

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INTRODUCTION

1. On 20 December 1999, in accordance with the 1987 Joint Declaration on the Question of Macau and with the Constitution of the People's Republic of China (PRC), Macau, previously a territory under Portuguese administration, became the Macau Special Administrative Region (MSAR) of the PRC. The Basic Law, which was adopted by China's National People's Congress in 1993, is the constitutional instrument governing the MSAR. The Basic Law grants the MSAR a high degree of autonomy except in foreign affairs and defence, and stipulates the principle of "one country, two systems". Under this principle, the previous market-based economic system and way of life are to be maintained for at least 50 years after 1999, and the MSAR's courts are endowed with independent judicial power, including that of final adjudication. Within certain limits, the MSAR is authorized to conduct, on its own, some external affairs; in particular, the MSAR can, using the name "Macau, China", maintain and develop relations and conclude international agreements in fields such as economic, trade, financial, and monetary matters.

(2) GENERAL CONSTITUTIONAL AND LEGAL FRAMEWORK

2. Macau, China's political status and institutional structure are embodied in the Basic Law. It appears that the reversion to China did not affect Macau's legislation concerning trade and trade-related policies, except for the changes made to laws and regulations to comply with the requirements stipulated in the Basic Law.

3. Chart II.1 depicts the structure of the Government.¹ The Government of the MSAR, which is the executive authority of the Region, is headed by the Chief Executive. The Chief Executive is selected by election or through consultations held locally, and appointed by the Central People's Government.² The term of office of the Chief Executive is five years, with a maximum of two terms.³ The Chief Executive is formally empowered to conduct, on behalf of the Government of the MSAR, external and other affairs as authorized by the Central People's Government; the Chief Executive has the power to represent the MSAR and to conclude in the name of the MSAR multilateral, regional, and bilateral trade agreements with foreign countries and regions and relevant international organizations.⁴ The Chief Executive is accountable to the Central People's Government and the MSAR in accordance with the provisions of the Basic Law.⁵ The authorities confirm that there is no specific provision empowering the Central People's Government to instruct the Chief Executive; there are several provisions specifying the relationship between China's central authorities and the MSAR.

¹ The Government must abide by the law and is accountable to the Legislative Assembly. The Government implements laws, presents regular policy addresses to the Assembly, and answers questions raised by members of the Assembly (Article 65).

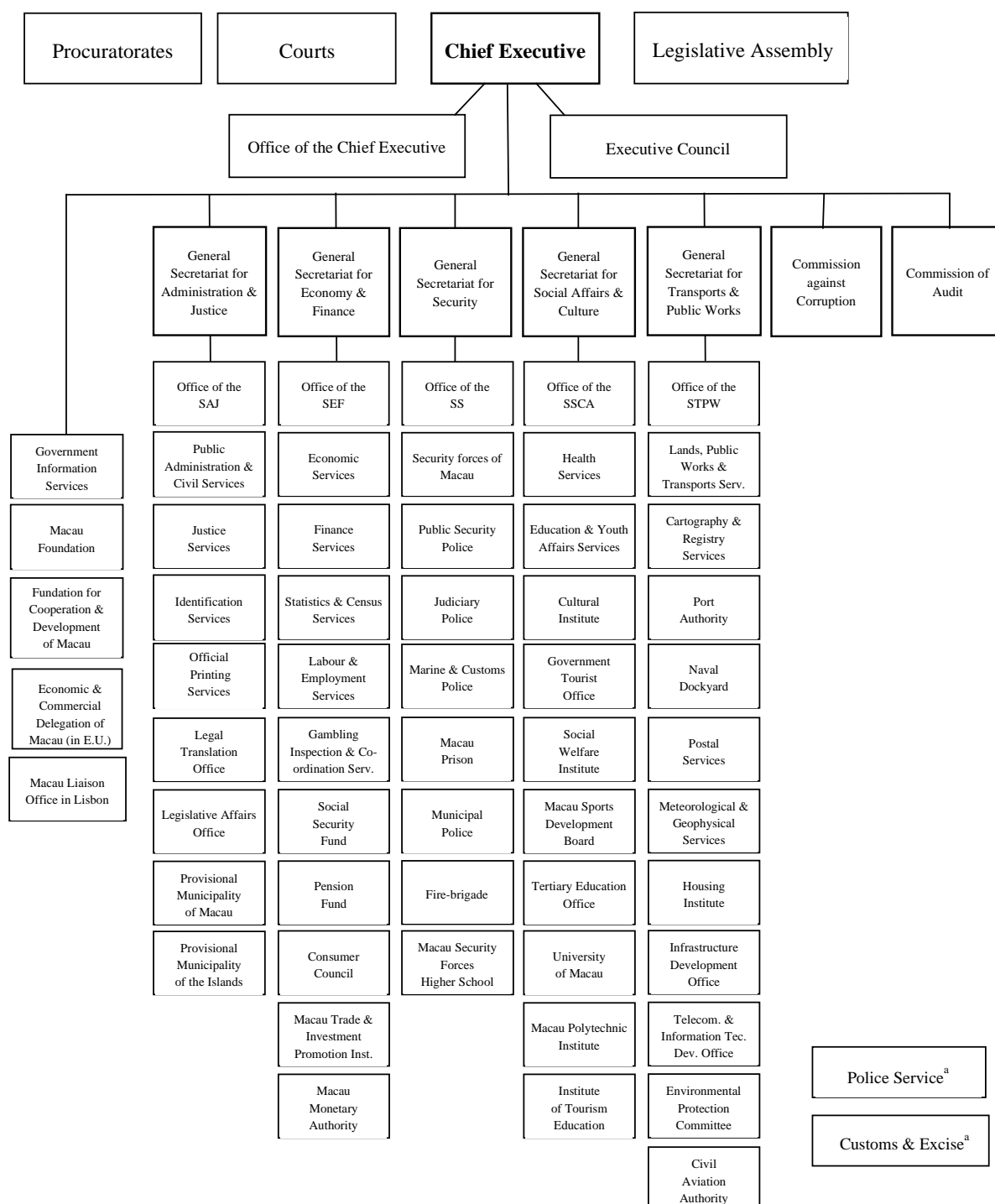
² The specific method for selecting the Chief Executive is described in the Annex I of the Basic Law (Article 47).

³ Article 48 of the Basic Law.

⁴ Article 50 of the Basic Law stipulates the powers and functions of the Chief Executive, such as: to sign bills passed by the legislature and to promulgate laws; to decide on government policies and to issue executive orders; to nominate, and report to the Central People's Government for appointment, certain principal officials; to appoint and remove judges of the courts at all levels, and holders of public office, in accordance with legal procedures; to implement the directives issued by the Central People's Government in respect of the relevant matters provided for in the Basic Law; to conduct external and other affairs as authorized by the Central Authorities; and to approve the introduction of motions regarding revenue or expenditure to the legislature.

⁵ Article 45 (2) of the Basic Law.

Chart II.1
Structural Diagram of the Government of Macau SAR



^a Administrative subordination is under consideration.

Note: This diagram does not cover all entities under supervision and guardianship of the Government.

Source: Information provided by the authorities of Macau, China.

4. In formulating policy, the Chief Executive is assisted by the Executive Council.⁶ The latter consists of seven to eleven (currently ten) members, who are appointed from among principal officials of the executive authorities, Legislative Assembly members and public figures⁷; their appointment or removal is decided by the Chief Executive, who chairs meetings of the Executive Council.

5. The Legislative Assembly is the MSAR's legislature.⁸ It currently consists of 23 members, i.e. eight returned through direct elections, eight indirect elections, and seven appointed by the Chief Executive.⁹ The term of office of the first (current) Legislative Assembly lasts until 15 October 2001; the term of subsequent Legislative Assembly will be four years. The President of the Legislative Assembly is elected by, and from among, its members.

6. The Legislative Assembly is empowered, *inter alia*, to enact laws, approve budgets, and decide on taxation.¹⁰ The Chief Executive is not vested with legislative power. Members of the Legislative Assembly may introduce, individually or jointly, bills that do not relate to public expenditure, the political structure, or the operation of the Government. All bills relating to government policy need the written consent of the Chief Executive before being introduced into the Legislative Assembly.

7. Macau, China's trade-related legislation consists of laws and decree-laws¹¹; the Chief Executive may issue administrative regulations, executive orders, and decisions in accordance with laws or decree-laws (Table II.1). Bills passed by the Legislative Assembly become law only after being signed and promulgated by the Chief Executive.¹² If the Chief Executive considers that a bill passed by the Legislative Assembly is not compatible with the overall interests of the MSAR, it may be returned to the Legislative Assembly within 90 days for reconsideration.¹³ If the Legislative Assembly passes the original bill again, by not less than a two-thirds majority of all members (i.e. 16 of the total of 23 members), the Chief Executive must sign and promulgate it within 30 days.¹⁴ If the Chief Executive refuses to do so, or if the Legislative Assembly refuses to pass a budget or any other bills that may concern the overall interests of the MSAR, and if consensus cannot be reached after consultation, the Chief Executive may dissolve the Legislative Assembly.¹⁵ Laws enacted by the

⁶ The Executive Council effectively replaced a previous Consultative Council.

⁷ As provided in Article 58, the Chief Executive must consult the Executive Council before making important policy decisions, introducing bills to the Legislative Assembly, formulating administrative regulations, or dissolving the Legislative Assembly. Members of the Executive Council must be Chinese citizens who are permanent residents of the MSAR.

⁸ Article 67 of the Basic Law.

⁹ Indirect elections involve a system of electoral colleges, where certain associations or organizations representing social interests recognized by law are endowed with active voting capacity.

¹⁰ Article 71 of the Basic Law.

¹¹ The decree-law was the format for the legislative power of Governor before the transfer of sovereignty. Decree-laws that were in force at the time of the transfer and did not contravene the Basic Law have been maintained in force in the MSAR. The effectiveness of the laws and of the decree-laws in the legal order is the same.

¹² Article 78 of the Basic Law.

¹³ Article 51 of the Basic Law.

¹⁴ Article 51 of the Basic Law.

¹⁵ Article 52 of the Basic Law. The Chief Executive is allowed to dissolve the Legislative Assembly only once during each term of his or her period of office. The Chief Executive must resign if the new Legislative Assembly again passes the original bill by a two-thirds majority of all members and if he/she still refuses to sign it within 30 days. The same applies to a situation where the new Legislative Assembly refuses to pass the original bill in dispute.

Legislative Assembly must be reported to the Standing Committee of the National People's Congress for the record; the reporting does not affect the entry into force of such laws.¹⁶

Table II.1
Basic trade-related legislation in Macau, China

Subject	Date	Legislation	Content
Commercial Code	03.08.99	Decree-Law 40/99/M	Legal system regulating trade activities
Foreign trade	18.12.95	Decree-Law 66/95/M (as amended by Decree-Law 59/98/M)	Framework legislation governing all foreign trade operations.
	29.01.96	Decree-Law 7/96/M	Regulations for freight forwarders.
	25.06.96	Decree-Law 158/96/M	Regulations for registration of foreign trade operators.
	12.02.96	Government Decision 28/96/M	Issuance procedures of certificate of origin and licences under Decree-Law 66/95/M.
Export quotas	28.12.98	Government Decision 128/GM/98	Goods subject to import and export licensing.
	19.09.94	Government Decision 59/GM/94	Allocation and utilization of export quotas.
Trade controls	08.11.99	Decree-Law 77/99/M	Regulations for arms and ammunitions.
	04.12.95	Decree-Law 62/95/M	Regulation for trade in substances depleting the ozone layer.
	29.09.86	Decree-Law 45/86/M	Regulation for imports of CITES species.
	19.10.98	Government Decision 219/98/M	Prohibition of import of used vehicles and engines.
	09.10.96	Notice on Gazette	Allocation of import quotas for trichloroethane under Montreal Protocol.
	27.09.99	Decree-Law 51/99/M	Regulation for production and trade of optical media products.
Government procurement	15.12.84	Decree-Law 122/84/M (as amended by Decree-Law 30/89/M)	Financial regime governing procurement of public works, acquisition of goods and services.
	06.07.85	Decree-Law 63/85/M	Guidelines for tenders for acquisition of goods and services.
Labelling	17.08.92	Decree-Law 50/92/M (as amended by Decree-Law 56/94/M)	Labelling regulations for prepared foods.
Industrial policy	22.03.99	Decree-Law 11/99/M	Industrial licensing requirements.
Investment incentives	08.02.86	Decree-Law 1/86/M (as amended by Decree-Law 35/93/M)	Fiscal incentives for industrial investors.
	01.06.98	Decree-Law 23/98/M	Extension of interest-rate subsidies to all private enterprises.
	27.03.95	Decree-Law 14/95/M (as amended by Decree-Law 22/96/M and Decree-Law 22/97/M)	Investors and professionals residency application.
Consumption taxes	13.12.99	Law 4/99/M	Basic framework regulation.
Intellectual property protection	16.08.99	Decree-Law 43/99/M	Copyright and related rights law in compliance with TRIPS.
	13.12.99	Decree-Law 97/99/M	Industrial property law in compliance with TRIPS.
	05.12.95	Government Decision 313/95/M	Classification of goods and services for purposes of trade mark registration.
Pharmaceuticals	05.06.00	Executive Decision 87/2000	Administrative fees for IP registration.
	19.09.90	Decree-Law 58/90/M (amended by Decree-Law 20/91/M, Government Decision 43/SASAS/91 and Decree-Law 30/95/M)	Regulation for import, export, wholesale, and retail sale of medicines and pharmaceuticals.
	19.09.90	Decree-Law 59/90/M	Registration of pharmaceutical products.

Source: Information provided by the Macau, China authorities.

¹⁶ Article 17 of the Basic Law.

8. International treaties ratified or approved by the PRC or, as may be the case in certain appropriate fields, by the Chief Executive, immediately and automatically become part of the MSAR's legal order once published in the *Official Gazette*. International law generally takes precedence over domestic law.

9. The Basic Law vests the MSAR with independent judicial power, including that of final adjudication; it also establishes the independence of the courts, their submission only to the law, and their jurisdiction over all cases in the Region. There are exceptions to their jurisdiction, imposed by the legal system and by the principles previously in force, which the Basic Law maintained. The courts of the MSAR also have no jurisdiction over acts of State such as defence and foreign affairs. With the transfer of sovereignty, the Court of Second Instance and the Court of Final Appeal were established; the latter replaced the Justice Superior Court.¹⁷

(3) TRADE POLICY FORMULATION AND IMPLEMENTATION

10. Since the previous Trade Policy Review of Macau in 1994, the Territory has continued to rely largely on free market forces to allocated domestic resources and thus trade and investment flows. Government activities focus on establishing a basic regulatory framework and improving the business environment for private operators, through such measures as investment incentives, training programmes and trade promotion initiatives.

11. Under the Basic Law, the MSAR remains a separate customs territory; it may use the name "Macau, China" and participate in international organizations and international trade agreements, such as WTO Agreements. The MSAR may, on its own, maintain and develop relations and conclude and implement agreements with foreign States and regions and relevant international organizations in the appropriate fields, including in economic, trade, financial and monetary, shipping, communications, tourism, cultural, science and technology, and sports matters.¹⁸ The Basic Law also stipulates that the MSAR "shall maintain the status of a free port" (Article 110) and "pursue a policy of free trade and safeguard the free movement of goods, intangible assets, and capital" (Article 111). The authorities maintain that Article 111 includes free movement of services, but excludes labour. In addition, the MSAR "may issue its own certificates of origin for products in accordance with prevailing rules of origin" (Article 113).

(i) Agencies involved in trade policy implementation

12. The Secretaries¹⁹, the Commissioner against Corruption, the Director of Audit, and the heads of the Police Services and the Customs Services are principal officials in the Government.

13. Macau Economic Services is the main agency advising and assisting the Chief Executive and principal officials in formulating, coordinating and implementing policy initiatives in areas related to

¹⁷ Macau, China's courts consist of primary courts, intermediate courts and a Court of Final Appeal. The primary courts have general jurisdiction at first instance, including the Criminal Instruction Tribunal. The Administrative Court has jurisdiction at first instance in administrative disputes. The Court of Second Instance is a court of appeal and the Court of Final Appeal is vested with final adjudication power. The judges of the courts at all levels are appointed by the Chief Executive, on the recommendation of an independent commission composed of local judges, lawyers, and eminent persons from other sectors. The judges are chosen on the basis of merit. The independence of the courts is safeguarded by the irremovability of the judges and their non-subjection to any orders or guidance other than the duty to respect decisions made following appeal to higher courts.

¹⁸ Article 136 of the Basic Law.

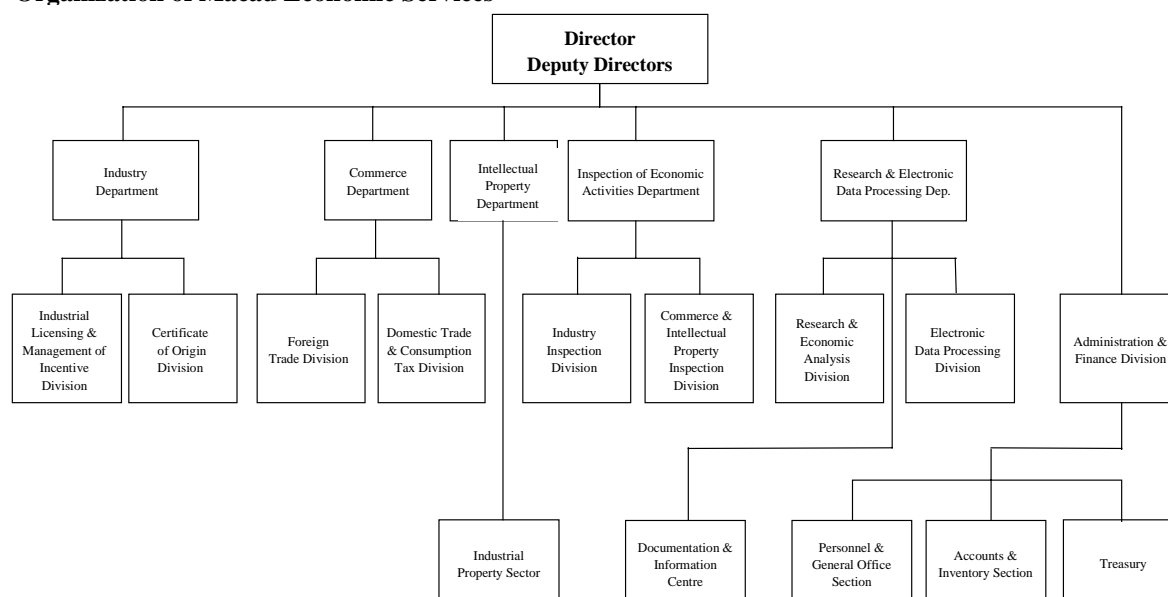
¹⁹ Currently, there are five Secretaries, i.e. for Administration and Justice, Economy and Finance, Security, Social Affairs and Culture, and Transport and Public Works.

trade, fisheries, and industry. The Organization of Macau Economic Services (Chart II.2), is mandated to:

- cooperate in the formulation and implementation of economic policies and the overall planning of economic activities;
- support economic development, industrial diversification, investment and product quality enhancement in Macau, China;
- administer foreign trade regulations and ensure the normal operation of commercial flows;
- foster export growth and diversification, and promote Macau, China's economy abroad; and
- ensure fair competition, protect intellectual property rights and defend consumer interests.

14. Other governmental bodies that participate in advising and assisting the Chief Executive and principal officials in the formulation and implementation of trade policies include the Macau Finance Services, the Macau Monetary Authority, the Macau Statistics and Census Services, the Macau Marine Police and Customs, the Macau Health Services, the Office for Development of Telecommunications and Information Technology, the Macau Trade and Investment Promotion Institute, and the Economic Council.²⁰

Chart II.2
Organization of Macau Economic Services



Source : Information provided by the authorities of Macau, China.

²⁰ The Macau Trade and Investment Promotion Institute was established in July 1994, and the Office for Development of Telecommunication and Information Technology in June 2000.

(ii) **Advisory and review bodies**

15. Two of the main advisory and review bodies are the Economic Council and the Consumer Council. The Economic Council gives advice on matters relating to Macau, China's economic and trade strategies, development, and policies.²¹ The Consumer Council, a public institute established since 1988, promotes the task of consumer protection in the MSAR and provides comments on the implementation of policy pertaining to consumer protection.

(4) **TRADE POLICY OBJECTIVES**

16. The MSAR's trade policy objectives ARE geared to maintaining a structurally diverse, market-driven, *laissez-faire*, and rules-based Macau economy. With regard to the new round of trade negotiations, Macau, China attaches great importance to liberalization of certain sectors, such as air transport, tourism, telecommunications, and e-commerce.

(5) **TRADE AGREEMENTS AND ARRANGEMENTS**

(i) **Multilateral agreements**

17. Macau, China signed the Marrakesh Declaration to become a founding member of the WTO; it had been a GATT contracting party in its own right since January 1991. The WTO Agreements were published in the *Government Gazette* on 27 December 1994 and entered into force on the same date.²² At the WTO Singapore Ministerial Conference in 1996, Macau was party to the Ministerial Declaration on Trade in Information Technology Products (the Information Technology Agreement). In the context of implementing its Uruguay Round commitments and in support of multilateral disciplines, the MSAR has made notifications under a number of WTO Agreements (Table II.2)

Table II.2
Principal notifications by Macau, China under WTO Agreements, as at October 2000

Agreement	Document reference	Requirement/Contents
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)	IP/N/1/MAC/1, 1/Rev.1 and 1/Rev.1/Add.1, 4 February 1998, 7 March 2000, and 23 June 2000	Article 63.2: Notification of the legislation that applies in Macau, China in the field of intellectual property
	IP/N/1/MAC/C/1 and 1/Rev.1, 30 March 2000 and 9 May 2000	Article 63.2: Notification of the legislation that applies in Macau, China in the field of intellectual property
	IP/N/1/MAC/I/1 and 2, 16 February 1998 and 17 May 2000	Article 63.2: Notification of the legislation that applies in Macau, China in the field of intellectual property
	IP/N/1/MAC/T/1 and 2, 16 February 1998	Article 63.2: Notification of the legislation that applies in Macau, China in the field of intellectual property
	IP/N/6/MAC/1, 1 May 2000	Checklist of issues on enforcement
	IP/Q/MAC/1 (IP/Q2/MAC/1, IP/Q3/MAC/1, IP/Q4/MAC/1), 18 August 2000	Review of legislation

Table II.2 (cont'd)

²¹ The Council is chaired by the Chief Executive, comprising council members from senior officials, traders and businessmen, professionals, economists, academics, and representatives of enterprises.

²² Articles 112 and 138 of the Basic Law safeguard Macau, China's continued participation in the WTO.

Agreement	Document reference	Requirement/Contents
Agreement on Agriculture	G/AG/N/MAC/1, 2, 3, 4, 5, 6 and 7, 25 July 1996, 16 April 1998, 16 April 1998, 17 December 1999, 17 December 1999, 17 March 2000, 17 March 2000	Article 6: Notification concerning domestic support; Article 9.1: Notification concerning export subsidies
Agreement on Textiles and Clothing	G/TMB/N/108, 5 July 1995	Article 2.2: Macau, China's observation in relation to the U.S. notification under Article 2.1
	G/TMB/N/96, 24 May 1995	Article 3.1: Notification concerning restrictions on textile and clothing products
	G/TMB/N/97, 24 May 1995	Article 6.1: Notification concerning transitional safeguard
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Agreement on Anti-Dumping Practices)	G/ADP/N/1/MAC/1, 22 November 1995	Article 18.5: Notification concerning laws or regulations relevant to the Agreement.
Agreement on the Implementation of Article VII of the GATT 1994 (Agreement on Customs Valuation)	G/VAL/N/1/MAC/1, 9 May 1996	Article 22.2: Notification concerning national legislation relevant to the Agreement
Agreement on Subsidies and Countervailing Measures	G/SCM/N/1/MAC/1, 1 July 1998	Article 32.6: Notification concerning laws or regulations relevant to the Agreement
	G/SCM/N/3/MAC (16/MAC, 25/MAC), 38/MAC, 48/MAC, 60/MAC and 60/MAC/Corr.1, 2 July 1998, 20 September 1999, 21 September 1999, 16 March 2000, 1 May 2000	Article 25: Notification concerning subsidies
Agreement on Safeguards	G/SG/N/1/MAC/1 and 2, 14 August 1995 and 30 November 1995	Article 12.6: Notifications concerning laws and regulations relevant to the Agreement
Agreement on Import Licensing Procedures	G/LIC/N/3/MAC/1 and 2, 22 December 1998 and 3 January 2000	Article 7.3: Notifications concerning import licensing procedures
Agreement on Technical Barriers to Trade	G/TBT/Notif.96.449, 450, 451, 452, 19 December 1996.	Notification under Article 10.6
	G/TBT/Notif.00.481, 2 October 2000	
Agreement on the Application of Sanitary and Phytosanitary Measures	G/SPS/N/MAC/1, 2 and 3, 19 July 1999, 13 August 1999 and 26 August 1999	Notification of emergency measures
Understanding on the Interpretation of Article XVII of the GATT 1994	G/STR/N/1/MAC, G/STR/N/2/MAC, G/STR/N/3/MAC, G/STR/N/4 (5)/MAC and G/STR/N/6/MAC, 18 September 1995, 21 September 1999, 16 April 1998, 21 September 1999 and 15 March 2000	Notification of state trading enterprises

Source: WTO Secretariat.

(ii) Regional agreements

18. Macau, China does not participate in any regional trade arrangements involving preferences, and all trading partners are treated on an MFN basis.

19. Although Macau, China filed its application to join the Asia Pacific Economic Cooperation (APEC) in 1993, it is not an APEC member.

(iii) Bilateral agreements

20. Macau, China has no bilateral trade-related agreements or arrangements with any other parties; no bilateral negotiations or initiatives have taken place since its previous Review.

21. Certain exports from Macau, China enjoy preferential treatment in Australia, Canada, the European Union, Japan, New Zealand, Norway, Switzerland, and the United States, under GSP

schemes, although such treatment has been diminishing.²³ While Macau, China exported GSP-eligible goods worth US\$4.5 million in 1999; the authorities indicate that only 0.2% of its total exports of such goods to these countries actually benefited from preferential access, according to the data provided by the authorities.

22. While Macau, China accords no preferential treatment to the Mainland in terms of trade, the Governments of the MSAR and Mainland China have cooperated in various fields such as customs and infrastructure.

(6) TRADE DISPUTES AND CONSULTATIONS

23. Macau, China has never had any trade disputes with Members of the WTO; nor have there been any trade disputes outside the WTO framework, according to the authorities.

(7) MEASURES RELATED TO FOREIGN DIRECT INVESTMENT

24. Macau, China does not maintain any restrictions or controls on inward or outward foreign direct investment or the use of foreign capital in existing or newly established companies; nor are there any restrictions on the repatriation of profits or exchange controls. Moreover, the same procedures are applied for the establishment of a local or foreign company; each company doing business in Macau must have a registered office there.

25. Since the establishment of the MSAR, the Macau Trade and Investment Promotion Institute (IPIM) has assumed additional authority and responsibilities; its scope of activities has been expanded and an Investment Committee coordinating relevant government offices, and a Private Notary to assist the setting up and registration of companies were established within the IPIM to assist investors with the necessary procedures required to start a business in Macau.

26. The Government grants interest-rate subsidies on Pataca-denominated bank loans for the purchase or leasing of new equipment, as well as for purchase, construction or leasing of industrial buildings, used exclusively by the beneficiary; the subsidies may be granted for up to four years. In addition, refundable and non-refundable subsidies may be granted to investment projects if certain requirements are met (Chapter III(4)(ii)). According to the authorities, the granting of these subsidies is non-discriminatory, benefiting local and foreign investors alike.²⁴

27. In 1999, Macau, China signed a double taxation agreement with Portugal (published in Decree-Law No. 106/99/M of 13 December 1999). Macau, China also signed a bilateral agreement on investment protection with Portugal (published in the *Government Gazette* No. 31, on 31 July 2000). Macau, China has no other bilateral investment treaties or bilateral tax treaties.

²³ In 1998, Macau products ceased to benefit from the U.S. GSP scheme; benefits under the Japanese GSP scheme were terminated on 1 April 2000.

²⁴ According to Decree-Law No. 22/96/M of 22 April 1996, entrepreneurs investing at least US\$125,000 are granted the right of abode in the MSAR. According to Decree-Law No. 22/97/M of 11 June 1997, this amount is further reduced to US\$62,500 for applicants who are retirees or pensioners from Hong Kong, China and have proof of their financial status. The authorities indicate that the provision of the right to abode aims to attract foreigners wishing to investing in housing and reside in the MSAR.