

**COMMUNICATION FROM THE UNITED STATES**

The following communication, dated 21 September 2004, is being circulated at the request of the Delegation of the United States.

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

Additional Questions from the United States to China concerning  
Trade-Related Investment Measures

**I. NEW AUTOMOBILE INDUSTRIAL POLICY**

1. In paragraph 204 of its Working Party Report, China committed to amend its 1994 Industrial Policy for the Automotive Sector upon accession to make it compatible with WTO rules and principles. On 1 June 2004, China published its new policy, entitled "Development Policy of the Automobile Industry."

2. In Article 47 of its new policy, China states that a new automobile production plant requires a minimum investment of RMB 2 billion, of which owned capital should not be less than RMB 800 million. According to this paragraph, the new plant should also include an R&D facility, investment in which should not be less than RMB 500 million. Article 47 also requires the establishment of an R&D facility in connection with new automobile engine manufacturing.

3. In paragraph 7.3 of its Protocol of Accession, China committed: "China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement. . . . 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*." (Emphasis added.) Similarly, in paragraph 203 of its Working Party Report, China committed: "The allocation, permission or rights for investment will not be conditional upon performance requirements set by national or sub-national authorities or subject to secondary conditions covering, for example, *the conduct of research*, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology." (Emphasis added.)

**Question 1**

**Please explain whether paragraph 3 of the new policy applies only to Chinese enterprises or also to foreign-invested enterprises.**

**Question 2**

**If paragraph 3 of the new policy applies to foreign-invested enterprises, please explain how it complies with China's commitments in paragraph 7.3 of China's Protocol of Accession and paragraph 203 of China's Working Party Report.**

4. Annex II of the new policy describes the documents that must be filed when seeking approvals for new production plants. One of the listed documents in paragraph iv of Annex II is the technology transfer agreement of the foreign party.

**Question 3**

**Please explain this requirement in light of China's commitments in paragraph 7.3 of its Protocol of Accession and paragraph 203 of its Working Party Report.**

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