

# WORLD TRADE ORGANIZATION

G/L/751  
24 October 2005

(05-4879)

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## Committee on Trade-Related Investment Measures

### TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

#### Report of the Chairman

1. In accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China, the Committee on Trade-Related Investment Measures carried out the fourth annual review under China's Transitional Review Mechanism (TRM) at its meeting on 10 October 2005.
  2. Written questions in connection with China's TRM were submitted in advance of the review by the European Communities and the United States. These submissions were circulated as documents G/TRIMS/W/41, and G/TRIMS/W/42, respectively.
  3. In a communication dated 6 October 2005, China submitted information on Annex 1A of its Protocol of Accession in the context of the TRM. This submission was distributed in document G/TRIMS/W/45, dated 7 October 2005.
  4. Annex 1 to this document reproduces the relevant sections of the Minutes of the TRIMs Committee meeting held on 10 October 2005 in which the substantive discussions on China's TRM are reflected.
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Annex 1

Relevant Sections of the Minutes  
of the meeting held on 10 October 2005

(G/TRIMS/M/22)

D. TRANSITION REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

11. The Chairman recalled that under Paragraph 18 of China's Protocol of Accession, the TRIMs Committee was required to review annually, over a period of eight years after China's accession, the implementation by China of the TRIMs Agreement and the related provisions of the Protocol and to report to the Council for Trade in Goods (CTG) on the results of its review. The third annual review had taken place in October 2004 and the relevant report had been submitted to the CTG as document G/L/708.

12. With regard to this year's review, he said that in order to discharge its reporting obligations the TRIMs Committee would need to undertake the review and submit its report in advance of the next meeting of the Council for Trade in Goods, which was planned for 10 November 2005. Pursuant to paragraph 18 of China's Protocol of Accession, the Council for Trade in Goods would in turn report to the General Council by the end of the year. He then said that the Committee had received communications from the European Communities and the United States, containing questions in connection with China's Transitional Review Mechanism. These submissions had been circulated in documents G/TRIMS/W/41 and 42, respectively. In addition, the Committee had received a communication from China, dated 6 October 2005, concerning information provided under Annex 1A of its Protocol of Accession. This had been circulated in document G/TRIMS/W/45.

13. He proposed that, in accordance with past practice, the Committee conduct the review as follows: he would first give the floor to those delegations that had submitted questions to China, and to any other delegation that wished to comment on this item. He would then offer the floor to the delegation of China to answer the questions and provide any further information they might wish to share with the Committee. With respect to the Committee's reporting obligation to the Council for Trade in Goods, he understood that Members would wish the Committee to follow the same procedure that had been adopted in previous years, i.e., the Chairman would submit a brief, factual report, which would make reference to the submissions made in connection with this year's review and would contain in an annex the relevant parts of the Minutes of this meeting. He had taken the liberty of asking the Secretariat to prepare a draft outline of his report for Members' consideration. This had been circulated as document G/TRIMS/W/44. If Members agreed to this outline, and once the relevant sections of the Minutes had been attached to it, he would forward the report to the Council for Trade in Goods.

14. The Committee agreed on the proposed procedure to discharge its reporting obligations.

15. The representative of the European Communities thanked the delegation of China for its submission, which had been circulated on 7 October. He said that it was unfortunate that most of the questions in his delegation's present communication had already been raised in the past, and so far had not yet been answered in a fully satisfactory manner in the EC's view. For example, with regard to the contractual arrangement clauses, which the EC believed were incompatible with the TRIMs Agreement, the EC had raised this issue at last year's review and was still awaiting confirmation from China that it would ensure that any contracts which might contain commitments incompatible with the

TRIMs Agreement would not be enforced, including before domestic law courts or other administrative tribunals. The EC was still seeking this assurance from China.

16. The issue of the Industrial Guideline Catalogue for Foreign Investments had also been raised by his delegation at the last Transitional Review Mechanism (TRM). On that occasion, China had alluded to prospective amendments to the catalogue. The EC would like to seek confirmation from China on whether the amendments that were referred to last year had been made. The EC would also appreciate having more details regarding what the amendments entailed, especially with regard to the status of the catalogue of investment. His delegation would also wish to have information on where these amendments had been published and where they could be found.

17. On the new automobile policy and related outstanding issues, the EC continued to have concerns regarding the publication of drafts of these implementing regulations. The EC would appreciate receiving the drafts well in advance so as to allow it and other Members to conduct a proper examination of them in the WTO. More precisely, the EC had concerns over the so-called Administrative Measures for the Imports of Automobile Components Fulfilling the Characteristics of a Whole Vehicle. His delegation would urge China to review its new legislation in the WTO, allowing for an open and constructive in-depth discussion on this matter. The EC would be seeking to have this discussion with its Chinese partners. He added that the same concerns arose when looking at the joint venture ownership limitation foreseen in the new automobile policy. In that context, his delegation wanted to draw China's attention to the fact that a review of the joint venture ownership regulation might help to facilitate solving the problem related to the localisation of parts production.

18. His delegation also shared the United States' concerns over China's recently implemented steel policy, known as the Steel Industry Development Policy. More specifically, the EC had concerns regarding two basic provisions of this new policy. One was Article 23, which in the EC's view appeared to discriminate between domestic and foreign companies. In that regard, the EC sought further clarification from China on the criteria that it intended to use for applying this provision. The second set of provisions concerned Article 17 and Article 18 of the same piece of legislation, which basically foresaw a ban on outdated techniques and equipments. The EC wished to receive more information from China on the definition of "outdated equipments" and "advanced and practical equipment". His delegation was willing to have a fruitful exchange with China on this issue and receive information to take back home in view of the next review in the Council for Trade in Goods.

19. The representative of the United States said that he had not much to add to the communication that his delegation had submitted on this issue. The United States basically had three separate areas where it required further clarification: the foreign investment catalogue; the automobile industrial policy; and the steel policy. His delegation would appreciate any further information that the Chinese delegation could shed on these matters.

20. The representative of Chinese Taipei said that, according to paragraph 203 of China's Working Party Report, prior to acceding to the WTO China had revised its Laws on Chinese-foreign Equity Joint Ventures, on Foreign Capital Enterprises, and on Chinese-foreign Contractual Joint Ventures to bring them into compliance with the TRIMS Agreement by eliminating the foreign-exchange balancing and trade-balancing requirements, local content requirements, and export performance requirements. While from the legal perspective there was general conformity with WTO rules, Chinese Taipei's companies that had invested in China said that they were facing some problems. Therefore, his delegation would like to ask two questions to China. First, given that differing interpretation of Chinese law and regulation had led to a situation where there was inconsistent enforcement by the central and local governments, he asked if any measures or concrete actions had been taken to ensure consistency and transparency. Secondly, he asked if China was considering the drafting of a law such as an administrative procedural law that would provide for fair

and open procedures to be followed in administrative action in order to protect the interests of business. If so, his delegation would appreciate if China could provide further details on the main provision of this law.

21. The representative of China said that prior to this meeting his delegation had submitted to the TRIMS Committee the information required by Annex 1A of its Protocol of Accession (G/TRIMS/W/45). At present, he would like to provide responses to the issues of concern raised by Members.

22. Firstly, he stated that the Chinese Government faithfully honoured its commitments made in the Protocol on the Accession of China to the World Trade Organization (WTO) and the Working Party Report. China had made two amendments in 2000 and 2001 respectively, to the Law on Sino-Foreign Equity Joint Ventures of the People's Republic of China, the Law on Sino-Foreign Cooperative Joint Ventures of the People's Republic of China, the Law on Foreign-Invested Enterprises of the People's Republic of China and their implementing rules or measures as well as related regulations. Articles therein on foreign-exchange balance, trade balance, local content and export performance which contradicted the TRIMs Agreement had been clearly removed. However, without the consensus reached through consultation between the consenting parties on any terms of an existing contract, the contract itself or some of its articles could not be altered or invalidated by a Chinese court or any other administrative body through a mandatory order. He requested Members to refer to his delegation's more detailed explanations made during previous reviews on this point, which he believed were complete and clear.

23. Secondly, by strictly following WTO rules and its accession commitments, the Chinese Government had updated the old version of the Catalogue for the Guidance of Foreign Investment Industries, soon after its accession. A new version had been published on 30 November 2004 jointly by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) upon the approval of the State Council, and had officially taken effect on 1 January 2005. The Catalogue was divided into three categories: the encouraged (257 items), the restricted (78 items) and the prohibited categories (35 items). This was the guiding document for applying policies on foreign-funded projects and foreign-invested enterprises.

24. He also confirmed that there was no mandatory technology transfer requirement in China regarding the approval of foreign-funded projects. In addition, China would continue to amend the above-mentioned Catalogue when deemed necessary. However, China did not have yet any plan to remove the area of "production and development of genetically modified plants seeds" from the "prohibited" category.

25. Thirdly, he would like to respond to the questions on China's new Automobile Industrial Policy. He stressed that the new Policy had been composed in a transparent way. Sufficient public consultation had been undertaken through comments solicitation and symposia with deeply involved stakeholders, *inter alia*, with major auto makers from foreign countries.

26. (1) China's auto industry was still in an initial stage of development. The technological level and competitive power of its products still lagged far behind those of developed countries. As import quotas were phased out, import tariffs further slashed and the market further developed in the post-accession transitional period, fiercer competition had taken place in China's auto market. The shareholding requirement was based upon the fact that China's auto industry was at a preliminary stage of development and it did not contradict any WTO principle or China's accession commitments.

27. (2) With regard to the "2+2" requirements on setting up joint ventures in China, he confirmed that this requirement was designed to prevent investors from over-stretching their investment, opening multiple production sites and competing viciously with one another. The new auto industry policy

clearly stipulated that "investors which, in association with their Chinese joint-equity partners, acquire or merge with other auto production companies in China may be exempt from this requirement", which demonstrated the Government's supportive attitude towards further consolidation of its automobile industry.

28. (3) Due to the differences in tariff levels between whole vehicle and auto parts, it had become imperative that a clear-cut definition of "Whole Vehicle" be made. Measures on the Administration of the Import of Automobile Components Fulfilling the Characteristics of a Whole Vehicle, which had come into force on 1 April 2005, contained no mandatory requirement on domestic whole-car and auto part manufacturers, so it did not contradict China's accession commitments. Moreover, it was equally applicable to foreign-invested enterprises established in China and domestic-funded enterprises, thus it did not go against the principle of national treatment.

29. (4) Regarding the requirements on setting up an R&D facility for a new automobile plant, he repeated the rationale behind this policy. China wanted to make sure that any new plant could meet the increasing technical and legal requirements on safety, environmental protection and energy saving, as well as customer demand in China through setting up its own R&D facility. However, setting up an R&D facility itself did not constitute any mandatory requirement on transfer of technology. Thus, China's requirement was not against its WTO commitments.

30. He indicated that for more detailed explanations on the New Automobile Policy, Members could refer to China's responses made under the TRM in the Committee on Market Access and the Committee on Import Licensing Procedures this year, as well as to responses made in previous reviews.

31. Fourthly, regarding China's steel policy, he invited Members to refer to China's statement made under the TRM at the Committee on Import Licensing Procedures the previous month.

32. Lastly, he announced that responses to questions on books, newspapers and periodicals would be delivered under China's TRM at the Council on Trade in Goods in November 2005. Regarding the questions raised orally by Chinese Taipei, and recalling a similar situation in the Committee last year, the representative of China urged the delegation of Chinese Taipei to respect the procedures of the review by submitting valid questions in writing, if any, well in advance of the meeting to facilitate the process of the review in the future.

33. The Chairman thanked China for replying to the questions that had been submitted and for the very comprehensive statement it made. He also thanked the delegations that had participated in the exercise.

34. The Committee took note of the statements made and agreed that the Report of the Chairman to the Council for Trade in Goods<sup>1</sup>, together with the Minutes of the present meeting on this agenda item, be submitted to the CTG.

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<sup>1</sup> A draft Report of the Chairman to the Council for Trade in Goods was distributed to Members prior to the meeting in document G/TRIMS/W/44.