

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 28 July 2005, is being circulated at the request of the Delegation of the European Communities.

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

1. The EC is transmitting these comments and questions in advance of the meeting of the Committee on Trade-Related Investment Measures (TRIMs) on 10 October, in order for the Chinese authorities to reply and to complete any information that may be incomplete. The questions build upon the previous meetings of the Committee on TRIMs on 14 October 2002, 3 October 2003 and 25 October 2004, as well as previous questions from the EC and its member States as contained in documents G/TRIMS/W/21, G/TRIMS/W/31 and G/TRIMS/W/36.

2. Once the information to be provided by China in accordance with paragraph 8 and paragraph IV.3(a) of Annex 1A of its accession protocol has been received, the EC may submit additional questions, including questions pertaining to issues that have been raised in previous EC communications.

3. At this point in time, the EC's comments and questions are focused on the following priority items:

- Amendment of clauses contained in contractual arrangements that are incompatible with the TRIMs Agreement
- Industrial Guideline Catalogue for Foreign Investments
- New Automobile Policy

4. In connection with its accession to the WTO, China has 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."*

Amendment of TRIMs incompatible clauses in contractual arrangements

5. During the last TRM, China stated that TRIMs incompatible clauses in contracts "should not be regarded as invalid automatically or be annulled through or by government actions or interference." Similar statements have been made by China at earlier occasions as well, at which China has also informed Members about the fact that the contracts and articles of association of a foreign invested enterprise become effective only after they have been approved by the competent authority.

6. Yet, Paragraph 3 of the Protocol of accession 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.

7. In this context, the EC would be grateful if China could:

Confirm that for its part it will ensure that any contracts which may contain TRIMs incompatible commitments and obligations will not be enforced by China, including 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.

Industrial Guideline Catalogue for Foreign Investment

8. 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 (p. 85) of document WT/ACC/CHN/49.

9. With respect to China's Industrial Guideline Catalogue for Foreign Investment, at the last TRM, China alluded to prospective amendments to the Guideline Catalogue by stating "[a]t present, the competent authorities are working on the amendment, and the new version will be issued and implemented soon after its approval by the State Council".

10. In this context, the EC would be grateful if China could:

Confirm whether the amendment has been made as well as specify in more detail what the amendment entails, 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.

New Automobile Policy

11. The EC refers to its concerns regarding the New Automobile Policy (hereafter "NAP") already voiced in last year's transitional review, especially with a view to the wide scope of state intervention and the uncertainty about the implementing regulations that will supplement the new policy. Given the experience of how the NAP was developed, the EC wishes to stress the transparency obligations under WTO rules with regard to the outstanding implementation regulations of the NAP. Publishing drafts of these implementing regulations well in advance would allow other WTO Members to comment on them.

12. The EC would like to turn China's special attention to the following issues

(i) Administrative measures for the import of automobile components fulfilling the characteristics of a whole vehicle

13. These measures are likely to invalidate some of China's WTO accession commitments (abolition of local content requirements and TRIMs, national treatment obligation).

14. The measures will have a major negative economic and technical impact on the EC manufacturers and on the development of the Chinese automotive industry itself.

15. The EC therefore urges China to review its new legislation regarding WTO (as well as WCO) aspects and to be open for a constructive in depths discussion on this matter in order to develop solutions that are both, promoting China's goals of further localization of parts production and facilitating business for EC automobile manufacturers.

(ii) Joint venture ownership limitation

16. The NAP imposes restrictions on foreign investors, which have contributed substantially to the rapid development of China's automotive sector. Foreign joint venture partners are not allowed majority ownership in automobile production. Moreover, participation of foreign joint venture partners in automobile manufacturing projects is limited to two for the production of passenger cars and two for commercial vehicles ("2+2"). Due to the global nature of the automotive industry and the brand strategies of local companies locked in 50/50% ventures with foreign vehicle makers such restrictions are counterproductive to the NAP's objective of promoting international competitiveness.

17. In this context the EC urges China

- to allow foreign majority investment and
- to eliminate the "2+2" regulation.

18. The EC would like to draw China's attention to the fact that a review of the joint venture ownership regulation might well help to facilitate to solve the problem related to the localisation of parts production (see (i)).
