II. THE PEOPLE’S REPUBLIC OF CHINA ON CONTROL OF HIV/AIDS

MR. HAO: In 1985, the first AIDS victim was found in China.1 The first individuals diagnosed with AIDS were primarily foreigners and overseas Chinese citizens.2 Subsequently, the Chinese government enacted a series of laws to prevent AIDS from spreading into or out of the country.3 These laws were designed to establish an AIDS inspection system to prevent victims of AIDS or carriers of the AIDS virus from entering or exiting China.4 The laws pertaining to AIDS in China include state statutes and administrative rules or regulations. Specifically, Certain Regulations on the Monitoring and Control of AIDS, implemented in 1988, is significant because it covers the substantial requirements of AIDS control and procedures for AIDS inspection.5

A. CHINESE AIDS STATUTES AND REGULATIONS

1. Frontier Health and Quarantine Law 1986

The Frontier Health and Quarantine Law of the People’s Republic of China was “formulated in order to prevent infectious diseases from spreading into or out of the country, to carry out frontier health and quarantine inspection and to protect human health.”6

2. Implementation Rules of Frontier Health and Quarantine Law7

Article 6: Health and quarantine organs are required to bar any epidemic victims or suspects [who are subject to quarantine] from [exiting], with the exception of those who come from abroad and have undergone an on-site clinical checkup upon arrival. These persons can leave the port if they wish to if they leave in conveyance. [Q]uarantine physicians are required to annotate and comment on their Exit Quarantine Certificates and to inform the person in charge of the conveyance to take the necessary precautionary measures.

Article 99: The health and quarantine organ should bar foreigners who are victims of AIDS, venereal disease, leprosy, psychosis, [and] open tuberculosis from entry.

Article 102: Chinese citizens who apply to stay abroad for over one year are required to carry health certificates issued by the health and quarantine organ. The exit and entry organ for Chinese citizens shall process such an application only if it includes a health certificate issued by the health and quarantine organ. A Chinese citizen who has stayed abroad for over one year is, upon reentry, required to fill out [the] health declaration form required by the health and quarantine organ, and go to the local health and quarantine organ or to the hospital, at or above the county level, for a physical check-up within one month. The public security organ shall allow him to go through related procedures on the strength of the

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2. Id.
health certificate. A copy of this health certificate must be sent to the port health and quarantine organ for the record. Chinese crewmembers working on the means of international transport must carry their health certificates issued by the health and quarantine organ or the hospital at or above the county level. The health administrative department, under the State Council of the People’s Republic of China, shall unify the items and form of the health certificate. The term of validity is 12 months.

3. **Controlling Entry and Exit to China’s Frontier** 8

In addition to the Implementation Rules, Chinese immigration law includes provisions regulating the entry and exit of individuals with AIDS.

Article 7(4): An alien suffering from mental disorder, leprosy, AIDS, venereal diseases, contagious tuberculosis or other infectious diseases [shall not be allowed to enter China].

4. **Provisions for the Monitoring and Control of AIDS 1988**

The Implementation Rules include provisions for the monitoring of AIDS by granting authority to conduct quarantine inspections.

Article 4: All persons, conveyance and containers, as well as articles such as baggage, goods and postal parcels that may transmit quarantinable diseases are subject to quarantine inspection upon entering or exiting the country in accordance with these Rules, and entry and exit shall be allowed to them only after an approval is issued by the health and quarantine office.9

In addition to the Implementation Rules, *Certain Regulations on the Monitoring and Control of AIDS* provide additional authority and standards for monitoring foreign nationals and Chinese citizens.

Article 5: When applying for entry visa, any foreign national who plans to settle down in China or stay (or study) in China for one year or longer is required to furnish the AIDS blood serum test certificate issued by a public hospital, or by a private hospital notarized by the notary office in the country of origin and authenticated by the Chinese Embassy or consulate in that country. The certificate shall remain valid for six months as of the date of issue.10

Article 6: Those foreign nationals who belong to the categories as defined in Items (1) and (2) of Article 2 in these Provisions shall be barred from entering China. Those who are not allowed to enter China but have already arrived at a China border port must leave the border as soon as possible by the same means of transport or by a means of transport of the country where they reside. If necessary, China civil air, railways or other transportation departments shall make arrangements for their departure. Before they leave the border, they must be placed in isolation by the health quarantine organ at the border port.11

Article 7: Any foreign nationals who stay in China and are found to be objects as defined in Items (1) and (2) of article 2 in these Provisions, the local health administrative department may request the public security organ to order them to leave China without delay.12

Article 8: Chinese citizens who have settled down abroad or have stayed abroad for over one year (including those Chinese seamen working on foreign vessels) and who intend to resettle down in China or stay in China for over one year are required to go to a designated professional health organ for a physical check up within two months after they return to China.13

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8. *Rules Governing the Entry and Exit of Aliens*, supra n. 4, at art. 7(4).
11. *Id.* at art. 6. Foreign nationals that should be barred from China, as defined in article 2(1)-(2), are victims of AIDS and carriers of the AIDS virus.
12. *Id.* at art. 7.
13. *Id.* at art. 8.