accordance with the relevant regulations.

**Article 35.** As from 2005, for all passenger vehicles self-produced by vehicle manufacturers, brand sales and services are to be put into practice; as from 2006, for all self-produced automotive products, brand sales and services are to be put into practice.

**Article 36.** The current management method concerning the authorization of dealership rights for small passenger vehicles is abolished; the Ministry of Commerce (MOFCOM) is to formulate, jointly with the State Administration for Industry and Commerce (SAIC) and NDRC, Implementation Rules for the Management of Automotive Brand Sales. Automotive dealers shall carry out automotive business activities within the business scope authorized by the management departments for the administration of industry and commerce. A business scope for a brand dealership for passenger vehicles (including second-hand vehicles) of no more than 9 seats is to be authorized and published by the State management department for the administration of industry and commerce in accordance with relevant regulations. Business licenses for brand dealerships will be authorized consistently as being for brand automobile sales.

**Article 37.** Automobile and motorcycle manufacturers should strengthen sales management in their distribution network, and regulate maintenance services; they have the responsibility to inform society which vehicle models are no longer in production, and to take active measures in order to guarantee that within a reasonable time-span a reliable supply of parts is provided for use in after-sales services and maintenance; at regular times they should make public towards society the list of their authorized brand sales or maintenance enterprises as well as those whose authorization has been revoked; and they are not to supply products to dealers without brand authorization and failing to meet business conditions.

**Article 38.** Automobile, motorcycle and parts dealers shall abide by the State's relevant laws and regulations in their business activities. The relevant departments shall impose punishment according to the law, to those who sell vehicles prohibited by the State or of which sales have been announced to have discontinued; those who sell vehicles under a false or assumed manufacturer's name, manufacturer's location, or quality certificate; those who are not authorized by the vehicle manufacturer or whose authorization has been revoked and who continue to use the original brand to

engage in vehicle and/or parts sales and maintenance services; as well as those who deal in counterfeit and bad quality auto parts to provide customers with repair services.

**Article 39.** Vehicle manufacturers should take the overall interests of the manufacturing and sales and services segments into consideration with a view to increase comprehensive economic benefits. When transferring the rights and interests of the sales segment to another legal person, this should be deemed a major change to the feasibility study report of the original investment project and, in addition to reporting such a transfer to MOFCOM for its approval in accordance with the regulations, it needs as well to be submitted for authorization to the unit that originally approved the project.

## **Chapter X: Investment Management**

**Article 40.** In accordance with the principle that any investment approval system should be advantageous to enterprises' autonomous development and to the government's exercising macro-economic control, the government's approval and management system over vehicle manufacturers' investment projects is being reformed so as to be carried out through two methods, i.e. filing and approval.

**Article 41.** Investment projects for which filing is to be carried out:

- (1) Existing manufacturers of automobiles, transport vehicles for agricultural use, and vehicle engines, that through funding of their own expand their production capacity for same-category products or add new products, including newly built manufacturing facilities by the same company in a different location for same-category products.
- (2) Investment in production of motorcycles and their engines.
- (3) Investment in production of parts for automobiles, transport vehicles for agricultural use and motorcycles.

**Article 42.** For clause 1 under the investment projects for which filing is to be carried out, the provincial government-level department in charge of investments or an enterprise corporation separately listed in the State Plan is to submit the project proposal to NDRC for filing; for clauses 2 and 3, the enterprise is to submit the project proposal directly to the provincial government-level department in charge of investments. For the contents to be filed, see Annex 2.

**Article 43.** Investment projects for which approval is to be carried out:

- (1) Newly-established manufacturers of automobiles, transport vehicles for agricultural use, and vehicle engines, including new manufacturers with independent legal personality established in a different location by an existing vehicle manufacturer.
- (2) Existing vehicle manufacturers that are to produce another category of whole vehicles, crossing over from the product category that they already produce.

**Article 44.** For investment projects for which approval is to be carried out, the provincial government-level department in charge of investments or an enterprise corporation separately listed in the State Plan is to submit the project proposal to NDRC for examination; projects to invest in the production of special-use vehicles are to be ratified by the provincial government-level department in charge of investments and submitted to NDRC for filing, while newly-established Sino-foreign joint venture sedan car projects are to be submitted by NDRC to the State Council for its ratification.

**Article 45.** Projects included in the development plans of large vehicle manufacturers, once approved, are to be implemented by the enterprise itself.

**Article 46.** Until January 1, 2006, approval of any newly-to-be-established manufacturer producing transport vehicles for agricultural use will be temporarily suspended.

**Article 47.** New investment projects should fulfill the following conditions:

- (1) Newly-established manufacturers of motorcycles and their engines should have technological development ability and conditions, and total project investment may not be less than RMB 200 million.
- (2) The registered capital of manufacturers of special-use vehicles may not be less than RMB 20 million, and such an enterprise should have product development ability and conditions.
- (3) For investment projects for producing another category of whole vehicles, crossing over from the product category that the enterprise in question already produces, the total project investment (including utilization of previously existing fixed assets and intangible assets) may not be less than RMB 1.5 billion; the manufacturer's assets/liabilities ratio should be under 50%, with a bank credit rating of AAA.
- (4) Vehicle manufacturers that are to produce sedan cars or other products in the passenger vehicle category, crossing over from the product category that they are already making, should have a record of mass production of automotive products and an accumulated after-tax profit over the last three years of more than RMB 1 billion (as evidenced by the tax bureau); the manufacturer's assets/liabilities ratio should be under 50%, with a bank credit rating of AAA.
- (5) For investment projects for newly-to-be-established vehicle manufacturers, the total project investment may not be less than RMB 2 billion and of this amount, the self-owned capital may not be less than RMB 800 million; an organization for product R&D has to be set up, for which the investment may not be less than RMB 500 million. The investment project for a newly-established manufacturer of passenger vehicles or heavy trucks must include the production of engines destined for the whole vehicle. For investment projects for newly-to-be-established manufacturers of vehicle engines, the total project investment may not be less than RMB 1.5 billion and of this amount, the self-owned capital may not be less than RMB 500 million; a R&D organization has to be set up, so that the product level may be able to satisfy the compulsory requirements of ever more stringent national technical norms.
- (6) The scale of production, for the newly-established investment projects hereunder, may not be less than:  
For heavy trucks: 10,000 units.  
For passenger vehicles: equipped with a 4-cylinder engine, 50,000 units; equipped with a 6-cylinder engine, 30,000 units.

**Article 48.** In Sino-foreign joint venture manufacturers of whole vehicles, special-use vehicles, transport vehicles for agricultural use and motorcycles, the shareholding ratio on the Chinese side may not be less than 50%. If a whole vehicle, special-use vehicle, transport vehicle for agricultural use, or motorcycle joint stock enterprise with listed shares, sells shares of the legal person to the public, one of the legal persons on the Chinese side must retain majority control which must be a higher share than the aggregate of shares on the side of the foreign investors' legal persons. One and the same foreign company may establish no more than (and including) two joint venture enterprises in China for the production of whole vehicle products of the same category (passenger vehicles, commercial vehicles, or motorcycles), but if it acquires another domestic vehicle manufacturer jointly with its Chinese joint venture partner, the limitation on two joint venture enterprises does not apply. If an

overseas enterprise with legal personality has majority control over another enterprise, both will be deemed to be one and the same foreign company.

**Article 49.** Domestic and foreign vehicle manufacturers investing in export-processing zones in projects to produce vehicles and vehicle engines for export, need not be bound by the restrictions of the relevant articles and clauses of this Policy but must apply to the State Council for special approval.

**Article 50.** If the partners in a Sino-foreign joint venture vehicle manufacturer prolong the term of their cooperation, change the joint venture's shareholding ratio or the foreign shareholder, this must, in accordance with the regulations, be submitted for handling to the original approval department.

**Article 51.** As long as projects for which approval is to be carried out have not obtained notification of approval, land administration departments may not handle land requisition procedures for them, State-owned banks may not issue loans to them, General Administration of Customs ("Customs") may not handle tax exemption applications from them, the Securities Regulatory Commission will not authorize them to issue shares and be listed, and the departments in charge of the administration of industry and commerce will not handle the registration procedure for a newly-established manufacturer. The relevant State departments shall not accept applications from manufacturers or applications for product access.

## **Chapter XI: Import Management**

**Article 52.** The State supports the efforts of vehicle manufacturers to increase their domestic production capacity, giving impetus to the technological progress of auto parts manufacturers and to the development of the automotive manufacturing industry.

**Article 53.** Any vehicle manufacturers using imported parts characterized as complete vehicles to produce vehicles should report this factually to the Ministry of Commerce, the Customs and NDRC. The imported parts for the vehicle models in question must all be declared for duty payment to the Customs office under whose jurisdiction the enterprise falls, so as to enable the relevant departments to exercise effective management.

**Article 54.** Customs duties will be levied strictly in accordance with the tariff rates for imported whole vehicles and parts, to prevent any loss of customs duties. The relevant functional departments of the State have to conduct inspections at each stage of application for quota, import declaration, and product access allowance.

**Article 55.** The following parts are characterized as complete vehicles: the body (including driver's cabin) assembly, the engine assembly, the transmission assembly, the drive axle assembly, the non-drive axle assembly, the frame assembly, the steering system and the brake system.

**Article 56.** Auto parts shall be determined to have the character of a complete assembly in the following cases: complete assemblies imported in their constituent parts (completely knocked-down), or assemblies and/or systems imported dismantled into several key parts (semi-knocked-down). Whenever imported key parts attain or exceed the stipulated quantity they shall be characterized as Imported Assemblies.

**Article 57.** Within the scope of determining the characteristics of a complete vehicle, the imported parts shall be characterized as complete vehicles if any of the following situations apply:

- (1) The two main assemblies, namely the vehicle body (including driver's cabin) and the engine, are imported to assemble the vehicle;
- (2) One of the two main assemblies, namely the vehicle body (including driver's cabin) or the engine, as well as three or more other assemblies are imported to assemble the vehicle;
- (3) When the two main assemblies, namely the vehicle body (including driver's cabin) and engine are not imported, but five or more other assemblies are imported to assemble the vehicle.

**Article 58.** The State designates as import ports for whole vehicles the four coastal ports of Dalian New Port, Tianjin New Port, Shanghai Port, and Huangpu Port, the two land ports of Manzhouli and Shenzhen (Huanggang), as well as the Alashankou Port in Xinjiang (for whole vehicles imported for use within Xinjiang Autonomous Region and produced in countries of the Commonwealth of Independent States). Imported whole vehicles must be imported through the above-mentioned ports. As of 2005, no bonded trade area in any import port shall be allowed to stock vehicles destined to be imported into the domestic market.

**Article 59.** The State prohibits the import of used vehicles, used motorcycles and their parts either by way of trade or by way of donation, as well as the import of used vehicle assemblies and parts as scrap steel or scrap metal for dismantling and revamping. Repairs of above-mentioned products from abroad for re-export over the border are allowed to take place within export-processing zones, but no dismantling and revamping business of used vehicles or used motorcycles is allowed.

**Article 60.** Specific management measures for the import of whole vehicles and parts shall be drawn up by the Customs jointly with other relevant departments, and implemented upon approval by the State Council. Sample vehicles sent from abroad for testing and vehicles temporarily imported to be shown at exhibitions shall be managed in accordance with customs management regulations for the temporary import and export of goods.

## **Chapter XII: Vehicle Consumption**

**Article 61.** Cultivate an automobile market with private consumption as its backbone, improve the environment for automobile use, and safeguard the rights and interests of automobile consumers. Incite automobile consumers to purchase and use low energy-consumption, low pollution, low gasoline emission, new energy-source and new power-driven automobiles so as to strengthen environmental protection. Bring about the coordinated development of the automotive industry with urban traffic infrastructure, environmental protection, energy saving and related industries.

**Article 62.** Establish a nationwide, uniform and open automotive market and management system; local governments should encourage that vehicles produced in other regions achieve fair competition in their regional market, and may not carry out discriminatory policies or measures that could have discriminatory results towards automotive products not locally produced. All restrictions and additional conditions on vehicle purchasing, use and property rights disposal that are not in conformity with State laws and regulations as well as with the requirements of this Policy should be revised or abolished.

**Article 63.** The State sets and publishes uniform fee-charging items and rates for all fees of administrative nature and fund contributions of government nature as they pertain to vehicles, and regulates all government fee-charging when a vehicle is registered and in the course of its utilization. Localities may not add to these, during vehicle purchasing, registration and use, any other fees of administrative nature and fund contributions and sums of government nature; if there is a need for



such additions, approval should be applied for according to procedure based on the law, laws and regulations or a document approved by the State Council. With the exception of fee-charging items stipulated by the State, no unit is allowed to charge automobile consumers any compulsory fee for non-business services. Automobile consumers have the right to file a complaint and to refuse payment in case of compulsory charges that contravene regulations.

**Article 64.** Strengthen the management of fee-charging for business services. In the course of vehicle utilization, business service fees that may arise such as for maintenance and servicing, non-statutory insurance, motorized vehicle parking fees etc. should be collected by the business service unit on the basis of the principle that the automobile consumer is willing to accept such services. Fee-charging and its rates for professions of a competitive nature such as maintenance and servicing can be fixed by the business service provider himself according to market principles. In cases where business services are engaged in using monopolistic resources such as with motorized vehicle parking, the rates for fee-charging and the management methods are to be set by the price management department under the State Council or authorized price management departments at provincial level, which are to publish them and supervise their implementation. The business service provider shall place a regularly updated billboard announcing the rates at the fee-collecting location, for supervision by the public. The placement of tollgates on highways must comply with relevant State regulations. All tollgates must publicize on a conspicuous spot the reason for fee-charging and the fee-charging rates.

**Article 65.** Actively develop automotive services and trade, to promote automobile consumption. The State supports the development of automotive credit consumption. Financial institutions engaging in credit business for automotive consumption should improve their services, and perfect mortgaging methods for automotive credit. Provided that the safety of credit is assured, consumers are allowed to use the vehicle they purchased as a mortgage so as to obtain automobile consumer credit. When approved, enterprises that meet the conditions can set up non-bank financial institutions dedicated to servicing automobile consumption, and foreign investors may engage in credit and leasing business for automobile consumption. Put effort in developing all lines of business such as vehicle leasing, driver training, logistics, emergency assistance etc., perfect an information and statistics system for the automotive business, develop on-line automobile information services and e-commerce. Support units that meet the conditions in establishing a consumer credit information system, and achieve information sharing.

**Article 66.** The State encourages the circulation of second-hand vehicles. Relevant departments should actively create the conditions for regulating in a uniform manner the administrative methods for levying taxes and charges in connection with second-hand vehicle exchanges, for rendering it convenient for vehicle dealers to engage in second-hand vehicle exchange, and for nurturing and developing a second-hand vehicle market. Establish a system for voluntary valuation requests for second-hand vehicles. Except for vehicles that are State-owned assets, the exchange price for second-hand vehicles should be determined between the buyer and the seller; the parties concerned may, on a voluntary basis, entrust an intermediary body holding a certificate of qualification to carry out a valuation, which shall be used as a reference at the time of the transaction; no unit or department is allowed to carry out a valuation of the exchanged vehicle in a compulsory manner or in a compulsory manner in disguise.

**Article 67.** Enterprises engaged in second-hand vehicle business should possess the required capital, premises, and specialized technical personnel, and shall conduct their business activities only upon approval by and registration at the management departments for the administration of industry and commerce. When selling second-hand vehicles, the vehicle dealer should provide the buyer of the vehicle with truthful information about the vehicle, and not engage in disguise or fraud. Vehicles sold must have the "Motorized vehicle registration certificate" and the "Motorized vehicle license", and at

the same time have certificates of annual inspection by the Public Security traffic management department and the Environmental Protection management department. If the second-hand vehicle purchased by the buyer is not eligible for outgoing or incoming registration of a motorized vehicle, the dealer should refund the vehicle unconditionally and bear the corresponding responsibility.

**Article 68.** Perfect the automotive insurance system. The insurance system should collect premiums in accordance with the level of risk of the consumer and of the insured vehicle. The insurance industry is encouraged to promote a diversification of automotive insurance products and a market orientation of insurance rates.

**Article 69.** All municipal people's governments should comprehensively study policies and methods for a balanced development between traffic demand, the modes of traffic in their municipality, and available traffic resources such as urban roads and parking facilities. A system of hearings is to be instituted when formulating non-provisional traffic management programs restricting traffic in certain areas.

**Article 70.** All municipal people's governments should, in accordance with the economic development situation in their municipality, actively plan and build parking spaces and facilities with as guiding principles to safeguard a smooth traffic flow, to make parking more convenient and to spur automobile consumption. Formulate land-use policies for parking spaces and policies that encourage investment, and encourage individuals, collectives as well as foreign investors to build parking facilities. In order to regulate the construction of municipal parking facilities, the Ministry of Construction should formulate corresponding standards and issue specific requirements for the building of parking facilities in residential areas, commercial areas, public spaces and recreational spaces.

**Article 71.** The relevant State departments shall formulate and promulgate uniform automobile emission standards, and shall distinguish in accordance with prevailing conditions between immediately operative standards and anticipatory standards. The people's governments in every province, autonomous region, and directly administered municipality shall, in accordance with the local actual situation, choose to implement either the immediately operative standard or the anticipatory standard. If the anticipatory standard is chosen as the immediately operative standard, the implementation date shall be announced at least one year in advance.

**Article 72.** Implement a nationwide, uniform management system for motorized vehicle registration and inspection; localities are not allowed to formulate their own management methods in this regard. When applying for motorized vehicle registration and annual inspection, the Public Security traffic management departments may not request documentation to be submitted other than the documentation that has to be provided according to the relevant State laws and regulations and State Council regulations or regulations authorized by the State Council (identity card of the motorized vehicle owner, certificate of origin of the motorized vehicle, ex-factory quality certificate for the whole vehicle for locally-produced motorized vehicles or import certificate for imported motorized vehicles, relevant tax certificates, proof of payment of the insurance premium for statutory insurance, certificate of annual inspection). People's governments at every level as well as relevant departments may not request the Public Security traffic management departments to examine additional documentation at the time of registration and annual inspection. If the procedure provided by the automobile consumer is conform to State regulations, the Public Security traffic management departments may not refuse to handle registration and annual inspection.

**Article 73.** The Public Security traffic and environmental protection management departments should, in accordance with the vehicle category, usage and age, in consultation with relevant departments

formulate different management methods. For new vehicles and vehicles not used for commercial purposes, the interval between inspections can be suitably lengthened, while for older vehicles the frequency of inspections and the items to be inspected can be suitably increased.

**Article 74.** The "Motorized Vehicle Registration Certificate" issued by the Public Security traffic management departments can be used by the motorized vehicle owner as proof of his property right when leasing the vehicle, when applying for automobile consumer credit, or when trading a second-hand vehicle; and when the vehicle is traded, the "Motorized Vehicle Registration Certificate" must be transferred to the new owner at the same time.

### **Chapter XIII: Others**

**Article 75.** Automobile professional organizations, intermediary bodies and other social groupings should strengthen their internal organization, increase their service awareness, and make efforts to play their role as intermediary bodies; they should actively participate in exchange activities with relevant professional circles internationally and fully play their role as a bridge and a hub between the government and enterprises, so as to promote the development of the automotive industry.

**Article 76.** Investors from the Hong Kong Special Administrative Region, the Macau Special Administrative Region and the Taiwan region investing in the automotive industry on the Chinese mainland are subject to the relevant stipulations of this Policy.

**Article 77.** Prior to the publication of compulsory requirements on technical standards for road motorized vehicle products, national compulsory standards provisionally apply.

**Article 78.** This Policy takes effect from the date of its publication, and NDRC is responsible for its interpretation.

### **Annex 1: Terminology**

1. Road motorized vehicle: any power-driven vehicle and trailer, with at least two wheels, and a rated minimum speed higher than 6 km/h, comprising mainly vehicles, transport vehicles for agricultural use, motorcycles, and other transport machines and trailers used on roads. Not including vehicles driving on rails, or any power-driven machines and tractors used in agriculture, forestry, engineering etc. but not used on roads.
2. Automobile, special purpose vehicle, transport vehicle for agricultural use, motorcycle: "automobile" as used in the Policy on Development of Automotive Industry refers to vehicles as defined in Art. 2.1 of National Standard GB/T 3730.1-2001, including whole vehicles and special purpose vehicles; "special purpose vehicle" refers to vehicles as defined in Art. 2.1.1.11, 2.1.2.3.5 and 2.1.2.3.6 of National Standard GB/T 3730.1-2001; "transport vehicle for agricultural use" refers to vehicles as defined in National Standard GB 18320-2001; "motorcycle" refers to vehicles as defined in National Standard GB/T 5359.1-1996.
3. Product category: according to the definitions of passenger vehicles, commercial vehicles and motorcycles in the National Standards, and their detailed classification, in which:
  - (A) Passenger vehicles are classified into:  
Sedans: Art. 2.1.1.1 to 2.1.1.6 of National Standard GB/T 3730.1-2001.  
Other passenger vehicles (including multi-purpose and sport/utility vehicles): Art. 2.1.1.7 to 2.1.1.11 of National Standard GB/T 3730.1-2001.
  - (B) Commercial vehicles are classified into:  
Buses: Art. 2.1.2.1 of National Standard GB/T 3730.1-2001.  
Semi-trailer tractors and trucks: Art. 2.1.2.2 and 2.1.2.3 of National Standard GB/T 3730.1-2001.
4. New automobile, transport vehicle for agricultural use, or automotive engine investment project: newly-established enterprises (including Sino-foreign joint venture enterprises) producing whole vehicles, special-purpose vehicles, farm transport vehicles and automotive engines; as well as existing enterprises (including Sino-foreign joint venture enterprises) producing whole vehicles, special-purpose vehicles, farm transport vehicles, or engines, which either change the legal person/shareholder(s) and/or establish a production enterprise with independent legal personality in another location. Another location means, outside of the municipality or county where the enterprise is located.
5. Total project investment: the total fixed assets investment (including existing fixed assets and newly-added fixed assets) required for the investment project, plus intangible assets and working capital.
6. Autonomous property rights (autonomous intellectual property rights): the product obtained through autonomous development, joint development or development entrusted to a third party, in which the enterprise owns the industrial property rights to the product, the right to improve and to certify the product, as well as the right to transfer the product technology.
7. Vehicle manufacturer: a manufacturer (including Sino-foreign joint venture or cooperative enterprises) of whole vehicles or special purpose vehicles and lawfully registered within the territory of China in accordance with the approval procedure stipulated by the State.
8. Domestic market share: the share that a corporation (manufacturer) occupies in the total sales of domestic vehicles with its own sales of whole vehicles in the domestic market over one whole year.

## **Annex 2: Contents to be filed for an automotive investment project**

The contents of materials to be filed include:

1. Basic information, legal address, legal representative's name, of the vehicle manufacturer or the project investor. Business operation results and bank credit information for the past three years.
2. Analysis of the necessity of establishing the investment project, and of the domestic and foreign markets; analysis of the technological level of the product and of the origin of the technology (explanation of the intellectual property rights over the product); total project investment, registered capital and sources of financing; production (operation) scale, contents of construction; method of construction, and construction schedule.
3. For Sino-foreign joint venture or cooperative enterprises, basic information on the foreign investor or cooperation partner, including name of the foreign investor, country of registration, legal address and legal representative, and nationality. The investment record and business results of the foreign investor in China. The shareholding ratio of the Chinese and foreign sides in the investment project, the method of investment and sources of financing, and the term of the joint venture.
4. The contract for foreign technology transfer or technological cooperation.
5. Economic benefit analysis of the investment project.
6. Documentation on environmental impact, land use, bank undertakings, and construction approval by the local government.
7. Supporting conditions and favourable policies offered by the local government.

**ANNEX E-2**

**TRANSLATION OF DECREE 125 AS AGREED BY THE PARTIES**

[Cover Letter of Decree 125]

**DECREE OF THE PEOPLE'S REPUBLIC OF CHINA GENERAL ADMINISTRATION OF CUSTOMS, THE  
PEOPLE'S REPUBLIC OF CHINA NATIONAL DEVELOPMENT AND REFORM COMMISSION, THE  
PEOPLE'S REPUBLIC OF CHINA MINISTRY OF FINANCE, AND THE PEOPLE'S REPUBLIC OF CHINA  
MINISTRY OF COMMERCE**

No. 125

February 28, 2005

In accordance with the *Automotive Industry Development Policy* as well as relevant regulations, the General Administration of Customs, the National Development and Reform Commission, the Ministry of Finance, and the Ministry of Commerce have formulated the *Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles*, now promulgated for implementation from April 1, 2005.

[signature of MU Xinsheng]  
The Minister, Customs General Administration

[signature of MA Kai]  
The Chairman, National Development and Reform Commission

[signature of JIN Renqing]  
The Minister, Ministry of Finance

[signature of BO Xilai]  
The Minister, Ministry of Commerce

**ADMINISTRATIVE RULES ON IMPORTATION OF AUTOMOBILE PARTS  
CHARACTERIZED AS COMPLETE VEHICLES**

**CHAPTER I     GENERAL PROVISIONS**

**Article 1**        These Rules are formulated in accordance with relevant laws and regulations with a view to formalizing and strengthening the administration of the importation of automobile parts, and promoting the healthy development of the automobile industry.

**Article 2**        These Rules are applicable to the supervision and administration of the importation of automobile parts characterized as complete vehicles, used to produce/assemble<sup>1</sup> vehicles by automobile manufacturers approved by or registered with relevant state authorities.

Automobile manufacturers importing completely knocked-down (CKD) or semi-knocked down (SKD) kits may declare such importation to the Customs in charge of the area where the manufacturer is located and pay duties, and these Rules shall not apply.

**Article 3**        The reference to "vehicles" in these Rules shall mean the classes M and N vehicles as defined in the *Classification of Vehicles and Trailers* (National Standard of China, GB/T15089-2001).

"Class M Vehicles" shall mean passenger vehicles with at least four wheels. "Class N Vehicles" shall mean cargo vehicles with at least four wheels.

**Article 4**        The reference to "assembly (system)" in these Rules shall include the vehicle body (including cabin) assembly, the engine assembly, the transmission assembly, the driving axle assembly, the driven axle assembly, the frame assembly, the steering system, and the braking system.

**Article 5**        The reference to "automobile parts characterized as complete vehicles" in these Rules shall mean that the imported automobile parts should be characterized as complete vehicles at the stage when complete vehicles are assembled. The reference to "automobile parts characterized as assemblies (systems)" shall mean that the imported automobile parts should be characterized as assemblies (systems) at the stage when the assemblies (systems) are assembled.

**Article 6**        The General Administration of Customs (hereinafter referred to as the "CGA"), the National Development and Reform Commission (hereinafter referred to as the "NDRC"), the Ministry of Commerce, and the Ministry of Finance shall be responsible for the administration of imported automobile parts that should be characterized as complete vehicles according to these Rules.

The CGA, the NDRC, the Ministry of Commerce, and the Ministry of Finance shall establish a Leading Panel for the Administration of the Importation of Automobile Parts Characterized as Complete Vehicles (hereinafter referred to as "the Leading Panel"). The Leading Panel Office shall be resident at the CGA, and be responsible for dealing with daily affairs of the Leading Panel. Designated by the CGA, the National Professional Center for Verification of the Character of Complete Vehicle (hereinafter referred to as "the Verification Center"), shall verify whether imported parts can be characterized as complete vehicles or assemblies (systems).

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<sup>1</sup> Canada, the EC and the United States note that the Chinese original text contains the two words "shengchan" and "zuzhuang", which are properly translated into "to produce" for "shengchan", and "to assemble" for "zuzhuang". China considers that the two words are used in an interchangeable sense.

## CHAPTER II ADMINISTRATION OF REGISTRATION

**Article 7** Automobile manufacturers shall conduct a self-evaluation of whether imported automobile parts used in a particular vehicle model should be characterized as complete vehicles in accordance with these Rules, if the automobile manufacturers produce<sup>2</sup> vehicles with imported automobile parts for domestic sales. If, through the self-evaluation, an automobile manufacturer determines that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall register the relevant vehicle models with the CGA prior to the importation of such automobile parts. Each vehicle model of the same automobile manufacturer shall be registered separately.

If the self-evaluation suggests that the imported automobile parts should not be characterized as complete vehicles, the automobile manufacturer shall request the CGA to conduct a review. The CGA shall designate the Verification Center to conduct a simplified review or an on-site review. In the event that the review indicates that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall file a supplementary registration. In the event that the review concludes that the imported automobile parts should not be characterized as complete vehicles, registration is then unnecessary.

When an automobile manufacturer applies to the NDRC to be listed on the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products* and applies to the Ministry of Commerce for an Automatic Importation License, it shall submit the self-evaluation results for the vehicle models concerned. If the imported automobile parts are not characterized as complete vehicles, the automobile manufacturer shall also submit the review opinion by the CGA.

"Characterized as Complete Vehicles" shall be marked by the NDRC in the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products* and shall be marked by the Ministry of Commerce in the Automatic Importation License for those vehicle models assembled with imported automobile parts that have been characterized as complete vehicles.

**Article 8** Registered vehicle models shall be those that have been listed on the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products* published by the NDRC.

**Article 9** When an automobile manufacturer applies for registration, the manufacturer shall submit:

- (1) a brief introduction of the manufacturer;
- (2) an annual production plan for the vehicle model to be registered;
- (3) a classification and price ratio schedule of the automobile parts of the vehicle model to be registered; the total price of the vehicle model to be registered, and the itemized prices of domestic parts and imported parts used in the vehicle model to be registered (each of the above shall exclude relevant taxes);

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<sup>2</sup> Canada, the EC and the United States note that the Chinese original text contains the word "shengchan", which is properly translated into "to produce". China considers that this word is used interchangeably with "zuzhuang", "to assemble".



- (4) a complete list of the domestic and foreign suppliers that supply the automobile parts used in the vehicle model to be registered, and a list of the automobile parts supplied by each supplier;
- (5) Evidence that the vehicle model to be registered has been included in the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products*.

**Article 10** Having received a registration application, the CGA shall distribute relevant documents to the NDRC, the Ministry of Commerce, and district customs offices. Having received relevant documents, the NDRC, the Ministry of Commerce, and the district customs office in charge of the area where the manufacturer is located shall administer the registration in accordance with their respective responsibilities.

**Article 11** Once a district customs office in charge of the area where the manufacturer is located receives a manufacturer's registration documents distributed by the CGA, such district customs office shall:

- examine the registration documents,
- register the automobile manufacturer and its vehicle models, if the criteria are met; and
- notify the manufacturer accordingly.

**Article 12** After a vehicle model has been registered, the automobile manufacturer shall provide comprehensive duty bonds commensurate with its importation plans to the district customs office in charge of the area where the manufacturer is located prior to the importation of such parts. The amount of the comprehensive duty bonds shall not be less than the manufacturer's monthly average of duties payable on the importation of such parts.

If the number of registered vehicle models is subsequently changed or the importation plan modified, the automobile manufacturer shall timely apply for an adjustment of the amount of the comprehensive duty bonds to the district customs office in charge of the area where the manufacturer is located. If such change or modification is verified to be true, the district customs office shall follow the required procedures to adjust the amount of the bonds.

### CHAPTER III ADMINISTRATION OF CUSTOMS CLEARANCE

**Article 13** An automobile manufacturer importing automobile parts that should be characterized as complete vehicles shall declare such importation and pay duties to the district customs office in charge of the area where the manufacturer is located.

If an automobile manufacturer imports automobile parts characterized as complete vehicles from ports other than the one where the manufacturer is located, application for inter-customs transshipment shall be made by the automobile manufacturer to the district customs office of the area where the manufacturer is located, after the vehicle model concerned has been registered and the comprehensive duty bonds have been provided.

Importation of other automobile parts that should not be characterized as complete vehicles shall not be subject to the previous paragraph.

**Article 14** To declare the importation of automobile parts characterized as complete vehicles, an automobile manufacturer shall submit to the customs:

- an importation declaration form;
- the Automatic Importation License marked with "Characterized as Complete Vehicles";
- other relevant licenses; and
- accompanying documents required by the customs.

**Article 15** If importation licenses are required for the importation of automobile parts characterized as complete vehicles, the licenses shall be examined during customs clearance. "Characterized as Complete Vehicles" shall be filled in the column of Duty/Exemption in the importation declaration form; the name of the automobile manufacturer shall be filled in the column of Consignee.

The automobile parts of each vehicle model shall be declared on a separate form.

**Article 16** Upon entry of automobile parts characterized as complete vehicles, the customs shall handle the importation formalities by reference to relevant regulations regarding the administration of bonded goods, and shall include such entries in the customs statistics according to the status of the entries.

#### **CHAPTER IV    CRITERIA FOR WHETHER OR NOT TO BE CHARACTERIZED AS COMPLETE VEHICLES AND THE VERIFICATION**

**Article 17** Application for verification as to whether imported automobile parts should be characterized as complete vehicles shall be submitted by automobile manufacturers to the CGA; the CGA entrusts the Verification Center to conduct verifications. The customs shall determine the applicable tariff rates and the dutiable prices, and shall handle the duty collection based upon the Verification Report issued by the Verification Center. Implementation rules on how to verify whether the imported automobile parts should be characterized as complete vehicles will be separately formulated and promulgated by the CGA.

**Article 18** The Verification Center shall, in accordance with the instructions of the CGA, verify relevant vehicle models assembled by automobile manufacturers and issue verification reports.

**Article 19** An automobile manufacturer shall submit a verification application to the CGA within 10 days after the first batch of vehicles of the registered vehicle model are produced/assembled<sup>3</sup>. The Verification Center shall, within one month after receiving instructions from the CGA, conclude the verification and issue a verification report.

For those vehicle models that have been put into production before these Rules become effective, automobile manufacturers shall, within one month after these Rules become effective, conclude the self-evaluations, and report the results of the self-evaluations to the CGA. In the event that the self-evaluation suggests that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall file a registration with the CGA within 10 days after completion of the self-evaluation, and shall apply for verification with the CGA. In the event that the self-evaluation

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<sup>3</sup> See the footnote associated with Article 2.1 of Decree 125.

suggests that the imported automobile parts should not be characterized as complete vehicles, the automobile manufacturer shall apply for a review with the CGA. If the review indicates that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall, within 10 days after the issuance of the review conclusion, file a supplementary registration with the CGA, and shall apply for verification with the CGA. The Verification Center shall, in accordance with the instructions of the CGA, conclude the verification of the registered vehicle models that have been put into production and issue a verification report within three months.

**Article 20** The vehicle models verified by the Verification Center are baseline models. If imported parts are installed on vehicles of a verified baseline model on an optional basis, the automobile manufacturer shall report the options to the Verification Center and the district customs office in charge of the area where the manufacturer is located, and shall make faithful declarations at the time of the actual installation of the optional parts. After the Verification Center concludes its review and issues a verification report, the customs shall make an adjustment when it determines the dutiable prices and calculates the duties.

An automobile manufacturer may apply for re-verification of a baseline vehicle model if changes in the importation of automobile parts in the production process may result in a change in the determination of whether the imported automobile parts should be characterized as complete vehicles. The customs shall determine the dutiable prices for the purpose of duty calculation in accordance with the Re-verification Report issued by the Verification Center. In the event that the re-verification indicates that the imported automobile parts should no longer be characterized as complete vehicles, the customs shall no longer administer such vehicle models pursuant to these Rules.

**Article 21** Imported automobile parts shall be characterized as complete vehicles if one of the following applies:

- (1) imports of CKD or SKD kits for the purpose of assembling vehicles;
- (2) within the scope identified in Article 4 of these Rules:
  - (a) imports of a body (including cabin) assembly and an engine assembly for the purpose of assembling vehicles;
  - (b) imports of a body (including cabin) assembly or an engine assembly, plus at least three other assemblies (systems), for the purpose of assembling vehicles;
  - (c) imports of at least five assemblies (systems) other than the body (including cabin) and engine assemblies for the purpose of assembling vehicles; or
- (3) the total price of imported parts accounts for at least 60% of the total price of a complete vehicle of that vehicle model. This criterion shall enter into force on July 1, 2006.

**Article 22** Imported automobile parts shall be characterized as an assembly (system) if one of the following applies:

- (1) imports of a complete set of parts for the purpose of assembling assemblies (systems);
- (2) imports of key parts or sub-assemblies for the purpose of assembling assemblies (systems), if the quantity of the imported key parts or sub-assemblies reaches or exceeds the specified level as set forth in Annexes 1 and 2; or

- (3) the total price of imported parts accounts for at least 60% of the total price of that assembly (system).

**Article 23** An assembly (system) manufactured by a domestic automobile assembly (system) manufacturer shall be considered a domestic assembly (system), if the imported automobile parts used in the manufacturing of the assembly (system) are not characterized as an assembly (system).

**Article 24** If domestic automobile manufacturers or domestic automobile parts manufacturers use imported automobile parts (excluding assemblies and sub-assemblies) or imported unfinished automobile parts to manufacture automobile parts, the automobile parts manufactured by such domestic manufacturers shall be considered domestic automobile parts, if the domestic manufacturers substantially process the imported parts or unfinished parts.

The reference to "substantial processing" shall mean that the article, after being processed, meets the substantial transformation criteria set forth in the *Regulation on Rules of Origin for Imported and Exported Goods of the People's Republic of China*.

**Article 25** When the Verification Center conducts verifications on whether the imported automobile parts should be characterized as complete vehicles, automobile manufacturers shall actively cooperate, and shall submit the following documents:

- (1) the verification application;
- (2) the manufacturer's self-evaluation report;
- (3) the *List of Purchased Parts for Registered Vehicle Model* (Annex 3);
- (4) other documents deemed necessary by the Verification Center.

**Article 26** If an automobile manufacturer is required to register or is required to apply for verification of whether imported automobile parts should be characterized as complete vehicles, but fails to do so, the CGA may instruct the Verification Center to conduct verifications.

## **CHAPTER V DUTY COLLECTION PRINCIPLES AND CALCULATION OF DUTIES**

**Article 27** The customs in charge of the area where the manufacturer is located shall administer, by reference to the rules for bonded goods, the imported automobile parts that are characterized as complete vehicles, during the period from the customs declaration and clearance of the goods to the payment of duties. In order to enhance the efficiency and effectiveness of the administration, automobile manufacturers with such capabilities shall be electronically connected to the customs in charge of the area where the manufacturer is located.

**Article 28** [UNOG TRANSLATION] After the imported automobile parts have been assembled into complete vehicles, the automobile manufacturer shall make a declaration of duty payable to Customs and Customs shall, in accordance with the relevant provisions of the Customs Law of the People's Republic of China (hereinafter referred to as the "Customs Law"), the Import-Export Tariff Regulations of the People's Republic of China and the Import-Export Tax Regulations of the People's Republic of China, proceed with classification and duty collection.

If the Verification Center, after verifications, concludes that the imported automobile parts should be characterized as complete vehicles, the customs shall classify them as complete vehicles, and shall base both the tariff and the import VAT on rates applicable to complete vehicles. If the imported automobile parts should not be characterized as complete vehicles, the customs shall classify them as parts, and shall base the tariff and the import VAT on rates applicable to parts.

**Article 29** If the customs treats the imported automobile parts used by an automobile manufacturer as complete vehicles for the purpose of classification and duty collection, and if the supplier of the automobile manufacturer imported some of the automobile parts used by the automobile manufacturer and already paid import duty and import VAT upon importation, such paid import duty and import VAT shall be deducted from the total amounts of import duty and import VAT due from the automobile manufacturer, provided that the automobile manufacturer provides relevant proof of payment of import duty and import VAT.

If automobile parts, which are imported in compliance with these Rules, are not used in the production<sup>4</sup> of complete vehicles within one year, the automobile manufacturer shall declare duty payment to the customs within 30 days after the expiry date of the aforementioned one year period, and the customs shall handle the duty collection in accordance with relevant regulations.

**Article 30** These Rules shall apply to the situation in which vehicles manufactured under the trade-for-processing programs are sold into the domestic market.

An automobile manufacturer operating under a trade-for-processing program shall file retroactive registrations with the CGA and shall accept verifications by the Verification Center in compliance with these Rules, before such an automobile manufacturer applies for domestic sales of the vehicles, which are produced/assembled<sup>5</sup> with imported automobile parts characterized as complete vehicles. Based upon the verification conclusion that imported automobile parts should be characterized as complete vehicles, and the License for Domestic Sales of Imported Bonded Materials under Trade-for-Processing Programs and relevant importation licenses submitted by the manufacturer, the customs shall apply the duty rates set forth in these Rules and collect the duties accordingly, and shall also collect the interests incurred by virtue of duty deferral on all imported automobile parts.

Automobile manufacturers located in a bonded zone, in an export processing zone, or in other special zones supervised by the customs shall file retroactive registrations with the CGA and shall accept verification by the Verification Center in compliance with these Rules, before such automobile manufacturers may apply for domestic sales of the vehicles that are assembled with automobile parts characterized as complete vehicles that have crossed the border and entered into the aforementioned zones. Based upon the verification conclusion that imported automobile parts should be characterized as complete vehicles, the customs shall, upon presentation of relevant importation licenses by the manufacturers, follow the required procedures to collect duties applicable to domestic sales such vehicles.

**Article 31** An automobile manufacturer shall declare duty payment to the district customs office in charge of the area where the manufacturer is located, by the tenth working day of each month subsequent to the month in which the Verification Center issues a report with the conclusion that the imported automobile parts should be characterized as complete vehicles. The customs shall collect the duty and the import VAT for all imported automobile parts used in assembling a certain vehicle model in the last month by a manufacturer, applying the tariff rates applicable to complete vehicles.

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<sup>4</sup> See the footnote associated with Article 7.1 of Decree 125.

<sup>5</sup> See the footnote associated with Article 2.1 of Decree 125.

In the first declaration, an automobile manufacturer shall also declare duty payment to the customs for imported automobile parts that had been produced<sup>6</sup> into complete vehicles before the issuance of the verification report.

**Article 32** An automobile manufacturer shall declare to the customs the imported automobile parts on which duties have not been paid within 30 days from the date on which the Verification Center issues a verification report concluding that the imported automobile parts should not be characterized as complete vehicles. The customs shall calculate the duties and the VAT by application of the tariff rates applicable to automobile parts and shall no longer administer such a vehicle model under these Rules.

**Article 33** If, after verifications by the Verification Center, all the registered vehicle models of an automobile manufacturer cannot be characterized as complete vehicles, and if the automobile manufacture has paid all relevant duties, the customs shall notify the manufacturer to release the comprehensive duty bonds.

**Article 34** In declaration for duty payment to the district customs office in charge of the area where the manufacturer is located, an automobile manufacturer shall submit:

- (1) the verification report of the Verification Center;
- (2) the quantity of the complete vehicles of relevant vehicle models that were produced<sup>7</sup> by the manufacturer in the last month, except for those models for which the imported automobile parts should not be characterized as complete vehicles;
- (3) the list of imported automobile parts that were used in production/assembly<sup>8</sup> of complete vehicles of relevant vehicle models in the last month, except for those parts that are not characterized as complete vehicles in the verification report;
- (4) other documents deemed necessary by the customs.

**Article 35** In the declaration of an automobile manufacturer to the customs on imported automobile parts that should be characterized as complete vehicles, the column of "Duty/Exemption" shall be filled with "Dutiable as Complete Vehicles" and the column of "Transactional Term" shall be filled with "CIF." In the declaration of an automobile manufacturer to the customs on imported automobile parts that should not be characterized as complete vehicles, the column of "Duty/Exemption" shall be filled with "Dutiable as Parts" and the column of "Transactional Term" shall be filled with "CIF."

## CHAPTER VI LEGAL LIABILITIES

**Article 36** Violations of these Rules, which may constitute smugglings or acts violating customs supervision rules, will be punished by the customs according to the *Customs Law* and the *Implementation Rules on Customs' Administrative Penalties of the People's Republic of China*. Those constituting criminal offences will be subject to criminal liabilities according to the law.

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<sup>6</sup> See the footnote associated with Article 7.1 of Decree 125.

<sup>7</sup> See the footnote associated with Article 7.1 of Decree 125.

<sup>8</sup> See the footnote associated with Article 2.1 of Decree 125.

**Article 37** If an automobile manufacturer, in violation of these Rules, fails to faithfully declare that the imported automobile parts should be characterized as complete vehicles when it applies to be listed on the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products* and when it files the corresponding registrations, or if an automobile manufacturer imports automobile parts that should be characterized as complete vehicles in multiple shipments without applying for registration with the CGA prior to the importation, the NDRC shall temporarily take relevant vehicle models off the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products* until such automobile manufacturer corrects its failures.

## **CHAPTER VII MISCELLANEOUS**

**Article 38** These Rules shall become effective on April 1, 2005.

### **ANNEXES**

- 1. ASSEMBLY (SYSTEM) LIST**
- 2. SCOPE OF AUTOMOBILE PARTS IN ASSEMBLIES (SYSTEMS)**
- 3. PURCHASE LIST OF AUTOMOBILE PARTS OF REGISTERED VEHICLE MODEL**

## ANNEX 1

## ASSEMBLY (SYSTEM) LIST

Assembly Names			Key parts and Sub-assemblies	Threshold Numbers for Imported Parts (in units)		Remarks
				Category A	Aggregate	
Vehicle bodies (cab)	Class M <sub>1</sub>	A	side panel, door, bonnet	2	5	Under Class M <sub>1</sub> , if imported pressing exterior cover is used, then the entire sub-assembly should be regarded as an imported sub-assembly.
		B	roof box, front apron, floorpan, luggage compartment lid, rear panel, fender	--		
	Class M <sub>2</sub>	A	roof box, side panel	2	4	
		B	bonnet, front apron, door, rear panel, floorpan	--		
	Class M <sub>3</sub>	A	roof box, side panel, body framing	2	4	
		B	Front apron, door, rear panel, floorpan	--		
	Class N	A	roof box, door, side panel	2	5	
		B	bonnet, front apron, rear panel, fender, floorpan	--		
Engine Assemblies	Diesel engine	A	cylinder block, cylinder head, high-pressure oil pump	2	6	Not including the radiator, radiator fan, air filter, muffler, fuel tank, and clutch
		B	crankshaft, supercharger, camshaft, link lever, starter, generator, diesel injector	--		
	Gasoline engine	A	cylinder block, cylinder head, EFI device (including the ECU, throttle valve, fuel-injector, and sensor)	2	6	
		B	crankshaft, camshaft, fuel pump, link lever, starter, generator, supercharger	--		
Transmission	MT	A	housing, gears, clutch	2	4	1. Not including the remote variable speed control system.  2. As to the transfer box of all-
		B	Shaft, gear shifter Unit, synchronizer, transfer case	-		



<b>Assemblies</b>	AT	<b>A</b>	housing, clutch, (hydraulic coupling for automatic gearbox), ECU	2	4	wheel-drive vehicles, the aggregate threshold number for the transmission assemblies should be 3
		<b>B</b>	transfer box, gears (or friction wheel and steel belt), shafts, gearshift components	--		
<b>Vehicle axle of Class M<sub>1</sub> vehicles</b>	driving axle		housing, left-right semi-axle (including constant speed universal joint), steering knuckle, differential, swing arm, wheel hub, bearing, final reduction gear, shock absorber, suspension spring	--	6	
				--	6	
	driven axle		axle (including trailing arm assembly), wheel hub, bearing, suspension spring, shock absorber.	--	4	
<b>Vehicle axle of Class M<sub>2</sub> M<sub>3</sub> and N vehicles</b>	driving axle		housing, differential, semi-axle, driving shaft, final reduction gear, wheel hub, bearing, shock absorber, suspension spring	--	5	When swing arm and steering knuckle are added to the independent front axle, the corresponding aggregate threshold number should be 6
	driven axle		steering knuckle, shock absorber, front axle, suspension spring, wheel hub, bearing.	--	4	
<b>Frames</b>			longitudinal beam (or front auxiliary frame, and engine cradle), cross beam (rear auxiliary frame)	--	2	
<b>Braking systems</b>			actuating brake cylinder (or pneumatic brake), assistor assembly, front braking assembly, rear braking assembly, ABS valves, and ECU assembly	--	4	
<b>Steering systems</b>	power steering		steering assembly, steering control valve assembly, oil pump for power steering, steering wheel, steering shaft and universal joint,	--	3	Air-bag included in the steering wheel.
	non-power steering		steering assembly, steer shaft, universal joint, and steering wheel	--	2	

**Notes:**

1. If imported parts under Categories A and B, in the aggregate, reach or exceed the aggregate threshold number for imported parts, such imported parts shall be characterized as assembly (system); if, however, the quantity of imported parts under Category A reaches or exceeds the threshold number for Category A parts, such imported parts shall also be characterized as assembly (system).
2. If the imported parts accounts for more than 60% of the price of the key parts or sub-assembly, such key parts or sub-assembly shall be deemed as imported key parts or sub-assembly. Manufacturers shall provide a list of price ratios of needed parts.  
  
[The calculation of importation ratios] of key parts and sub-assemblies, in principle, shall trace back to the second-level suppliers to the manufacturers of complete vehicles, and no further.
3. For all-wheel-drive vehicle, its transfer box should alone be characterized as an assembly, substituting driven axle. In this case, the housing, gears (or chain), and adaptor in the transfer box belong to Category A, and the corresponding threshold number should be 2. The shafts, bearings, synchronizers and electrical control devices in the transfer box belong to Category B, and the corresponding threshold number should be 4.
4. For dual drive-axle and multi-axle vehicles, the assembly (system) character shall be determined in accordance with their respective number of axles, and the aggregate threshold number for complete vehicles character shall be increased accordingly.
5. During the period from April 1, 2005 to June 30, 2006, key parts under Category A and Category B shall be verified together according to the aggregate threshold number.  
  
From July 1, 2006 and on, for all vehicle models, key parts under Categories A and B shall be verified separately according to the threshold numbers for their respective category.
6. If a vehicle model does not contain key parts or sub-assembly that functionally corresponds to those listed in this Assembly (System) List, the threshold numbers or the number of its assemblies (systems) shall be decreased accordingly.

## ANNEX 2

### SCOPE OF AUTOMOBILE PARTS IN ASSEMBLIES (SYSTEMS)

This *Scope of Automobile Parts in Assemblies (systems)* is mainly intended to clarify the scope of assemblies and systems for the purpose of verifying the complete vehicles character. The scope is delimited according to the following principles: (1) functional independence, and (2) distinctive and separate assembly phases. It takes references of : QC/T265-2004 <<Automobile Components Code>>, QC/T514-1999 <<Passenger Car Body Terms>>, QC/T4780-2000 <<Automobile Body Terms>>, GB/T5727-1985 <<Terms and Definitions of Automobile Hydraulic Transmission>>, GB/T5333-1985<<Terms and Definitions of Automobile Drive Axle>>, GB5620.2-1985 <<Terms and Definitions of Automobile and Trailer's Braking>>, GB/T5179-1985 <<Terms and Definitions of Automobile Steering System>>.

#### Vehicle bodies (cab):

They include: the body-in-white prior to the painting work, excluding body auxiliaries and decorative fittings, by welding together the body structural members and covering components (body-chassis frame construction).

Class M<sub>1</sub> includes: front apron, rear panel, roof box, floorpan, fender, door, bonnet, luggage compartment lid (or rear hatch assembly).

Classes other than M<sub>1</sub> include: the front apron, side panel, roof box, floorpan, floor cover (metal works), roof ventilation window, fender, door, bonnet, body framing (body-chassis frame construction).

#### Engine assemblies:

They include: cylinder block, cylinder cap, timing gear case, valve cover, crankshaft, flywheel, link lever, piston, bearing bush, camshaft, timing mechanism, intake/exhaust valve, driving mechanism, intake/exhaust manifold, ignition system, water pump, lubricant pump, oil filter, crankcase ventilator, fuel pump, EFI device (including ECU, throttle valve, fuel-injector, and sensor), supercharger, starter, generator, fuel piping, fuel filter, sensor and alarming devices.

Diesel engine also includes: high pressure fuel pump, and intermediate cooler.

Radiator, fan, air filter, muffler, fan clutch, pollutant emission control devices (particle trap device, and three-way catalytic converter) are not included.

#### Transmission assemblies:

Automatic transmission includes: housing, gears (or friction wheel and steel belt), shafts, gearshift components, hydraulic torque converter, ECU fuel pump, hydraulic control box, sensor, and transfer box.

Manual transmission includes: housing, gears, synchronizers, shafts, gearshift components, sensor, clutch, and transfer box.

Remote control system is not included.

**Drive axle assemblies:**

They include: final reduction gear, differential, semi-axle (including the constant speed universal joint), steering knuckle, swing arm, wheel hub, bearing, suspension spring, and shock absorber.

**Driven axle assemblies:**

They include: vehicle axle (including trailing arm assembly), wheel hub, bearing, shock absorber, and suspension spring.

**Frame assemblies:**

They include: longitudinal beam (or front auxiliary frame, and engine cradle), cross beam (rear auxiliary frame).

**Braking systems:**

They Include: braking pedal, actuating brake cylinder, wheel cylinder, booster, brake, ABS system (ECU, valve, and sensor), brake piping, fluid reserve tank, retarder, brake force adjusting device, service braking pedal, parking braking control device, three-way braking valve, sensor, and alarming device.

Pneumatic braking system also includes: air brake chamber, brake shoe actuator, air compressor, gas receiver, filter, air brake valve, double check valve, relay valve, and rapid-release valve.

**Steering systems:**

They include: steering wheel (including air bag), steering column, steering column support, steering shaft, universal joint, steering gear, steering gear support, steering pitman arm, steering rod, steering knuckle arm, and trapezoidal mechanism.

Power steering also includes: steering control valve, steering power cylinder, steering oil pump, steering power oil container, steering electrical motor, and control modules.

**Transfer box assemblies:**

They include: housing, bearing, gears (or chains), adapter, gearshift components, and electrical control devices.

**Notes:**

1. Due to the variety of the structures of each assembly, the scope is not the sole criterion for different structures, categorization should base on the functions of the parts.
2. For those parts that have more than one function, they should be categorized according to their most important function.
3. Link parts (such as piping, bolts nuts, screws, clamps, and adhesives), sealing elements and fastening elements that contribute to the integrity of the assemblies and sub-assemblies (excluding vehicle bodies and frame assemblies) should be included in the assemblies (systems).
4. Fuel, lubricating oil, lubricating grease, coolant, brake fluid and power oil that are irrelevant to the processing and assembling of the assemblies (systems) should not be included in the assemblies (systems).

ANNEX 3

PURCHASE LIST OF AUTOMOBILE PARTS OF REGISTERED VEHICLE MODELS

Order	HS tax code	Assembly code	Assembly Name	Part Number	Part Name	Unit Price	Quantity per Vehicle	Part Price per Vehicle	Proportion in CBU	Sources of Parts*	Name of Manufacturer

\*Note: Sources of Parts refer to imported automobile parts or domestic OEM parts.

**ANNEX E-3**

**TRANSLATION OF ANNOUNCEMENT 4 AS AGREED BY THE PARTIES**

[Cover Letter of Announcement No.4]

**PUBLIC ANNOUNCEMENT OF THE CUSTOMS GENERAL ADMINISTRATION OF THE PEOPLE'S  
REPUBLIC OF CHINA**

NO. 4 OF 2005

February 28, 2005

In order to implement the *Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles*, the *Rules on Verification of Importation of Automobile Parts Characterized as Complete Vehicles* has been formulated by the Customs General Administration ("Customs") of the People's Republic of China to regulate the verification work and to ensure openness, impartiality, fairness and transparency. The Rules become effective on 1 April 2005.

It is so published.

Attachment: the Rules on Verification of Importation of Automobile Parts Characterized as Complete Vehicles

[Seal of the General Administration of Customs]

## **Rules on Verification of Imported Automobile Parts Characterized as Complete Vehicles**

### **Chapter I      General Provisions**

**Article 1**      These Rules are formulated in accordance with the "*Automobile Industry Development Policy*", the "*Administrative Rules on the Importation of Automobile Parts Characterized as Complete Vehicles*" (hereinafter referred to as the "Administrative Rules"), and the "*Regulations on Import and Export Tariff of the People's Republic of China*" and its general rules for tariff classifications, with a view to regulating the verification of imported automobile parts characterized as complete vehicles and ensuring the publicity, impartiality, fairness, and transparency of the verification process.

**Article 2**      The Office of the Leading Panel for the Administration of Importation of Automobile Parts Characterized as Complete Vehicles (hereinafter referred to as "the Office") is resident in the Customs General Administration, and is responsible for organizing, coordinating, and directing the verification of imported automobile parts characterized as complete vehicles.

**Article 3**      Designated by the General Administration of Customs, the National Professional Center for Verification of the Character of Complete Vehicle (hereinafter referred to as the "Verification Center") shall be responsible for carrying out the verification of whether imported automobile parts can be characterized as complete vehicles.

**Article 4**      The Verification Center shall undertake the following tasks under the direction of the Office:

1. Conducting on-site verifications of the registered vehicle models that have been assembled into complete vehicles, and issuing verification reports;
2. Conducting simplified reviews or on-site reviews of the conclusions of self-evaluations conducted by automobile manufacturers, according to which the imported automobile parts should not be characterized as complete vehicles, and issuing review opinions;
3. Verifying other vehicle models when necessary;
4. Providing guidance and assistance to the automobile manufacturers for their self-evaluations;
5. Creating and maintaining a database for the task of verifying whether imported automobile parts can be characterized as complete vehicles;
6. Undertaking other tasks assigned by the Office.

**Article 5**      The task of verifying whether imported parts can be characterized as complete vehicles shall be conducted by a special verification team organized by the Verification Center. Each special team shall be composed of 3 or 5 automobile experts, who are randomly selected by the Office from the Verification Expert Database.

The Customs may appoint 2-3 tariff experts to observe the progress of the verification and to provide necessary assistance to the special verification team.

## CHAPTER II VERIFICATION PROCEDURE

**Article 6** Automobile manufacturers that produce<sup>1</sup> vehicles with imported automobile parts shall conduct self-evaluations pursuant to the verification criteria specified in the Administrative Rules, with reference to the *Nomenclature and Illustrative Figures of the Vehicle Structures* (Annex 1) and the *Tariff Schedule of Key Parts or Sub-assemblies* (Annex 2), if the automobile manufacturers assemble vehicles with imported automobile parts.

If the self-evaluation suggests that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall register the vehicle model with the Office after the vehicle model has been included in the *Public Bulletin on On-Road Motor Vehicle Manufacturers and Products* and before the automobile parts are imported.

If the self-evaluation suggests that the imported automobile parts should not be characterized as complete vehicles, the automobile manufacture shall fill out an *Application for Review of the Complete Vehicle Character* (Annex 3), enclose a *List of Automobile Parts for Verification (Review) of Complete Vehicle Character* (Annex 4) and apply for review with the Office.

Pursuant to the instructions of the Office, the Verification Center shall conclude a simplified review or an on-site review within 12 working days, and issue the *Report of Complete Vehicle Character Review* (Annex 5). In the event that the review concludes that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall file a registration with the Office within 7 working days after the conclusion of the review is issued.

If the status of whether imported automobile parts can be characterized as complete vehicles changes due to the fact that the composition of such parts is altered, the relevant vehicle model shall be registered as a new model.

**Article 7** The automobile manufacturer shall apply for verification to the Office within 10 working days after the vehicles of a registered new model are produced/assembled<sup>2</sup> by submitting the following documents:

1. an Application Form for Verification of Complete Vehicle Character (Annex 6);
2. a Self-Evaluation Report of the Registered Vehicle Models;
3. a List of Purchased Parts for Registered Vehicle Models;
4. a List of Documents for Verification of Complete Vehicle Character (Annex 7);
5. Other documents required.

**Article 8** The Office shall, after receiving the Application Form from an automobile manufacturer, deliver a verification notice within 7 working days and transfer the relevant documents to the Verification Center. The Verification Center shall, within 7 working days after receiving the notice, formulate a verification plan and report to the Office. The Office shall notify the relevant Customs office to designate tariff experts to assist in the verification, and shall also notify the automobile manufacturer of the verification.

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<sup>1</sup> See the footnote associated with Article 7.1 of Decree 125.

<sup>2</sup> See the footnote associate with Article 2.1 of Decree 125.



**Article 9** The Verification Center shall, after receiving the verification notice from the Office, conclude the verification within one month, issue a *Report of Complete Vehicle Character Verification* (Annex 8) and a *List of Automobile Parts for Complete Vehicle Character Verification (Review)* (Annex 4), and submit a file containing the above documents to the Office.

**Article 10** The following procedure shall apply to those vehicle models that have been put into production before the Administrative Rules become effective:

1. Automobile manufacturers shall conclude the self-evaluation within one month after the Administrative Rules become effective.
2. In the event that the self-evaluation suggests that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall file a registration with the Office within 7 working days after the conclusion of the self-evaluation, and shall apply for verification with the Office.

In the event that the self-evaluation suggests that the imported automobile parts should not be characterized as complete vehicles, the automobile manufacturer shall fill out an *Application for Review of Complete Vehicle Character* (Annex 5), enclose a *List of Automobile Parts for Complete Vehicle Character Verification (Review)* (Annex 4), and apply for review with the Office. If the review indicates that the imported automobile parts should be characterized as complete vehicles, the automobile manufacturer shall, within 7 working days after the issuance of the review opinion, file a registration with the Office, and shall apply for verification of whether the imported automobile parts can be characterized as complete vehicles.

3. The Verification Center shall conclude the verification within 3 months after receiving the instructions from the Office, issue a *Report of Complete Vehicle Character Verification* (Annex 8) and a *List of Automobile Parts for Complete Vehicle Character Verification (Review)* (Annex 4), and submit a file containing the above documents to the Office.

**Article 11** The opinions of review and the conclusions of verification shall be timely published on the Administrative Website of Imported Automobile Parts Characterized as Complete Vehicles at <http://autoadmin.chinaport.gov.cn>; and the website of the Chinese Automobile Industry Information at <http://www.autoinfo.gov.cn>.

**Article 12** The Office shall be responsible for holding meetings to evaluate and supervise the conclusions of verification. In case an automobile manufacturer disputes the conclusion of verification, the Office shall organize an appraisal meeting. The attendees to the meeting primarily include the representatives of the relevant automobile manufacturers, the automobile experts of the industry and the tariff experts of the Customs. In case the appraisal conclusion indicates a re-verification is necessary, the Office shall instruct the Verification Center to conduct a re-verification.

At least two thirds of the members of the team for re-verification shall be different from those of the original team. The head of the re-verification team shall not be a member of the original team.

The Verification Center shall conclude the re-verification within one month after receiving the instruction. The conclusion of the re-verification shall be published after a file containing the re-verification records is submitted to the Office.

### CHAPTER III VERIFICATION CRITERIA

**Article 13** Imports of automobile parts shall be characterized as imports of complete vehicles if one of the following applies:

- (1) imports of CKD or SKD kits for the purpose of assembling vehicles;
- (2) within the scope identified in Article 4 of the Administrative Rules:
  - (a) imports of a body (including cabin) assembly and an engine assembly for the purpose of assembling vehicles;
  - (b) imports of a body (including cabin) assembly or an engine assembly, plus at least three other assemblies (systems), for the purpose of assembling vehicles;
  - (c) imports of at least five assemblies (systems) other than the body (including cabin) and engine assemblies for the purpose of assembling vehicles; or
- (3) the total price of imported parts accounts for at least 60% of the total price of a complete vehicle of that vehicle model. This criterion shall enter into force on July 1, 2006.

**Article 14** Imported automobile parts shall be characterized as an assembly (system) if one of the following applies:

- (1) imports of a complete set of parts for the purpose of assembling assemblies (systems);
- (2) imports of key parts or sub-assemblies for the purpose of assembling assemblies (systems), if the quantity of the imported key parts or sub-assemblies reaches or exceeds the specified level as set forth in Annexes 1 and 2; or
- (3) the total price of imported parts accounts for at least 60% of the total price of that assembly (system).

**Article 15** An assembly (system) manufactured by a domestic automobile assembly (system) manufacturer shall be considered a domestic assembly (system), if the imported automobile parts used in the manufacturing of the assembly (system) are not characterized as complete vehicles.

**Article 16** If domestic automobile manufacturers or domestic automobile parts manufacturers use imported automobile parts (excluding assemblies and sub-assemblies) or imported unfinished automobile parts to manufacture automobile parts, the automobile parts manufactured by such domestic manufacturers shall be considered domestic automobile parts, if the domestic manufacturers substantially process the imported parts or unfinished parts.

**Article 17** The reference to "substantial processing" shall mean that the article, after being processed, meets the substantial transformation criteria set forth in the *Regulation on Rules of Origin for Imported and Exported Goods of the People's Republic of China*."

**Article 18** The substantial transformation criteria shall be applied pursuant to the following principles:

The basic criterion shall be the change in alteration of tariff classification. In case the criterion of change in tariff classification cannot capture the substantial transformation, criteria of *ad valorem* percentage and manufacturing or processing procedures should be supplemented.

1. The "change in alteration of tariff classification" criterion denotes the situation in which the tariff classification for the output product, which is made of imported materials domestically, is different from those for the imported materials at the four-digit level in the *"Customs Tariffs of Import and Export of the People's Republic of China"*. This criterion of "change in a tariff classification," however, shall not be applied to the change in a classification at the four-digit level resulting only from simple manufacturing such as simple assembling or cutting.
2. The "*ad valorem* percentage" criterion (i.e. ratio of substantial processing) denotes the situation in which domestic manufacturing or processing of imported intermediary products creates added value, which reaches or exceeds 30% of the value of the output product. The formula is:

Price for Delivered Goods - Value of Imported Intermediate Products	$\times 100\% \geq 30\%$
Price for Delivered Goods	

The "Price for Delivered Goods" hereinabove refers to the price of the finished products charged by parts suppliers to manufacturers of complete vehicles or assemblies/systems; in case the manufacturer of complete vehicles or assemblies (systems) produces the parts by itself, the "Price for Delivered Goods" refers to the internal price.

The "Value of imported intermediary products" refers to the value of the raw materials and parts (including unfinished parts) imported for direct use in manufacturing or assembling the end product, and shall be calculated on the basis of CIF price of importation.

Calculation of the above-mentioned "*ad valorem* percentage" shall conform to the Generally Accepted Accounting Principles and relevant provisions of the *"Regulations on Import and Export Tariff of the People's Republic of China"*.

3. The "manufacturing or processing procedures" criterion refers to the main production procedures deployed in domestic manufacturing or processing that accord the essential character to the output product.

**Article 19** Key parts or sub-assemblies of vehicle body, engine, and transmission shall be divided into two categories: Category A and Category B. If the total of the imported parts under both Categories A and B reaches or exceeds the aggregate threshold number for imported parts, such imported parts should be characterized as a complete assembly (system); if, however, the imported parts under Category A reach or exceed the threshold number for Category A, such imported parts should also be characterized as a complete assembly (system).

During the period from April 1, 2005 to June 30, 2006, key parts under Categories A and B shall be jointly evaluated against the aggregate threshold number.

From July 1, 2006 and on, for all vehicle models, key parts of Categories A and B shall be separately evaluated against their respective threshold numbers.

**Article 20** If the imported parts accounts for more than 60% of the price of the key parts or sub-assemblies, such key parts or sub-assemblies shall be deemed as imported key parts or sub-assemblies. Manufacturers shall provide a list of price ratios of parts needed.

Key parts or sub-assemblies, in principle, shall only be traced back to the secondary suppliers of the manufacturers of complete vehicles.

Imported parts purchased by domestic suppliers or trading companies shall be counted as imported parts.

**Article 21** If a vehicle model does not contain a key part or a sub-assembly that functionally corresponds to those listed in the "*Assembly (system) List*" in Annex 1 of the Administrative Rules, the threshold numbers or the number of assemblies (systems) shall be decreased accordingly.

**Article 22** For AWD vehicles, the driven axle in "*Assembly (system) List*" shall be substituted by the assembly of transfer box.

**Article 23** For dual drive-axle and multi-axle vehicles, whether imported automobile parts can be characterized as a complete assembly (system) shall be determined based on the number axles, and the threshold numbers for determining whether imported automobile parts can be characterized as complete vehicles shall be increased accordingly.

**Article 24** The formula for the calculation of importation ratio is as follows.

If a vehicle is partially assembled with imported parts, the following formula shall apply:

Importation Ratio =	Total Value of Imported Unassembled Parts per Unit Product	× 100%
	Total Value of Unassembled Parts per Unit Product	

The "unit product" refers to a single complete vehicle or a single assembly (system).

The "Total value of unassembled parts per unit product" refers to the CIF price of CKD parts of the original vehicle model or assembly (system), if there exists an original vehicle model or assembly (system) that is being introduced or imported; if no reference vehicle model or assembly (system) is available, it then refers to the CIF price of imported parts plus the price of domestic parts (excluding VAT).

The "Total value of imported unassembled parts per unit product" refers to the aggregate CIF price of all imported parts.

Assembling cost in the production of assemblies (systems) and complete vehicles shall not be included in calculation of the "total value of unassembled parts per unit product".

Processing cost incurred for painting and welding of vehicle bodies shall not be included in the price of the assembly of vehicle body.

Oil or liquid used in complete vehicles and assemblies (systems) shall not be included in calculation of the "total value of unassembled parts per unit product". Oil or liquid that have been sealed in finished products or semi-finished products may be included in calculation of the "total value of unassembled parts per unit product". Consumables used in manufacturing and processing may be included in the calculation of the "total value of unassembled parts per unit product" if they eventually become part of the products.

#### **CHAPTER IV SUPPLEMENTARY PROVISIONS**

**Article 25** The reference of the "vehicle model" in these Rules shall mean the models of classes M and N vehicles, which may be determined by the manufacturer, the brand, the displacement and type of the engine, and the type of transmission. If an additional configuration is added to a registered vehicle model and the imported parts thereof should be characterized as complete vehicle, the model with the additional configuration shall be registered as a new model with the Office.

**Article 26** If, (1) as indicated by an on-site review, the imported parts should be characterized as a complete vehicle; and (2) the production condition of the automobile manufacturer and the price of the imported automobile parts have been verified; and (3) the result of on-site review satisfies the requirements of a Verification Report; and (4) the manufacturer is so agreed and the Office is so approved, the verification team may issue a Verification Report based upon the review opinions, and no verification will be conducted.

**Article 27** Staff of the bureaus comprising the Leading Panel, staff of the Verification Center, automobile experts of the industry and tariff experts of customs, who are involved in the verification or the administration of importation, shall provide confidential treatment to the materials submitted by enterprises in accordance with the relevant laws and regulations.

#### **Article 28**

A false statement shall fall into Article 37 of the Administrative Rules and shall constitutes the "failing to faithfully declare" if it leads to the situation, in which

- the self-evaluation suggests that the imported automobile parts should not be characterized as complete vehicles; and
- the review opinion indicates that the imported automobile parts should be characterized as complete vehicles.

**Article 29** These Rules shall become effective on April 1, 2005.

Annexes:

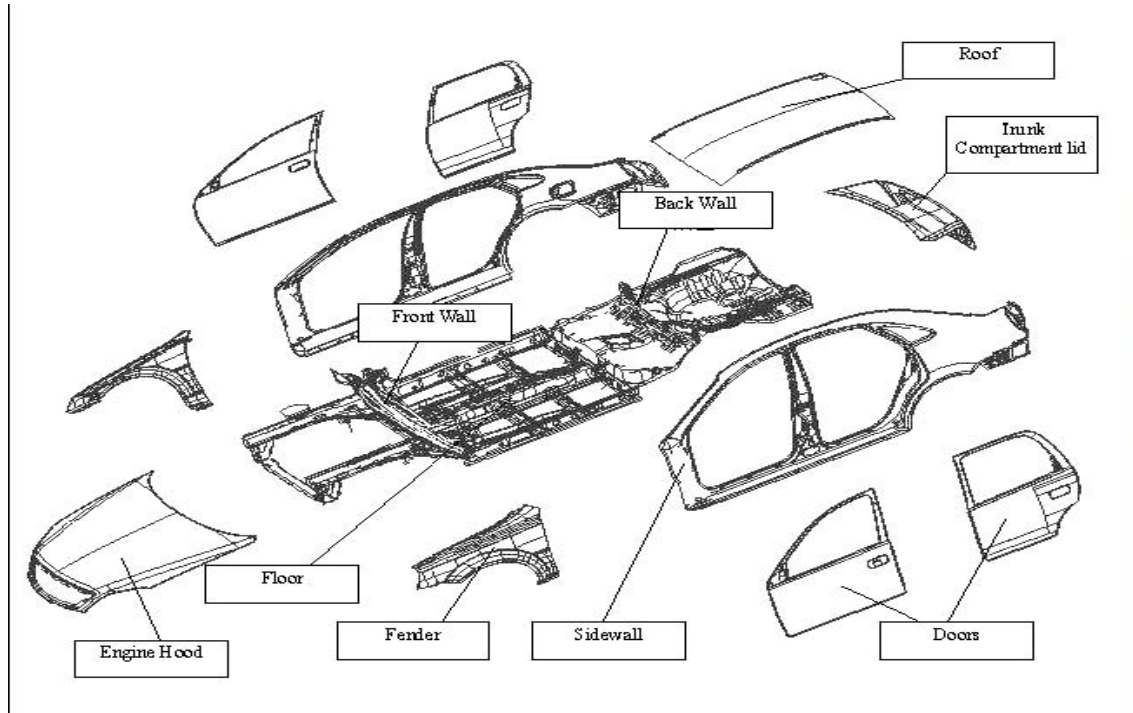
1. Names and Illustration of the Vehicle Structure and Body Parts
2. Table of HS Codes on the Key Parts and Sub-assemblies of Motor Vehicles
3. Application Form for Review of Complete Vehicle Character
4. Detailed List of Parts for Verification and Review of Complete Vehicle Character
5. Review Report for Complete Vehicle Character
6. Application Form for Verification of Complete Vehicle Character
7. Document List for Verifying Complete Vehicle Character
8. Report on Verification of Complete Vehicle Character

## **Annex 1 -Names and Illustration of the Vehicle Structure and Body Parts**

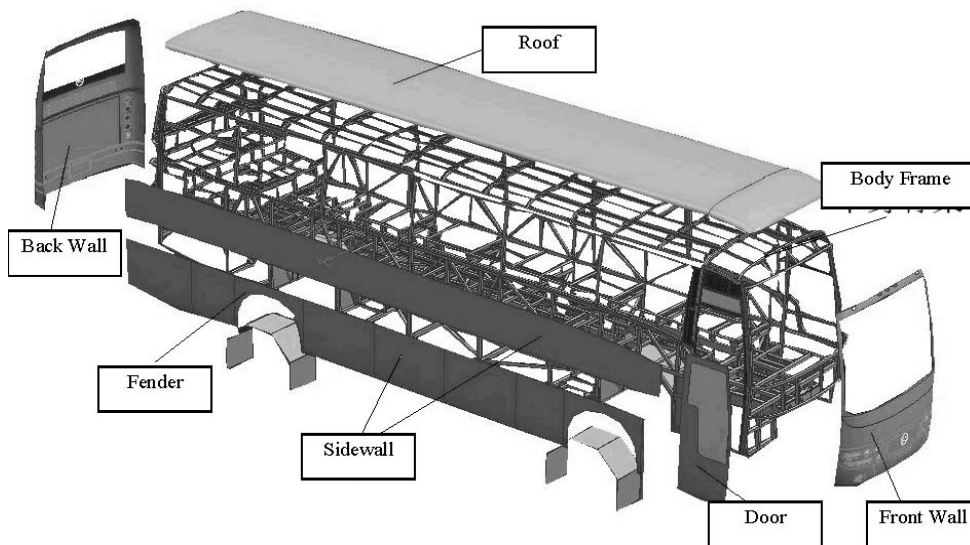
### **1. Names of the Vehicle Structure**

Front Wall	<p>The front structure in the cabin, including front panel, front windshield frame, windshield pillar (A pillar), outside cover of the front wall etc.</p> <p>The front panel insulates the cabin from the engine and the outside.</p>
Sidewall	<p>The lateral part of the cabin, can be separate or integral assembly. In the separate assembly, the sidewall includes the middle pillar (B pillar), upper beam for doors etc.</p>
Back Wall	<p>The rear part of the cabin, including rear panel, back pillar, rear window frame etc.</p> <p>The rear panel connects the floor and the right/left rear pillars and separates the cabin from the trunk compartment.</p>
Roof	<p>The top cover of the vehicle body, can be integral or divided into three parts along the longitudinal drips. As the roof side beams also serve as upper beams for doors, they are sometimes categorized as part of the sidewall. In the end, it depends on the specific structure and the welded sub-assemblies.</p>
Doors	<p>There are rotary doors, rotary wings and push-type gliding doors. Doors consist of external panel, internal panel, door frame, hinge, reinforcement panel for the lock, glass rails.</p>
Floor	<p>Floor and floor beams of the cabin and the trunk compartment.</p>
Fender	<p>An outside panel covering the wheel. If not independent, it is included in the sidewall.</p>

## 2. Illustration of the Passenger Car Structure elements



## 3. Illustration of the Omnibus Structure elements



**Annex 2 - Table of HS Codes on the Key Parts and Sub-assemblies of Motor Vehicles**

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Body	1. Sidewall	8708.2990	8708.2990 90	Other parts and accessories of the body
	2. Door	8708.2990	8708.2990 90	Other parts and accessories of the body
	3. Engine Hood	8708.2990	8708.2990 90	Other parts and accessories of the body
	4. Roof	8708.2990	8708.2990 90	Other parts and accessories of the body
	5. Front Wall	8708.2990	8708.2990 90	Other parts and accessories of the body
	6. Cabin floor	8708.2990	8708.2990 90	Other parts and accessories of the body
	7. Trunk compartment lid or rear door	8708.2990	8708.2990 90	Other parts and accessories of the body
	8. Back wall	8708.2990	8708.2990 90	Other parts and accessories of the body
	9. Fender	8708.2990	8708.2990 90	Other parts and accessories of the body
Engine (Diesel)	10. Engine block	8409 9991		Used in engines with power output of 132.39 kw (180) horse-power or more
		8409.9999	8409.9999 90	Other non-listed special engine parts
	11. Cylinder head	8409.9991		Used in engines with power output of 132.39 kw (180) horse-power or more
		8409.9999	8409.9999.90	Other un-listed special engine parts
	12. Crankshaft	8483.1090		Drive shafts (incl. camshaft and crankshaft)
	13. High-pressure pump	8413.3021		Fuel pumps for engine with 132.39KW (180 hp) or more power
		8413.3029		Other fuel pumps
	14. Supercharger	8414.8090	8414.8090.50	Supercharger for passenger vehicles
			8414.8090.90	Supercharger for other vehicles
	15. Camshaft	8483.1090		Drive shafts (incl. camshaft and crankshaft)
	16. Connecting rod	84099991		Used in engines with power output of 132.39 kW (180 hp) or more
		8409.9999	8409.9999.90	Other un-listed special engine parts
	17. Starter	8511.4091		Starter used in engines with power output of 132.39 kW (180 hp) or more
		8511.4099		Other starters and dual-use starters
	18. Generator	8511.5090		Other generator
	19. Diesel fuel injector	84099991		Used in engines with power output of 132.39 kW (180 hp) or more Other un-listed special engine parts
		8409.9999	8409.9999.90	Other un-listed special engine parts



ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Engine (Gasoline)	20. Engine block	8409.9199	8409.9199 90	Other parts of internal combustion engine with ignition
	21. Cylinder head	8409.9199	8409.9199 90	Other parts of internal combustion engine with ignition
	22. Crankshaft	8483.1090		Drive shafts (incl. camshaft and crankshaft)
	23. Camshaft	8483.1090		Drive shafts (incl. camshaft and crankshaft)
	24. EFI device (incl. ECU, throttle body, fuel injector, sensor)	8409.9191		Electronically controlled fuel ejection device
	25. Fuel pump	8413.3021		Fuel pumps for engine with 132.39KW (180 hp) or more power
		8413.3029		Other fuel pumps
	26. Connecting rod	8409.9199	8409.9199 30	Other parts of internal combustion engine with ignition – connecting rod
	27. Starter	8511.4091		Starters used in engines with power output of 132.39 kW (180 hp) or more
		8511.4099		Other starters and dual-use starters
	28. Generator	8511.5090		Other generator
	29. Supercharger	8414.8090	8414.8090.50	Supercharger for passenger vehicles
			8414.8090 90	Supercharger for other vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (manual)	30. Housing	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories for off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			87089959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959 20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 8704 2240, 2300, 3240)
		87089960		Other non-listed parts and accessories used in special-purpose vehicles
		87089999		Other parts and accessories of other motor vehicles
	31. Gear	8708.9910		Other parts and accessories used in tractors
			8708.9929 90	Other parts and accessories used in large buses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories used in medium and small trucks
			8708.9959 90	Other transmission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959 20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 8704 2240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other non-listed parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (Manual)	32. Clutch	8708.9310		Clutches and their parts used in tractors
		8708.9320		Clutches and their parts used in omnibuses with 30 or more seats
		8708.9330		Clutches and their parts used in off-road dump trucks
		8708.9340		Clutches and their parts used in diesel and gasoline light trucks
			8708.9350.10	Clutches and their parts used in diesel trucks with GVW ≥ 14t
			8708.9350.90	Clutches and their parts used in gasoline trucks with GVW >8t
		8708.9360		Clutches and their parts used in special-purpose vehicles
		8708.9390		Clutches and their parts used in non-listed motor vehicles
	33. Shaft	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			87089959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959 20	Trans-mission and power transfer parts (torque ≥ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories of special-purpose vehicles
		8708.9999		Other non-listed parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (Manual)	34. Gear Shifter unit	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959.20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other non-listed parts and accessories of motor vehicles
	35. Synchronizer	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959.20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other non-listed parts and accessories of motor vehicle

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (Manual)	36. Transfer case	8708.9910		Other parts and accessories of tractors
			8708.9929 90	Other parts and accessories used in large buses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories used in medium and small trucks
			8708.9959.20	Transmission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959.90	Other transmission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other non-listed parts and accessories used in motor vehicles
Transmission (automatic)	37. Housing	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959.20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories of special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (automatic)	38. Liquid Coupler	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959.20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles
	39. ECU of AT	90328900	9032.8900 90	Other automatic adjustment or control devises
	40. Transfer case	8708.9910		Other parts and accessories used in tractors
			8708.9929 90	Other parts and accessories used in large buses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories used in medium and small trucks
			8708.9959 20	Transmission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed [under] 87042240, 2300, 3240)
			8708.9959 90	Other transmission and power transfer parts (used in vehicles listed [under] 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other non-listed parts and accessories used in motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (automatic)	41. Gear (friction wheel steel band)	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			87089959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959 20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles
	42. Shaft	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959 20	Trans-mission and power transfer parts (torque $\geq$ 90 kg) (used in vehicles listed under 87042240, 2300, 32)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicle
		8708.9999		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Transmission (automatic)	43. Gear Shifter unit	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			8708.9959.20	Trans-mission and power transfer parts (torque $\geq 90$ kg) (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicle
		8708.9999		Other parts and accessories of motor vehicles
Axle (Driving Axle)	44. Housing	8708.9910		Other parts and accessories of tractors
			8708.9929.10	Parts of middle and rear drive axles with axle load capacity of $\geq 10$ t
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles



ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Axle (Driving Axle)	45. Left/right half shaft (constant velocity universal joint)	8708.9910		Other parts and accessories used in tractors
			8708.9929 10	Parts of middle and rear drive axles with axle load capacity of $\geq 10$ t
			8708.9929 90	Other parts and accessories used in large buses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories used in medium and small trucks
			8708.9959 90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other non-listed parts and accessories used in motor vehicles
	46. Steering knuckle	8708.9910		Other parts and accessories of tractors
			8708.9929 10	Parts of middle and rear drive axles with axle load capacity $\geq 10$ t
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Axle (Driving Axle)	47. Differential	8708.9910		Other parts and accessories of tractors
			87089929.90	Other parts and accessories of large omnibuses
		87089939		Other parts and accessories used in off-road dump trucks
		87089949		Other parts and accessories of medium and light trucks
			87089959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240),
		87089960		Other non-listed parts and accessories used in special-purpose vehicles
		87089999		Other parts and accessories of motor vehicles
	48. Rock-arm	87089910		Other parts and accessories of tractors
			87089929.10	Parts of middle and rear drive-axles with axle capacity >=10t
			87089929.90	Other parts and accessories of large omnibuses
		87089939		Other parts and accessories used in off-road dump trucks
		87089949		Other parts and accessories of medium and light trucks
			87089959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240),
		87089960		Other non-listed parts and accessories used in special-purpose vehicles
		87089999		Other parts and accessories of motor vehicles
	49. Wheel hub	8708.7090		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Axle (Driving Axle)	50. Bearing		8482.1000.10	Ball bearings
			8482.2000.10	Tapered roller bearings for motor vehicles
			8482.3000.10	Spherical roller bearings for motor vehicles
			8482.4000.10	Needle roller bearings for motor vehicles
			8482.5000.10	Other cylindrical roller bearings for motor vehicles
			8482.8000	Others, including hybrid ball and roller bearings
	51. Crown & Pinion	8708.9910		Other parts and accessories of tractors
			8708.9929.10	Parts of middle and rear drive-axles with axle capacity >=10t
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Axle (Driving Axle)	52. Suspension spring	8708.9910		Other parts and accessories of tractors
			8708.9929.90	Other parts and accessories of large omnibuses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories of medium and light trucks
			8708.9959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles
	53. Shock-absorber	8708.8010		Suspension shock-absorbers of motor vehicles
			87088090.10	Suspension shock-absorbers of omnibuses with 30 seats or more
			87088090.90	Other suspension shock-absorbers of motor vehicles
Axle (non-drive -axle)	54.Axle (trailing-arm)	8708.6010		Non-driving axles and parts of tractors
		8708.6020		Non-driving axles and parts of large omnibuses
		8708.6030		Dead axles and parts, used in off-road dump trucks
		8708.6040		Non-driving axles and parts of diesel trucks with GVW<=14t
		8708.6050		Non-driving axles and parts of trucks
		8708.6060		Dead axles and parts, used in special-purpose vehicles
		8708.6090		Other non-driving axles and parts of motor vehicles
	55. Wheel hub	8708.7090		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Axle (non-driving axle)	56. Bearing		8482.1000.10	Ball bearings
			8482.2000.10	Tapered roller bearings for motor vehicles
			8482.3000.10	Spherical roller bearings for motor vehicles
			8482.4000.10	Needle roller bearings for motor vehicles
			8482.5000.10	Other cylindrical roller bearings for motor vehicles
		8482.8000		Others, including hybrid ball and roller bearings
	57. Suspension spring	87086010		Non-driving axles and parts of tractors
		87086020		Non-driving axles and parts of large omnibuses
		87086030		Dead axles and parts, used in off-road dump trucks
		87086040		Non-driving axles and parts of diesel trucks with GVW<=14t
		8708.6050		Non-driving axles and parts of trucks
		8708.6060		Dead axles and parts, used in special-purpose vehicles
		8708.6090		Other non-driving axles and parts of motor vehicles
	58. Steering knuckle	8708.6010		Non-driving axles and parts of tractors
		8708.6020		Non-driving axles and parts of large omnibuses
		8708.6030		Dead axles and parts, used in off-road dump trucks
		8708.6040		Non-driving axles and parts of diesel trucks with GVW<=14t
		8708.6050		Non-driving axles and parts of trucks
		8708.6060		Dead axles and parts, used in special-purpose vehicles
		8708.6090		Other non-driving axles and parts of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Axle (non-driving axle)	59. Rock arm	87086010		Non-driving axles and parts of tractors
		87086020		Non-driving axles and parts of large omnibuses
		87086030		Dead axles and parts, used in off-road dump trucks
		87086040		Non-driving axles and parts of diesel trucks with GVW<=14t
		87086050		Non-driving axles and parts of trucks
		87086060		Dead axles and parts, used in special-purpose vehicles
		87086090		Other non-driving axles and parts of motor vehicles
	60. Shock-absorber	8708.8010		Suspension shock-absorbers of motor vehicles
			8708.8090.10	Suspension shock-absorbers of omnibuses with 30 seats or more
			8708.8090.90	Other suspension shock-absorbers of motor vehicles
Frame	61. Side member (or front sub chassis and engine supporter)	8708.9910		Other parts and accessories of tractors
			8708.9929 90	Other parts and accessories used in large buses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories used in medium and small trucks
			8708.9959 90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Frame	62. Cross-member (sub-chassis of integral body)	8708.9910		Other parts and accessories of tractors
			8708.9929 90	Other parts and accessories used in large buses
		8708.9939		Other parts and accessories used in off-road dump trucks
		8708.9949		Other parts and accessories used in medium and small trucks
			8708.9959 90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
		8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
		8708.9999		Other parts and accessories of motor vehicles
Brake System	63. Brake master cylinder (pneumatic valve)	87083910		Brakes and parts of tractors
		87083920		Brakes and parts of large omnibuses
		87083930		Brakes and their parts used in off-road dump trucks
		87083940		Brakes and parts of light trucks
		87083950		Brakes and parts of heavy diesel trucks
		87083960		Brakes and parts of special purpose motor vehicles
		8708.3999	8708.3999.90	Other brakes and parts of motor vehicles
	64. Booster	8708.3910		Brakes and parts of tractors
		8708.3920		Brakes and parts of large omnibuses
		8708.3930		Brakes and their parts used in off-road dump trucks
		8708.3940		Brakes and parts of light trucks
		8708.3950		Brakes and parts of heavy diesel trucks
		8708.3960		Brakes and parts of special purpose motor vehicles
		8708.3999	8708.3999 90	Other brakes and parts of motor vehicles

ASSY	Key parts	HS Code		Commodity Name
		8-digit code	10-digit code	
Brake System	65. Front brake ASSY	8708.3910		Brakes and parts of tractors
		8708.3920		Brakes and parts of large omnibuses
		8708.3930		Brakes and their parts, used in off-road dump trucks
		8708.3940		Brakes and parts of light trucks
		8708.3950		Brakes and parts of heavy diesel trucks
		8708.3960		Brakes and parts of special purpose motor vehicles
		8708.3999	8708.3999 90	Other brakes and parts of motor vehicles
	66. Rear brake ASSY	87083910		Brakes and parts of tractors
		87083920		Brakes and parts of large omnibuses
		8708.3930		Brakes and their parts used in off-road dump trucks
		87083940		Brakes and parts of light trucks
		87083950		Brakes and parts of heavy diesel trucks
		87083960		Brakes and parts of special purpose motor vehicles
		8708.3999	8708.3999 90	Other brakes and parts of motor vehicles



ASSY		Key parts	HS Code		Commodity Name
			8-digit code	10-digit code	
Brake System		67. ABS & ECU	8708.3910		Brakes and their parts used in tractors
			8708.3920		Brakes and their parts used in large buses
			8708.3930		Brakes and their parts used in off-road dump trucks
			8708.3940		Brakes and their parts used in diesel and gasoline-driven light trucks
			8708.3950		Brakes and their parts used in heavy diesel trucks
			8708.3960		Brakes and their parts used in special-purpose vehicles
				8708.3999.20	Hydraulic controllers of ABS (Consist of ECU control module, motor, transducer and electromagnetic valve)
				8708.3999.30	Actuate slip-resistant device (for ABS) (Structure similar to hydraulic controller of ABS, with a function of ASR)
				8708.3999.10	EBD for ABS (Structure similar to hydraulic controller of ABS, but with a function of EBD)
Steerin g system	Power steering	68. Steering gear ASSY	87089410		Steering wheels, steering columns and steering gears of tractors
			87089420	87089420.10	Steering wheels, steering columns and steering gears of buses with 30 seats or more
				87089420.90	Steering wheels, steering columns and steering gears of large omnibuses
			87089430		Steering wheel, steering column and steering gear used in off-road dump trucks
			87089440		Steering wheels, steering columns and steering gears of light trucks
			87089450		Steering wheels, steering columns and steering gears of heavy diesel trucks
			87089460		Steering wheels, steering columns and steering gears of special purpose motor vehicles
			87089490		Other steering wheels, steering columns and steering gears of motor vehicles

ASSY		Key parts	HS Code		Commodity Name
			8-digit code	10-digit code	
Steering system	Power Steering	69. Steering controller valve	8481.2010		Valves for oleohydraulic transmissions
			8481.2020		Valves for pneumatic transmissions
			8481.3000	8481.3000 90	Check (non-return) valves
			8481.4000		Safety or relief valves
		70. Steering booster	8413.6090	8413.6090.90	Rotary positive displacement pumps
		71. Steering wheel (incl. Safety air bag)	8708.9410		Steering wheels, steering columns and steering gears of tractors
				8708.9420.10	Steering wheels, steering columns and steering gears of buses with 30 seats or more
				8708.9420.90	Steering wheels, steering columns and steering gears of large omnibuses
			8708.9430		Steering wheel, steering column and steering gear used in off road dumpers
			8708.9440		Steering wheels, steering columns and steering gears of light trucks
			8708.9450		Steering wheels, steering columns and steering gears of heavy diesel trucks
			8708.9460		Steering wheels, steering columns and steering gears of special purpose motor vehicles
			8708.9490		Other steering wheels, steering columns and steering gears of motor vehicles

ASSY		Key parts	HS Code		Commodity Name
			8-digit code	10-digit code	
Steering System	Power Steering	72. Steering column and universal joint	8708.9910		Other parts and accessories of tractors
				8708.9929.20	Parts of steering gear of buses with 30 seats or more
				8708.9929.90	Other parts and accessories of large omnibuses
			87089939		Other parts and accessories used in off-road dump trucks
			8708.9949		Other parts and accessories of medium and light trucks
				87089959.10	Parts of steering gears of diesel trucks with GVW $\geq$ 14t
				87089959.90	Other trans-mission and power transfer parts (used in vehicles listed under 87042240, 2300, 3240)
			87089960		Other non-listed parts and accessories used in special-purpose vehicles
			87089999		Other parts and accessories of motor vehicles

ASSY		Key parts	HS Code		Commodity Name
			8-digit code	10-digit code	
Steering System	Non-power Steering	73. Steering gear ASSY	8708.9410		Steering wheels, steering columns and steering gears of tractors
			87089420	87089420.10	Steering wheels, steering columns and steering gears of buses with 30 seats or more
				87089420.90	Steering wheels, steering columns and steering gears of large omnibuses
			87089430		Steering wheel, steering column and steering gear used in off-road dump trucks
			87089440		Steering wheels, steering columns and steering gears of light trucks
			87089450		Steering wheels, steering columns and steering gears of heavy diesel trucks
			87089460		Steering wheels, steering columns and steering gears of special purpose motor vehicles
			87089490		Other steering wheels, steering columns and steering gears of motor vehicles
		74. Steering column and universal joint	8708.9910		Other parts and accessories used in tractors
				8708.9929 20	Steering gear parts used in buses with $\geq 30$ seats
				8708.9929 90	Other parts and accessories used in large buses
			8708.9939		Other parts and accessories used in off-road dump trucks
			8708.9949		Other parts and accessories of medium and light trucks
				8708.9959 10	Steering gear parts used in diesel trucks with total weight of $\geq 14$ t
			8708.9960		Other non-listed parts and accessories used in special-purpose vehicles
			8708.9999		Other non-listed parts and accessories used in motor vehicles

ASSY		Key parts	HS Code		Commodity Name
			8-digit code	10-digit code	
Steering System	Non-Power Steering	75. Steering wheel	87089410		Steering wheels, steering columns and steering gears of tractors
				87089420.10	Steering wheels, steering columns and steering gears of buses with 30 seats or more
				87089420.90	Steering wheels, steering columns and steering gears of large omnibuses
			87089430		Steering wheel, steering column and steering gear used in off-road dump trucks
			87089440		Steering wheels, steering columns and steering gears of light trucks
			87089450		Steering wheels, steering columns and steering gears of heavy diesel trucks
			87089460		Steering wheels, steering columns and steering gears of special purpose motor vehicles
			87089490		Other steering wheels, steering columns and steering gears of motor vehicles

### Annex 3 - Application Form for Review of Complete Vehicle Character

No.

Review Type: Review Verification Re-verification					
File No.	Q+4-digit tariff area code + 4-digit code denoting year and month+3-digit numbering			Customs Authorities at the place	
Company No.	(Business License No.)	Company Name		Time of Application	
Vehicle Model No.		Model Name		Start of Production	
Address		Postal Code		Contact Person	
E-Mail		Telephone		Fax	
<b>Office of the Leading Group:</b>  We hereby apply for verification review of the abovementioned vehicle model of our company pursuant to the <i>Administrative Measures</i> and the <i>Verification Rules</i>  The required materials are attached to this form.  Applicant (Signature/Seal)					
<b>Opinion of the Office of the Leading Group:</b>  Instruction No. XXX: The Center is hereby instructed to conduct the review pursuant to the <i>Administrative Measures</i> and the <i>Verification Rules</i> before XXX (Date). The review report shall be duly submitted via the Internet.  Incumbent (Signature/Seal)					
<b>Opinion of the Center Office of the Leading Group:</b>  This is to note that the Center received the review instruction on XXX (Date) and shall finish the review work within the stipulated time frame pursuant to the <i>Administrative Measures</i> and <i>Verification Rules</i> .  Incumbent (Signature/Seal)					

## Annex 4 - Detailed List of Parts for Verification and Review of Complete Vehicle Character

### Form Head: Company Profile

File No.	Q+4-digit tariff area code + 4-digit code denoting year and month+3-digit numbering		
Company No.	( Business License No. )	Company Name	
Address		Postal Code	
Customs Authorities at the place			
Verification (Review) Report No.:	( 70 )	Responsible Persons for the Verification (Review)	
Time of completing the verification (review):		Conclusion	( Yes/No )
Verification (review) Remark:			
Vehicle Model Name:	70 ( X )	Vehicle Model Name in English:	70 ( X )
Numbering of the standard vehicle model:	30(X)	Numbering of the optional vehicle model:	30(X)
Displacement ML:	9(5)	Gross Weight KG:	9(6)
Rated Driver/Passengers:	9(3)	Start of Production:	YYYYMMDD
Vehicle Price	9(13).9(5)	Currency	

### Form Body: Details of the Parts

No.	Commodity No.	Part Name	Part Code within the company	Verified Unit Price	Currency	Unit Price in RMB	Unit of Measurement	Import proportion in the total input		Proportion in unit input	Name of the sub-assembly	Name of the key component of the assembly	A/B Parts? Yes/No	Procurement (operational import/other import/domestic supply/manu-facturing by the company)	Name of the supplier	Proportion of substantial manu-facturing	HS Code Change Due To Substantial Manu-Facturing?
								% of this subassembly (system)	% of the vehicle								
1			X(30)					9(3).9(9)	9(3).9(9)	9(9).9(9)	X(30)	X(30)			X(70)	9(9).9(9)	Y/N
2																	

Note: The Center shall list the detail prices of the imported parts of the other imports, domestic supply and manufacturing by the company

### Annex 5 - Review Report for Complete Vehicle Character

Note No.		Time of Review		Place of Review	
File No.	Q+4-digit tariff area code + 4-digit code denoting year and month+3-digit numbering			Customs Authorities at the Place	
Company No.	(Business License No.)	Company No.		Time of Application	
Vehicle Model No.		Name of Vehicle Model		Start of Production	

**Office of the Leading Group:**

We have finalized the review of the abovementioned vehicle model pursuant to the *Administrative Measures* and the *Verification Rules* and conclude as follows:

1. Number of assemblies , of which there are \_ imported parts such as

☐ body (including cabin) ☐ engine  
☐ transmission ☐ drive axle ☐ non-drive axle ☐ chassis ☐ steering system  
☐ braking system ☐ others: ☐ others: ☐ others: ☐ others:

2. Import percentage: %

According to Articles 21 section ☐ (1) ☐ (2) ☐ (3) of the *Administrative Measures* and as of XXX (Date), this vehicle model ☐ uses imported parts characterized as Complete Vehicles ☐ uses imported parts NOT characterized as Complete Vehicles

Attachment: Detail List of Parts for Verification of Complete Vehicle Character

The Center incumbent for the review (signature/seal)  
Chief panelist of the review panel (signature/seal)  
Members of the review panel (signatures/seals)



### Annex 6 - Application Form for Verification of Complete Vehicle Character

No.:

<b>Type:</b> Review Verification Re-verification					
File No.	Q+4-digit tariff area code + 4-digit code denoting year and month+3-digit numbering			Customs Authorities at the place	
Company No.	(Business License No.)	Company Name		Time of Application	
Vehicle Model No.		Model Name		Start of Production	
Address		Postal Code		Contact Person	
E-Mail		Telephone		Fax	
<p><b>Office of the Leading Group:</b></p> <p>We hereby apply for verification of the abovementioned vehicle model of our company pursuant to the <i>Administrative Measures</i> and the <i>Verification Rules</i>.</p> <p>The required materials are attached to this form.</p> <p>Applicant (Signature/Seal)</p>					
<p><b>Opinion of the Office of the Leading Group:</b></p> <p>Instruction No. XXX: The Center is hereby instructed to conduct the verification pursuant to the <i>Administrative Measures</i> and the <i>Verification Rules</i> before XXX (Date). The verification report shall be duly submitted via Internet.</p> <p>Incumbent (Signature/Seal)</p>					
<p><b>Opinion of The Center Office of the Leading Group:</b></p> <p>This is to note that The Center received the review instruction on XXX (Date) and shall finish the verification work within the stipulated time frame pursuant to the <i>Administrative Measures</i> and the <i>Verification Rules</i></p> <p>Incumbent (Signature/Seal)</p>					

### Annex 7 - Document List for Verifying Complete Vehicle Character

1. Products and Production Summary

Including types of product series, main structure and technical data of the product; production guidance, assembly batches at present, production conditions, local content plan, etc.

2. Statistics of 8 Assemblies and key parts imported and purchased domestically

Statistics on Imported Key Parts

Assembly Name	Name of Imported Key Parts (Sub-assemblies)

Ratio statistics for domestically purchased (including self-made) key parts

Name of Key Parts	Domestic content ratio	Imported parts ratio	Domestic Supplier

Remark: body, driving axle and non-driving axle should be filled separately according to relevant key parts in Class M<sub>1</sub>, M<sub>2</sub>, M<sub>3</sub> and N described in *Administrative Measures*, Annex I ("Names and Illustration of the Vehicle Structure and Body Parts"). Please enclose additional pages for the added Assemblies.

3. Time limitation for parts not characterized as complete vehicles and relevant substantiating material.

Including Customs Declaration of imported parts characterized as Complete Vehicles, Customs Declaration at time of applying for parts not characterized as Complete Vehicles, imported parts list and reduced order contracts or lists, etc.

4. Main domestic parts suppliers

No.	Supplier	Address	Post code	Principal	Contact Person	Tel	Fax	Email	Products & Quantity
1									
2									
3									
4									

Remarks:

1) The above table should list domestic parts suppliers whose products account for more than 0.1% of the complete vehicle.

2) Suppliers should be listed in Pinyin order

3) In accordance with the Center's verification arrangement, sampled suppliers should also provide the list of main production equipment, sequence of production technology, Customs Declaration, supply contract and quantity, etc.

### Annex 8 - Report on Verification of Complete Vehicle Character

Note No.		Time of Verification		Place of Verification	
File No.	Q+4-digit tariff area code + 4-digit code denoting year and month+3-digit numbering			Customs Authorities at the Place	
Company No.	(Business License No.)	Company No.		Time of Application	
Vehicle Model No.		Name of Vehicle Model		Start of Production	

**Office of the Leading Group:**

We have finalized the verification of the abovementioned vehicle model pursuant to the *Administrative Measures* and the *Verification Rules* and conclude as follows:

1.Number of assemblies , of which there are \_ imported parts such as

☐ body (including cabin) ☐ engine

☐ transmission ☐ drive axle ☐ non-drive axle ☐ chassis ☐ steering system

☐ braking system ☐ others: ☐ others: ☐ others: ☐ others:

2. Import percentage: %

According to Articles 21 section ☐ (1) ☐ (2) ☐ (3) of the *Administrative Measures* and as of XXX (Date), this vehicle model

☐ uses imported parts characterized as Complete Vehicles ☐ uses imported parts NOT characterized as Complete vehicles

Attachment: Detail List of Parts for Verification of Complete Vehicle Character

The Center incumbent for the review (signature/seal)  
Chief panelist of the review panel (signature/seal)  
**Members of the review panel (signatures/seals)**