

**COMMUNICATION FROM THE EUROPEAN COMMUNITY  
AND ITS MEMBER STATES**

The following communication, dated 14 August 2003, has been received from the Permanent Delegation of the European Commission.

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18  
OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S  
REPUBLIC OF CHINA ("CHINA")**

**I. GENERAL**

1. In connection with its accession to the WTO, China assumed a number of commitments with respect to existing WTO agreements and the obligations contained therein.
2. A number of these commitments relate to the WTO Agreement on Trade-Related Investment Measures ("TRIMs") and are reflected primarily in paragraph 18 of the Chinese Protocol on Accession which also establishes a transitional review mechanism ("TRM") providing for the General Council to review China's implementation of the WTO Agreement within one year after accession.
3. On TRIMs, has China committed itself to comply fully with the TRIMs Agreement through abolishing legislation and other measures constituting TRIMs **upon joining the WTO** and through "providing relevant information, including information contained in Annex 1A, to each subsidiary body in advance of the review". More specifically, paragraph 3 of the Accession Protocol for China reads:

"3. China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement. China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licences, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or **investment** by national and sub-national authorities, **is not conditioned on:** whether competing domestic suppliers of such products exist; or **performance requirements** of any kind, such as local content, offsets, the **transfer of technology**, export performance or the conduct of research and development in China."

**II. CHINESE TRIMS – REQUEST FOR FURTHER CLARIFICATION**

4. In response to the questions posed by the European Community and its Member States (the "EC") in submission G/TRIMS/W/21, as well as questions posed by other WTO Members

regarding modifications to its TRIMs, China issued Communication G/TRIMS/W/26. In addition to this document, the Head of the Chinese Delegation delivered a detailed and informative statement dated 14 October 2002 during the 14 October 2002 meeting of the TRIMs Committee. That statement provided further clarification concerning certain questions raised by other WTO Members.

5. Having carefully analysed the document and the statement in question, the EC would be grateful for some additional clarification on a number of points. This would allow the EC to gain a better understanding of and assess more fully the progress made by China in abolishing or modifying its TRIMs and TRIMs incompatible legislation as required.

### **Question 1**

Upon acceding to the WTO, China accepted to provide information regarding a number of economic policy areas (as well as other areas).

In the area of investment specifically, China accepted to provide the Committee on Trade-Related Investment Measures with information about "completed revisions to investment guidelines in conformity with the WTO Agreement", cf.. Annex 1A, II, 2 (paragraph 85) of document WT/ACC/CHN/49.

**Can China confirm that such revisions have in fact taken place, and, what the revisions consist of more precisely, especially as regards the status of the Catalogue on Investment and the categorisation of restricted; permitted; and encouraged investments, and requirements relating to transfer of technology?**

### **Question 2**

The above-quoted paragraph 3 of the Accession Protocol for China lays out a clear obligation for China to not only abolish or amend TRIMs-incompatible legislation, but also to ensure that any contracts containing TRIMs incompatible commitments and obligations would not be enforced.

However, the EC notes that – according to the Chinese answers so far provided - obligations contained in existing contractual arrangements will nevertheless remain valid and enforceable even where such arrangements contain TRIMs-incompatible commitments.

During the last TRM regarding TRIMs China stated its respect for the freedom of parties to enter into contracts and added that commitments entered into by (foreign) producers continue to be enforceable, as "such commitments cannot be deemed invalid ... [and] the enterprise shall continue to honour its commitment made in the contract" and the fact that in relation to foreign investment, the contracts and articles of association of a foreign invested enterprise become effective only after they have been approved by the competent authority.

That answer would appear to be in direct contradiction with the explicit undertaking under paragraph 3 of the protocol to ensure that contracts which contain TRIMs-incompatible commitments and obligations are no longer enforceable.

**Can China confirm that contractual arrangements which contain TRIMs-incompatible commitments and obligations should be amended in such a way that they will contain obligations which are fully compatible with the TRIMs Agreement?**

**Can China indicate how such amendments might be instituted, including through a renegotiation of the relevant parts of a contract?**

**Can China confirm that for its part it will ensure that any contracts which may contain TRIMs incompatible commitments and obligations will not be enforced before domestic law courts or other administrative tribunals or bodies and that the TRIMs-incompatible commitments and obligations are to be considered null and void?**

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