WORLD TRADE ORGANIZATION

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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. At its meeting on 14 October 2002, the Committee on Trade-Related Investment Measures agreed that, following a similar practice to that adopted by other WTO bodies, the Chairman of the Committee would submit a report to the Council for Trade in Goods, on his own responsibility, and that this report would be deemed to constitute the report referred to in Paragraph 18 of China's Protocol of Accession to the WTO.

2. Pursuant to Paragraph 18 of China's Protocol of Accession, the Committee held the first annual review under China's Transitional Review Mechanism (TRM) at its meeting on 14 October 2002.

3. Written comments and questions in connection with China's TRM were submitted in advance of the review by Japan, the European Communities, the United States and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. These submissions were distributed in documents G/TRIMS/W/20, G/TRIMS/W/21, G/TRIMS/W/22 and G/TRIMS/W/24, respectively.

4. In a communication dated 10 October 2002, China submitted information on Annex 1A of its Protocol of Accession in the context of the TRM. This submission is contained in G/TRIMS/W/26. The statement made by the Chinese delegation at the meeting in which the review took place was distributed shortly thereafter as document G/TRIMS/W/27.

5. Reproduced as Annex 1 to this document are the Minutes of the TRIMs Committee meeting held on 14 October in which the substantive discussions on China's TRM are reflected.

Annex 1

Committee on Trade-Related Investment Measures **G/TRIMS/M/15**
29 October 2002

MINUTES OF THE MEETING HELD ON 14 OCTOBER 2002

Note by the Secretariat

1. The Committee on Trade-Related Investment Measures met on 14 October 2002 under the Chairmanship of Mr. Vassili Notis (Greece). The Committee adopted the agenda contained in WTO/AIR/1915.

A. NOTIFICATIONS UNDER ARTICLE 6.2 OF THE TRIMS AGREEMENT

2. The Chairman said that notifications submitted under Article 6.2 were listed in document G/TRIMS/N/2/Rev.9. Since the last meeting notifications had been received from Zambia, Moldova, Croatia, Bolivia and Canada, which were contained in G/TRIMS/N/2/Rev.9/Add.6, 7, 8, 9 and 10. A number of Members had not yet complied with the notification requirement. He urged all Members to submit notifications as soon as possible.

B. OUTSTANDING IMPLEMENTATION ISSUES – AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES – REQUEST BY THE COUNCIL FOR TRADE IN GOODS PURSUANT TO ITS DECISION TAKEN ON 7 MAY 2002

3. The Chairman recalled the decision of the Council for Trade in Goods (CTG) of 7 May 2002, whereby the TRIMs Committee had been assigned the responsibility for conducting work on the outstanding implementation issues contained in tirets 37-40 of document JOB(01)/152/Rev.1, and for reporting regularly to the CTG on progress on this issue.

4. He referred to the decision of the TRIMs Committee taken at its meeting on 21 May, that the Chairman of the Committee would make an oral report to the CTG on new developments and discussions under this agenda item after each meeting of the TRIMs Committee. Accordingly, he had made a report to the CTG at its meeting of 22-23 July.

5. He announced that a new communication had been received from Brazil and India concerning paragraph 12(b) of the Doha Ministerial Declaration, which had been distributed in document G/TRIMS/W/25. He then invited the representatives of Brazil and India to introduce their communication.

6. The representative of Brazil said that his country and India had jointly circulated a proposal to amend Article 4 of the TRIMs Agreement. They had done so with reference both to the mandate contained in Article 9 of the TRIMs Agreement and to the mandate set out in paragraph 12(b) of the Doha Ministerial Declaration. It was on the basis of the latter that the proposal had been presented to the TRIMs Committee. The purpose of the proposal was to further specify Brazil and India's interests regarding the interpretation of the TRIMs Agreement and its implications for developing countries. He explained that, since the end of the Uruguay Round and the entry into force of the WTO Agreements, the argument against the use of trade-related investment measures had lost much of its theoretical strength; doubts had been raised about the *a priori* prohibition of TRIMs based on the

assumption that such measures would always have trade-distortive effects. This had not been supported by conclusive empirical evidence. The recent joint study by the WTO and UNCTAD Secretariats (G/C/W/307) was enlightening in this regard. If it was true that this study did not add up to a decisive argument in favor of local content, trade balancing and export performance requirements, it did, however, weigh against any kind of general assumption that such measures necessarily distorted trade. Examples abounded of successful recourse to investment measures to address developmental objectives as well as to offset trade-distorting effects of certain forms of corporate behaviour. In the case of developing countries, such effects might in practice affect the efficient allocation of resources in a more decisive way than investment measures. Other currently WTO-compatible measures had revealed themselves to have a much more distorting effect on international trade than those related to investment. This was so particularly in sectors of interest to developing countries, like agriculture.

7. Members should be clear that one of the major problems they had been facing with the implementation of the TRIMs Agreement was that it had actually established equal obligations for all Members, irrespective of their stage of development. In practice, the blatant disparities among Members, ranging from technological capabilities to social, regional and environmental conditions, made it very difficult, if not impossible, for the TRIMs Agreement to generate balanced benefits for all. The proponents remained convinced that trade-related investment measures could be appropriately used to correct the present disparities rather than to aggravate them. They could be an important element to enable developing countries to extract benefits from trade and investment liberalization, while preventing the negative effects of investment cycles, including with regard to restrictive business practices. This had been shown by a number of studies, including the joint WTO/UNCTAD paper, which had pointed out that TRIMs had been important policy tools for developed countries in their early stages of economic development. These studies had also shown that in many cases, the use of TRIMs by developing countries in the context of their industrial policies had been successful, taking into account the particular macroeconomic and other characteristics of individual countries. This was, for instance, the case of Brazil as regards the mechanism used in the 1970s and 1980s, called BEFIEX, to induce national and foreign companies to export part of their production relative to their imports.

8. The disciplines of the TRIMs Agreement had disregarded all these factors. Apart from transitional periods, which had already expired, they incorporated no specific meaningful clauses for special and differential treatment. Hence the need, as stated in their proposal, for flexibility in the TRIMs Agreement in order to allow developing countries to resort to trade-related investment measures in order to achieve specific technological, regional, economic and environmental development objectives. To that effect, the proponents called for an amendment to Article 4 of the Agreement as specified in paragraphs 11 and 12 of their paper, allowing developing countries to use trade-related investment measures in order to:

(a) promote domestic manufacturing capabilities in high value-added sectors or technology-intensive sectors;

(b) stimulate the transfer or indigenous development of technology;

(c) promote domestic competition and/or correct restrictive business practices;

(d) promote purchases from disadvantaged regions in order to reduce regional disparities within their territories;

(e) stimulate environment-friendly methods or products and contribute to sustainable development;

(f) increase export capacity in cases where structural current account deficits would cause or threaten to cause a major reduction in imports, and

(g) promote small- and medium-sized enterprises as they contribute to employment generation.

9. This was an issue of extreme importance for the Governments of Brazil and India, as well as for a large number of developing countries that were known to share similar concerns. The proponents ventured the hope that the TRIMs Committee would be in a position to debate their proposal in a straight forward and objective manner, bearing in mind the mandate given by Ministers at Doha on the negotiation of implementation-related issues.

10. The representative of India supported the comments made by Brazil in introducing the paper, which had touched upon the main elements and the rationale of their joint proposal. He also wished to underscore some of the important elements of the proposal. He first recalled that, at Doha, Ministers had determined that negotiations on outstanding implementation issues should be an integral part of the Work Programme. In accordance with paragraph 12(b) of the Doha Ministerial Declaration, all outstanding issues should be addressed on a priority basis by the concerned WTO bodies, which should report to the TNC by December 2002. Their joint proposal related to tiret 40 of the document Job (01)/152/Rev.1, which listed all outstanding implementation tirets. The submission responded to requests made by some delegations in earlier meetings of the Committee for a written contribution from the proponents explaining the rationale of the proposal.

11. In the context of the WTO, trade-related investment measures should be defined as those investment measures which had an impact on trade. Such measures were to be sanctioned only to the extent that they had trade-restrictive or trade-distorting effects. The negotiating mandate for TRIMs under the Uruguay Round had required that "following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade". Elaboration of further provisions to avoid such effects had to follow such a review. However, in effect, no criteria to identify and evaluate the trade-restrictive and distorting effects of investment measures had been identified during the negotiations. It was a fact that the issue of whether TRIMs should be prohibited outright or be made actionable on a case-by-case basis, based on the actual economic effects of the measure concerned, had remained unresolved during the Uruguay Round negotiations, though the TRIMs Agreement had prohibited outright TRIMs inconsistent with the provisions of Article III and Article XI of GATT. It was, however, important to pick up the threads now, and this perspective should guide Members in their discussion at the current meeting.

12. The argument that the use of performance requirements would lead to trade-distortive effects had not been proved by empirical evidence. On the contrary, in the case of developing countries, the experience of many Members suggested that if performance requirements were used along with certain complementary measures, their effect might be trade-stabilising and development-enhancing. In case domestic content or other performance requirements were not development-friendly, these countries would obviously, on their own, decide against using them. However, the very fact that many developed countries and the newly-industrialized countries of today had resorted to trade-related investment measures and other performance requirements during their industrialization process, and had succeeded in industrializing themselves, pointed to the crucial role such measures could play during the industrialization process. It was for each Member country to use such measures with discretion. The responsibility for doing so should be left to the countries concerned.

13. The transition period of five years had not been helpful because the inherent assumption behind such a provision was that developing countries would not only have entered sustainable growth during this period but would also have caught up with developed countries. Developing

countries were, however, at a different stage of economic development. The Uruguay Round negotiations had failed to build in the developmental dimension in an effective manner into the TRIMS Agreement. There was, therefore, need to have a fresh look at performance requirements. Empirical studies had shown that affiliates of certain transnational corporations bought the bulk of their inputs from parent companies and other affiliated companies leaving only a small proportion for unaffiliated suppliers within the host country or in third countries. UNCTAD's Trade and Development Report 2002 had highlighted the poor record of generation of value added and linkages by transnational corporations. It was also an undeniable fact that until recently performance requirements had been an integral part of the growth strategy of all developed countries. This fact had been brought out in the joint WTO/UNCTAD study as well as in other studies. It was important that flexibility to maintain TRIMS remained available to developing countries for reasons cited in paragraph 12 of the joint proposal to ensure that foreign investment contributed to the achievement of development policy goals.

14. The fact that only one least-developed country had notified a TRIM clearly reflected that trade-related investment measures and certain other types of performance requirements were suitable for use by countries only when they reached a particular stage of development. Many low-income countries and least-developed countries had been denied the use of this development policy tool even before certain sectors in their development process had reached the threshold for benefiting from TRIMS. Local content requirements contributed to a number of economic gains for the national economy, such as value addition in the economy through greater utilisation of domestic resources, increased employment opportunities, up-grading the technological level of the economy, and diversification of the economy as a whole. The developmental dimension should receive overriding consideration in dealing with performance requirements. Developing countries should have the policy space to pursue policies to promote their technological, industrial and social development. It was in this context that Brazil and India had proposed that Article 4 of the TRIMs Agreement be amended to provide necessary flexibility to implement development polices. His delegation looked forward to a constructive dialogue in the Committee on the proposal.

15. The Chairman invited delegations to make comments on the proposal submitted by Brazil and India as well as to offer their views more generally on tirets 37-40 regarding the outstanding implementation issues.

16. The representative of Colombia made some general comments regarding the paper submitted by Brazil and India and said that her delegation considered the document to be a valuable element for the debate both in the TRIMs Committee and in the context of the review procedure of the TRIMs Agreement which was being conducted in the Council for Trade in Goods. She shared India and Brazil's view that the review mandated in Article 9 of the TRIMs Agreement and paragraph 12 of the Doha Declaration together created a scenario which was propitious for a substantive debate on the re-dimensioning of TRIMs in the multilateral framework. In her delegation's view, the weakening of the theoretical basis that had given rise to the prohibition of TRIMs now required the adjustment of multilateral rules. She believed that the proposal suggested that the present scheme, which could be categorised as an objective prohibition, be turned into a flexible scheme. This flexibility would make incompatibility of measures contingent on an assessment of development objectives pursuant to which such measures were maintained. This approach recognized the positive effects of the measures under consideration. In a scenario such as that considered in Brazil and India's proposal, certain very valuable elements of the TRIMs Agreement could be maintained such as transparency and standstill. The incorporation of these development objectives could be combined with a limit on coverage in a standstill mode. It could also be combined with a monitoring system of such measures. Colombia had benefited from the positive effects of investment measures in facing shifts in the competitive environment of some markets. The structural shortcomings in transmitting information found in some markets in developing countries needed to be dealt with in order to avoid negative effects, particularly social effects. The use of these measures had proven to be efficient and it had been less prejudicial

than the use of other types of measures associated with market access restrictions, which were currently permitted under multilateral commitments. In light of this experience, there was not much sense in keeping a position of principle when referring to the topic of TRIMs, and this was why Colombia was making a plea to the TRIMs Committee that it consider favourably the proposal of tiret 40 on outstanding implementation issues.

17. The representative of Canada, commenting on tiret 40, said that in his delegation's view the modifications to the TRIMs Agreement proposed by Brazil and India under this tiret were not warranted for a number of reasons. First, there was already great flexibility in the TRIMs Agreement, specifically in Articles 4 and 5. It was complemented by the operation of Articles 2 and 4 and the flexibility contained in GATT 1994 as well as the availability of Article IX of the WTO Agreement. This flexibility had been demonstrated through, for example, the extension of transition periods – and this had been acknowledged by Ministers in Doha. The second element he wished to touch upon was the link between investment and development. His delegation believed that investment was important for development and that the productive capacity of an economy was enhanced through investment. In this regard, he noted that the joint WTO/UNCTAD study had demonstrated the significance and positive relationship between, *inter alia*, FDI and domestic manufacturing efficiency. However, the type of measures advocated by the present proposal could have distorting effects on trade and investment. Indeed, these measures could discourage investments; they could negatively affect both the host country and the investors in that they might cause private investors to abandon plans for a projected investment because the cost of the requirements outweighed or negated the returns, profits or operating efficiencies for the investor.

18. The next point he wished to touch upon was the misallocation of resources. Brazil and India's proposal promoted measures that would indeed result in a misallocation of resources. The joint WTO/UNCTAD study once again had found that TRIMs and performance requirements resulted in a misallocation of resources and that they were costly and inefficient. Certainly, costly and inefficient measures such as those proposed by Brazil and India were contrary to the developmental objectives they sought to promote in the first place. Another concern was the negative effect this proposal could have on smaller developing countries as well as on least-developed countries. The policy flexibility advocated in this paper was indeed potentially discriminatory against these countries because large, more advanced developing countries might have greater capacity to impose such measures. Investors might be prepared to factor in some costs of doing business in order to gain access to these larger markets, but the smaller developing and least-developed countries which would be tempted to use such policy flexibility would likely see potential investments go elsewhere. In his delegation's view, the proposal failed to demonstrate that the TRIMs Agreement was insufficiently flexible and, further, that there was a need to change the existing rights and obligations contained in it.

19. He also reacted to some of the points made in the presentation of the paper. His delegation did not agree with Brazil that the TRIMs Agreement imposed the same obligations for all and that it did not take into account special and differential treatment. First, TRIMs Articles 4 and 5 did have special provisions for developing and least-developed countries and, secondly, Article 4 referred specifically to GATT Article XVIII, which had been recognized by Ministers in Doha as a special and differential treatment provision. The second element to which he would like to react dealt with competition. Noting that Brazil and India had referred to it in their contribution, he explained that Canada supported the implementation of effective competition policies and laws as a means to promote the efficient operation of markets, competition among businesses, and consumer welfare. However, he was puzzled by the reference in paragraph 6 of the joint paper that stated "risks of excessive corporate power can be reduced through incentives to other investors to compete in the domestic market". His delegation did not believe that incentives were an appropriate or an effective instrument to promote competition and would welcome any clarification from the authors of the paper as to what was intended or what was meant by paragraph 6. Thirdly, he had heard both India and Brazil referring to past uses of performance requirements by developed countries. In this regard, he

drew Members' attention to the Canadian experience which had been presented at the meeting of the Working Group on Trade and Technology Transfer the previous week. This contribution explained the evolution of Canada's policy regarding performance requirements. Quoting a passage from it, he said that the policy rationale for the abolition of performance requirements was based on the fact that "…they had been demonstrated to discourage foreign investment and that the undertakings it extracted from potential investors were of dubious value". This was the Canadian experience in regard to the type of measures proposed by Brazil and India.

20. The representative of Cuba noted that the document by Brazil and India had been presented in the context of the discussions on implementation issues under paragraph 12(b) of the Doha Ministerial Declaration. She reiterated that the subject of implementation was of great importance for a number of developing countries. However, there had been little progress on this issue throughout the year. Her delegation wished to take this opportunity to support Brazil and India's contribution, which showed that a number of provisions in the TRIMs Agreement were obsolete because investment measures could have a positive effect on development and did not create trade distortions. For this reason, developing countries should be allowed to make use of these measures when they were aimed at facilitating and furthering economic growth in pursuance of their developmental policies. Therefore, she expressed appreciation to the delegations of Brazil and India for submitting this valuable document, which captured the essence of the debates so far. She reiterated her support for the objectives contained in the document as they were aimed at achieving effective flexibility. This flexibility could not be based merely on transitional periods and extensions.

21. The representative of Pakistan said that his delegation was still examining the contents of the joint submission. As a preliminary comment, however, he was pleased that the TRIMs Committee was discussing implementation issues in pursuance of paragraph 12(b) of the Doha Declaration. There was no doubt that the Committee was mandated to submit a report to the TNC by the end of 2002. The pace of progress regarding these implementation tirets was slow. Nevertheless, Members were discussing and there were now very substantive proposals on the table for consideration by the Committee. He did not intend to delve into the nitty-gritty of all the tirets, especially tiret 40 with reference to which the joint submission had been made. He said that in analysing these particular proposals, one had to keep in mind the objectives of the Marrakesh Declaration, i.e., why and for what reasons the multilateral trading system had come into being. As he could recall, the Declaration explicitly indicated that the reasons were to raise standards of living, to ensure full employment and to expand trade by way of expansion of production of goods and services. He had spelt out those objectives in order to remind Members that there were certain larger objectives for the Membership to attain. In this context, the Agreement on TRIMs was immensely important to the developing countries' cause, especially with reference to raising their standards of living and ensuring full employment. It was through TRIMs that the socio-economic, trade and financial needs of Members had been or were being attained. He also reminded the Committee of the joint WTO/UNCTAD study, which explicitly stated that developed countries had made use of TRIMs. There was no level playing field in the economic orbit as Members discussed this subject. There were divergent levels of development within the Membership and, if Members looked at the larger picture, they might have to think beyond certain confined interpretations of the Agreement. His delegation understood the rights and obligations under the Agreement, and knew what transition periods meant and what the limitations were. However, the current proposals went beyond the run-of-the-mill interpretations and pointed to certain larger objectives of the World Trade Organization, especially with reference to developing countries. This, of course, also applied to the least-developed countries. However, since Members were discussing Article 4 of the TRIMs Agreement, he would particularly refer to developing countries. Some Members adopted the narrow interpretation that a country had had a transition period, it had availed itself of that period and then it was over. His understanding was that these issues, which were extremely important, could not be resolved through such narrow interpretations. Members would really have to understand the socio-economic rationale as to why these proposals were currently on the table.

22. Members had been discussing these proposals for the last four years, but to date they had not been able to resolve or to make any progress on these four tirets. That was a cause of concern because these were development-related concerns. His delegation was pleased that Brazil and India had been able to give a concrete shape to the proposals. He believed that through this joint submission Members would have enough material and economic and social rationale to take decisions and to make solid recommendations to the TNC or to the General Council. Members might have to go beyond a narrow interpretation of the Agreement. His delegation understood and was fully aware of those obligations. However, in order to make any progress, Members would have to give serious thought to these proposals which were a step in the right direction. He reserved his right to come back to these proposals at a subsequent occasion.

23. The representative of Mexico, recalling that her delegation had already offered detailed comments on tirets 37-40 at previous meetings, referred only to tiret 40. As a preliminary comment, she said that her delegation recognized the great importance of the outstanding implementation issues and was open to discuss concrete proposals. Nevertheless, in this context, her delegation believed that there were other instruments that could achieve the effects sought by the joint proposal by Brazil and India in terms of developmental policies. She reiterated her delegation's position that Members ought not to change the existing balance in the provisions of the TRIMs Agreement.

24. The representative of the European Communities, noting that Brazil's remark that their submission in this Committee was based on paragraph 12 of the Doha Declaration, said that his comments would also be made in that context. First, his delegation had taken note of the fact that a number of WTO Members, including one of the last ones to join – namely China – had gone out of their way to abolish existing TRIMs. His delegation believed that in order to have an informed, thorough discussion that this very important issue deserved, it would be interesting to learn of the experiences of some of the countries which had recently abolished those measures. Turning to the joint proposal, he referred to the point made in the paper – and also by India – that the TRIMs Agreement had failed and continued to fail to adequately incorporate special and differential treatment. Like Canada, he disagreed on this point. He said that the WTO Membership had already agreed to a batch of extensions. Requests had been made for such extensions by a number of countries which had cited a number of difficulties that they were experiencing, and all those requests had been met favourably by the WTO Membership. Also, as Canada had pointed out, both Article IX of the WTO Agreement and a number of the other goods-related agreements contained provisions that would allow for sufficient flexibility in this context.

25. He said that paragraphs 3 and 4 of the joint paper contained a number of somewhat categorical and sweeping statements, which seemed to discard what had been, up until now at least, common knowledge or the common conviction as to the trade-restricting and trade-distorting effects of TRIMs. The paper seemed to argue that this was no longer true and that there was new empirical evidence and, to quote Brazil, examples abounded of the positive effects of such TRIMs being used in developing countries. His delegation was perfectly happy to discuss this issue which merited discussion in this Committee and elsewhere, but he would encourage the proponents of these changes and proposals on tiret 40 to make the rest of the Membership aware of these studies and references. He would appreciate if they could be circulated to the Committee so that Members could judge for themselves the actual conclusions reached in those empirical studies. He hoped also that they were in fact empirical studies that went beyond occasional anecdotal evidence. Referring to the joint WTO/UNCTAD study, he said that it had shed light on a number of issues. However, it had one shortcoming, namely that many of the studies used were fairly old – dating back to the 1980s. In addition, to take one example which figured prominently in the Brazilian and Indian proposal, on the question of transfer of technology the study seemed to be at best inconclusive. It said that there were some examples of positive effects and some examples of negative effects. In short, the study probably confirmed what everybody knew, but it did not offer much in terms of a way forward. He,

therefore, repeated his plea to the proponents to make the rest of the Membership aware of the studies and the references that had been referred to throughout their paper.

26. He said that in paragraph 6 of the paper there seemed to be confusion between two completely different issues: on the one hand competition, and on the other hand competitiveness. Concurring with Canada, he did not believe that TRIMs, or performance requirements more generally, could be a proxy for having a proper domestic competition law and policy; it would be a poor proxy and a poor substitute. A very strong case could be made that in instances of what was referred to in the paper as "excessive corporate power", the answer was two-fold. First, one needed to have an effective domestic competition law and policy and, secondly, one needed to have access to some sort of international cooperation with competition authorities of other countries. That was the whole rationale behind the proposal being advocated by the EC and a number of other WTO Members in the context of the Working Group on the Interaction between Trade and Competition Policy. He sought clarification from Brazil and India as to what was actually meant by "excessive corporate power". Were they referring to market share or the number of countries in which a country was actually operating. He also asked how they would determine what "excessive corporate power" was. Finally, noting that India had referred to performance requirements more broadly instead of merely TRIMs, he asked whether there was a deliberate nuance being put across by stressing performance requirements as opposed to TRIMs. India had also mentioned in connection with performance requirements that there was a need for having certain "complementary measures". He sought clarification from India on what it meant by this term.

27. The representative of the United States said that his delegation shared the remarks by Canada and the European Communities. In addition, he made the following points. The TRIMs Agreement was an enunciation of obligations already included in the GATT to which Members had subscribed for over 50 years. The Agreement itself was effectively an S&D mechanism to provide all WTO Members, but particularly developing countries, with additional time to bring TRIMs into compliance with the GATT. His delegation was concerned about countries continued reliance on the joint WTO/UNCTAD study on the effects of TRIMs. His delegation had amply demonstrated at the Committee's meeting in May the pernicious effects of these measures as well as the limitations of the data that had been relied upon to demonstrate the impact of TRIMs. He also reminded delegates of the overwhelming evidence that production and consumption decisions at world prices, as opposed to pricing distorted by trade-related investment measures, had been shown to be the most efficient means of generating wealth. He noted that Brazil and India had presented a proposal under tiret 40 and recalled that his delegation had previously stated that it firmly believed that blanket exceptions were inappropriate. He agreed with the ideas put forward that proposals of this nature would undermine the foundations of the GATT system. There existed a suitable flexibility, both under the TRIMs Agreement itself and the GATT waiver provision, to address individual development needs on a case-by-case basis. His delegation had shown its willingness to address individual problems, as needed, and had responded to the demand to come up with a package approach to extensions that would not favour one country over another. It remained convinced that the current proposals, including the one from Brazil and India, would undermine the decisions on TRIMs extensions that had been taken the previous year. Furthermore, his delegation was sceptical that there was any need to modify the balance of rights and obligations contained in the TRIMs Agreement.

28. The representative of Switzerland said that his delegation supported the various arguments presented by Canada and the European Communities. The paper by Brazil and India was useful in that it gave Members the opportunity to see the elements which were considered to be the most important regarding the issues under discussion. It highlighted the key parameters, in particular in paragraph 12, as regards the various situations under which developing countries would be allowed to use TRIMs. He considered that these objectives were very broad. Some of them even went beyond what had been considered so far under the TRIMs Agreement, mainly local content provisions and export or import performance. The paper referred to objectives such as to stimulate environment-

friendly methods or products, to contribute to sustainable development, to promote domestic competition, and to stimulate transfer or indigenous development of technology. If Members were to agree to these situations, that would expand enormously the possibilities under Articles III and XI of GATT.

29. His delegation was very interested to learn about theoretical changes in economics, but because this was a science it took quite some time in order to produce new developments. In the joint WTO/UNCTAD study, there was a section, starting with paragraph 84, on the incidence of TRIMs on resource allocation and on growth. This section was quite useful because, when one looked at policy measures, one should be interested in their medium- and long-term effects. With many policies, one might reach short-term positive results, but several years later one might be in trouble because companies might be forced to close down as the efficiency required might not have been attained. He said that in paragraph 93 study, there were some considerations based on economic theory by Theodore Moran. This was a recent assessment since it was dated 1998. Moran had argued that under neo-classical hypotheses of perfect competition, prescriptions relative to local content or export performance had a negative impact on the development perspective of the countries adopting them. Moran had also said that under imperfect markets, such measures could have a positive impact, but that one should be very careful about the hypotheses based on the imperfection of markets. So, theoretically, the situation was not clear at all in terms of the impact of such measures on economic development. In paragraph 98, there was also a reference to a 1998 study by CEPAL, which had focussed on the automobile sector. The study had concluded that the policies linked to investment, in particular to performance results, had been inefficient and costly in Latin America. The problem had been that import substitution in the 1960s, in particular in Latin America, had gone well during the first years, but after a while companies had found out that they could not invest anymore because they were not getting enough profits and, they had therefore started falling further behind in technological terms. So modernization had not been able to take place because these policies – linked in particular to performance results – had not led to the kind of cash-flow and the profits necessary to refinance investment. One needed funding to replace investment – sooner rather than later – because in today's world things changed very rapidly.

30. His delegation was concerned that with the proposals, particularly local content proposals, one was going back to the development strategy of import substitution advocated by Raul Prebish. He emphasized that the world had changed considerably since the 1960s and 1970s and that companies today were mainly aiming at adjusting time-delivery for the parts which they needed; they needed the suppliers to be near by. This was particularly so in the automobile industry. Therefore, provided there was a competitive environment and efficient companies, the market should, and could, decide what was the best contribution for providing economic activity, jobs, and overall development.

31. The representative of Japan welcomed the fact that Brazil and India had provided an elaboration of their ideas in written form. Given the time constrains for submitting a report to the CTG, the paper would contribute greatly to facilitate the discussions in the Committee. He shared the views expressed by the US, the EC, Canada, Switzerland and Mexico. His delegation found no convincing argument to change the current balance of rights and obligations under the TRIMs Agreement. The joint paper had explained the developing countries' needs regarding technology advancement, regional development, environmental concerns and external financial weakness, etc. He did not disagree that for every country, especially for developing countries, industrial development was a very important issue. Technology, regional development and environment were also very important aims for all countries. As Mexico had pointed out, the problem was whether countries should resort to trade-related investment measures to achieve these objectives. When one looked at the history of economic and industrial development, each country had had various policies and some of these had had some benefits. However, in most countries, if not in all, TRIMs such as local content and export performance had not been effective. On the contrary, liberalization was the driving force for streamlining operational efficiency and economic advance. He drew Members' attention to the

recent trend in rapid globalization of the industrial base of developing countries. The new trend, particularly among prominent Asian countries, including China, was to relax investment restrictions to create a more attractive environment for prospective investors. This trend had actually led to economic development. He agreed that some disparity existed between developed and developing countries and that there was a need for special and differential treatment. That did not mean, however, that there was no room for meaningful flexibility in the current TRIMs Agreement which contained a transition period and extension provisions. He saw no convincing argument to change the balance of rights and obligations under the TRIMs Agreement and, in his delegation's view, it was neither acceptable nor appropriate to loosen the disciplines of the TRIMs Agreement.

32. The representative of Argentina, preserving his right to provide more detailed comments in the future on Brazil and India's proposal, made some general comments. He noted that Brazil and India had explained that the main element of the proposal was development. In his view, the debate was not so much about whether or not the TRIMs Agreement had built-in flexibility or special and differential treatment, but rather, it should focus on whether or not the TRIMs Agreement provided the developing countries with sufficient flexibility to be able to reinforce certain development policies in specific areas. According to his interpretation, the proposal did not encompasses all sectors, but rather very concrete areas, i.e., technology, competition, and regional and sustainable development, all of which would have a direct impact on a country's development. He had also heard from others that the TRIMs Agreement had already incorporated some flexibility by granting extensions of the transition period to some countries. If one looked at the reality, these extensions might not have been sufficient. One needed to look into the TRIMs Agreement from a more substantive perspective, i.e., whether or not there was a possibility of bringing in elements that could promote development policies that developing countries needed. Some had argued against this possibility by saying that the world had changed since the 1970s and 1980s; he agreed that today's world was not the same. However, development needs had remained the same throughout these decades. Therefore efforts should be aimed at exploring the possibility or the policy space that the TRIMs Agreement could provide for developing countries in order to reinforce their developmental policies. If one took a general principle of the TRIMs Agreement, for example, the prohibition to use TRIMs, and applied it equally in a structurally unequal situation, at the end of the day the result would not be equality but rather greater inequality. Conceptually, these were the parameters and the postulates upon which Members should begin their exploration of the proposals.

33. The representative of Korea said that the paper by Brazil and India contained very interesting and useful points. However, it required further careful examination because it involved the objective of the Agreement and basic GATT principles. It also required discussion in other WTO bodies, such as the Working Group on the Relationship between Trade and Investment. He shared the points raised by the European Communities, Switzerland, Canada, and Japan in relation to the paper. Referring to Korea's industrialization process over the last decades, he said that governmental intervention could lead to deviations from the right direction, affecting the potential development of the economy in the longer term. Korea's devastating experience during the 1997 financial crisis had clearly indicated that no matter what form the government's intervention took, the private sector remained the major driving force of the economy, even meeting the development needs. The government's intervention was only a second-best option; market liberalization was the first.

34. The representative of Brazil noted that, although there had been very few new arguments in the comments made to his proposal, he did however have some preliminary reactions to them. First, the jury was still out on the question of the so-called balance of rights and obligations of the TRIMs Agreement. This was so much true that Ministers had agreed to mandate negotiations on the outstanding implementation-related issues, which at least was some sort of recognition that there was a question there. His delegation's opinion on this was well-known. Brazil had made an effort over the past months to specify its interests and to refine its arguments that at the outset there had been no balance of rights and obligations in the TRIMs Agreement. He was not going to comment on the

point made by some delegations that there was more than enough flexibility in Article 4 of the TRIMs Agreement, or in Article 5 regarding transition periods that had already expired, as well as in other provisions of the TRIMs Agreement. He would simply invite these delegations to read the paper more closely and to really take those arguments into account. He would not be recognizing the effort and importance his delegation attached to the proposal if he accepted these arguments as valid. He took the point made by Canada that TRIMs could have distorting effects on trade and investment because he had used the verb "can". Brazil and India's proposal had developed on this argument.

35. He said that many delegations had tried to pick and choose parts of the joint WTO/UNCTAD study and urged them to look more closely at paragraph 4 in his paper, because the proposal had not made the argument that the study was conclusive in that regard. The point Brazil was making was that, ever since the Uruguay Round, there had never been any conclusive argument one way or the other that these measures would always have trade-distorting or trade-restrictive effects. Many delegations, including Korea, Japan, and Canada, in referring to their own experiences, had mentioned that these measures had produced negative effects in the allocation of resources and in the patterns of foreign trade flows. It was good for the evolution of their trade policy that they had achieved this conclusion, but this meant nothing more than that: an assumption based on their own national experience. Brazil's national experience had not led it to believe that these measures could be considered *a priori* as having always a trade-distortive effect. He supposed that if these countries could go back in time, they would not have resorted to these measures in the context of their trade and investment policies. He presumed that Canada, for example, would not have resorted to a measure like the motor vehicle tariff order as a means to attract automobile manufacturers into Canada. He supposed that other countries would not have resorted to local content requirements. This was an interesting argument from the point of view of their own national experiences. However, he disagreed, as he had done for some time, with the general assumption that these measures necessarily had, or produced, distortions to trade and investment.

36. Referring to Canada and the EC's question about the reference made to competition policy in paragraph 6 of the proposal, he clarified that what the proposal talked about was the use of trade-related investment measures as a means of ensuring a level playing field in the conditions of competition within a determined jurisdiction in a country. This had nothing to do with discussions in the Working Group on the Interaction between Trade and Competition Policy because, there, the proponents of an agreement were trying to reconcile the effort to ensure competition within a market with the effort to avoid the trade-distorting effects of these types of competition measures on international trade and investment flows. In his view, reconciling these two issues did not seem easy. With regard to the EC's comment that the proposal apparently made a confusion between competitiveness and competition when referring to the use of incentives in order to assure adequate levels of competition in one given market, he asked the representative how he saw the role played by subsidies and direct outlays given to companies, so-called state aid, in the context of the EC competition policy framework. It seemed to his delegation that subsidies or incentives did play some role in helping companies that had been affected by competition to recover their competitiveness. Very little of what he had heard was new, but he had reacted because this had been the first real opportunity for Members to have a substantive discussion.

37. Referring to the point raised by the United States that the discussions on implementation-related issues regarding TRIMs could undermine the extensions that had been given to a number of countries a year ago under Article 5.3 of the Agreement, he asked for clarification on what was the legal or *de facto* relation, if any, between the discussions under paragraph 12(b) and the extensions granted to eight countries the previous year. His delegation was open to hearing more explanation, on this in future meetings. On the often repeated argument that the TRIMs Agreement was nothing but a reiteration of Articles III and XI of the GATT, he asked the delegations that believed this to be so, what the reason was for having the TRIMs Agreement in the first place; what was the value added by the Agreement on the basis of those two provisions of the GATT. Switzerland had picked some

points from the joint WTO/UNCTAD study, pointing out that the recourse to TRIMs in the context of trade and investment policies in Latin American countries had been unsuccessful. He reiterated that in Brazil's case it had been very successful, particularly in the automotive sector.

38. In conclusion, he reiterated that this was an issue of extreme importance for his delegation and that he hoped to have a constructive and substantive discussion in the TRIMs Committee on this issue. The proponents had made a good effort in developing arguments, which they hoped would be discussed on their own merits in this forum. The present discussion was somehow complemented by the discussion going on under the mandate contained in the Agreement for its own review. He said that the TRIMs Agreement had resulted from very difficult negotiations in the Uruguay Round. There had been nothing conclusive from a theoretical point of view in that context, but Ministers had accepted the Agreement in good faith, just as they had done for other results of the Uruguay Round. Today, Members had behind them a patrimony of experience with the implementation of the TRIMs Agreement and this had shown that there was a good reason for reviewing the Agreement and revising its purpose, architecture and objectives. It was for no other reason than to give Members an opportunity to look back at the experience of the implementation of the Agreement, that Members had agreed in the Uruguay Round to include a provision for its own review.

39. The representative of India supported the comments made by Brazil in response to some of the questions raised by Members. He said that the proponents had attempted to put their thoughts in writing and share them with Members with a view to having a substantive debate in the Committee and to seeing how they could really address the concerns of some developing countries *vis-à-vis* the implementation of the TRIMs Agreement. Some encouraging remarks had been made, but there had also been some comments from delegations who had perhaps read the language of TRIMs in a very straight-jacket format or with a narrow interpretation. He offered preliminary comments on some of the questions raised. Firstly, he disagreed with the point raised by some delegations that, if the proposal put forward by Brazil and India were to be accepted, there would be an imbalance in the TRIMs Agreement. His delegation had heard this argument repeatedly in the Committee and had tried to explain why it felt that this was not a true reading. As his delegation had argued in its written submission, as well as in interventions in the Committee's meetings, the TRIMs Agreement was inherently unbalanced from the beginning. The joint proposal aimed to redress this balance, based on the experience of some developing-country Members and of least-developed countries which had faced difficulties in the implementation of the TRIMs Agreement and on the way it had restricted the policy space and flexibility for developing countries. The argument had also been made that there were existing special and differential provisions in the TRIMs Agreement and that, therefore, there was no need to have further flexibility. His delegation had argued repeatedly in the Committee that the current provisions did not allow at all the flexibility necessary for developing countries to pursue their developmental objectives.

40. Reference had also been made to the transition period in Article 5. The five-year transition periods had not been helpful to many countries because of the inherent logic behind such a provision that developing countries would have reached a particular level of development, whereby they would have not required certain policy tools. The fact remained that countries were at different levels of development and certain policy tools could be effectively used at certain levels of development. He was sure that developed countries would not require TRIMs to pursue their developmental objectives. This flexibility was required by countries which were at a middle level of industrial development. His delegation had argued this in its paper as well as in its earlier intervention. It had also argued at previous meetings that the Uruguay Round had failed to build the developmental dimension effectively into the TRIMs Agreement. With this perspective in mind, his delegation had alluded to the negotiating history of the TRIMs Agreement and to the mandate given to the negotiating group, and to how the TRIMs Agreement had come into its current shape. Members had to keep this perspective in mind when debating on the joint proposal in the Committee.

41. Reference had also been made by some delegations to the joint WTO/UNCTAD study in the context of the TRIMs review under Article 9 which was currently taking place in the Council for Trade in Goods. As Brazil had mentioned, Members had picked up certain aspects of that study, but had not done so in a comprehensive way. The assumption that TRIMs *per se* would be trade-restrictive and distortive was incorrect. One could not *a priori* decide that TRIMs *per se* would be trade-distortive and trade- restrictive. This fact had not been discussed during the Uruguay Round negotiations where there had been no criteria to identify and evaluate the trade restrictive and distortive effects of investment measures. What negotiators had done at that time was merely to prohibit outright certain TRIMs. His delegation firmly believed that if TRIMs were used by countries at a certain level of development, these countries could effectively pursue their development and social economic objectives. Canada had made the point, which was not clear to his delegation, that the proposal would differentiate between certain categories of developing and least-developed countries. This was not a correct reading of the proposal. It did not go in that direction at all. What the proponents were seeking was to allow for some flexibility, which was lacking in the TRIMs Agreement, to enable developing countries to pursue their developmental objectives.

42. The point had also been raised that certain studies referred only to the 1980s and 1990s. In this context, he subscribed to the comments by Argentina that what was important were the needs of developing countries. Things had changed since the 1980s and 1990s. The proposal addressed the needs of developing countries and how they could fulfil those needs, and in what way flexibilities could be built into the TRIMs Agreement. He reiterated that his delegation attached the highest importance to this implementation issue and he urged Members to come up with arguments and to engage substantively in the discussion so that they could really address the implementation issues pursuant to the mandate given by Ministers at Doha.

43. The Chairman invited Members to comment on tirets 37-39.

44. The representative of India recalled that his delegation had given its views on tirets 37-39 in previous Committee meetings. These tirets were directly or indirectly linked to the very comprehensive written proposal that had been submitted for the present meeting, which was in fact linked to all these tirets.

45. The representative of Canada said that since the Committee had had good substantive discussions on the other tirets, both in May and in July, his delegation would refrain from reiterating its problems and concerns.

46. The representative of the European Communities fully agreed with Canada. The Committee had already had multiple opportunities to discuss in depth the implementation issues concerning the other tirets. He therefore did not see the need to expand the discussion on those issues.

47. The Chairman recalled that the TRIMs Committee had to draft a final report on the basis of the discussion regarding the various outstanding implementation issues and that the present meeting was the final meeting scheduled for the year. Therefore, in order for the Committee to fulfill its reporting obligations to the CTG, he suggested moving forward in the following way: He would ask the Secretariat to establish a draft factual report on the basis of the discussions on this matte, including the discussion that had taken place at the present meeting. This document would then be submitted to the Members for their examination. He also suggested to set a time-frame for observations, and comments on the draft, one week after the report had been distributed to Members. If no replies or reactions had been received by that date, the report would be considered as adopted. However, if there were observations, he would convene another meeting of the Committee to allow Members the opportunity to examine the report, which would incorporate the observations made, with the view of adopting it. In any event, the report was to be adopted and submitted to the CTG before its meeting

of 22 November, which was the final meeting slated for the CTG to look at issues other than trade facilitation.

48. The representatives of Canada, the European Communities, Japan and the United States supported the procedure suggested by the Chairman. The representatives of Brazil, India, Pakistan and Cuba felt that the Committee should have one additional meeting to continue substantive discussions on the joint proposal by Brazil and India before the Secretariat could start drafting the report. The representative of Brazil said that he was not in a position to agree to the procedure put forward by the Chairman concerning the report at that stage. He suggested, therefore, that the Chairman conduct consultations on how to proceed with the report.

49. Following an exchange of views among Members on this issue, the Chairman proposed to suspend the Committee's meeting on this agenda item and to resume it on 4 November. In the meantime, he would conduct consultations with interested Members on how to proceed with the report.

50. The Committee so agreed.

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

51. The Chairman recalled that under Paragraph 18 of China's Protocol of Accession, the TRIMs Committee was required to review, as appropriate to its mandate, the implementation by China of the WTO Agreement and the related provisions of the Protocol. The first review was to take place within one year of China's accession on the basis of the relevant information to be provided by China, as specified in Sections 3 and 8 of Annex 1A of the Protocol. The TRIMs Committee was required to report the results of its review to the Council for Trade in Goods, which should in turn report to the General Council by the end of the year. In order to fulfill its task in a timely manner, it would be necessary for the TRIMs Committee to undertake and finalize the review at the present meeting. He said that the information submitted by China had been circulated in document G/TRIMS/W/26, dated 11 October 2002, and that some Members had submitted comments and questions in connection with China's Transitional Review Mechanism. These were Japan, the European Communities, the United States, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, whose submissions were contained in documents G/TRIMS/W/20, G/TRIMS/W/21, G/TRIMS/W/22 and G/TRIMS/W/24, respectively. He then invited the representative of China to introduce his submission.

52. In introducing his submission in G/TRIMS/W/26, the representative of China provided information on steps China had taken in preparation of the review, and also replied to written questions that had been previously submitted by Members (statement reproduced in Annex 1).

53. The representative of Japan commended the Chinese delegation for its efforts in preparing for the review. From the Chinese presentation, it was evident that there was a wide variety of investment-related laws and regulations that had been modified by China in order to implement its obligations since it became a Member of the WTO. He also thanked China for providing answers to the questions Japan had submitted and took the opportunity to ask for further clarifications. On the first question posed by his delegation concerning the status of the repeal of the 1994 Policies on the Automotive Industry, he understood that the actual contents of the policies were no longer in effect, but that the abolishment of the policies was still pending. In addition, from China's oral statement, he had understood that the Chinese Government was conducting in-depth research taking into account the concerns of both domestic industry and foreign capital. If the contents of the 1994 Auto Policies were in fact maintained, he wondered whether the measures contained therein would be inconsistent with China's commitments. He asked what kind of concerns the Chinese Government was considering in its in-depth research in relation to China's commitments under the TRIMs Agreement and its Protocol

of Accession. He also asked clarification from China on the time-schedule for the revision of the current policies and the introduction of the new guidelines.

54. With respect to the second question concerning the tariff rates for finished automobiles applied to automobile imported parts, he had heard from China's explanation that this issue had nothing to do with the TRIMs Agreement. He would need to look at China's written answers to be circulated afterwards and send them to his capital to see what the specific thresholds were in terms of tariff classification, so that his capital could further reflect on this issue. On the third question concerning the status of repeal of restrictions for the licensing of auto production, he appreciated that China had submitted in writing that the Chinese Government would completely lift the measure in line with its commitments as regards the time-frame. He asked the Chinese delegation if it was correct to understand that these restrictions would be abolished by 11 December 2003, i.e., two years after the accession of China to the WTO. Noting that paragraph 205 of the report of the Working Party on China's Accession stated that the restrictions would be gradually lifted, he asked China whether there was any time-schedule for lifting the restrictions between the present time and the end of 2003. With respect to the fourth question regarding the status of independent approval by provincial governments for investment in motor vehicle manufacturing, he appreciated China's answer that the commitments would be met by the end of 2002 and that the Chinese authorities would publish a circular increasing the limits. He asked if what would be done by the end of 2002 was not only the publication of the circular but also the effective increase of the limits. Finally, regarding the procedures for making these changes to Chinese legislation, he asked whether there would be an appropriate procedure for gathering public comments. He looked forward to the opportunity of seeing a written version of China's answers and of reflecting on them.

55. With respect to Japan's question concerning the revision of the 1994 Policies on the Automotive Industry, the representative of China confirmed that China had no difficulty to abolish the articles regarding local content, export performance and mandatory transfer of technology. However, these articles were only a small part of this policy. All in all, there were more than forty articles regarding the development of the automobile industry. He explained that the Chinese domestic automobile enterprises, the foreign automobile industries and the joint-venture enterprises had all different interests on how to develop the automobile sector in China. Those other articles had no direct linkage with the TRIMs Agreement, but in order to take into consideration the different interests of different kinds of enterprises, including joint-ventures and foreign automobile enterprises, the competent agency in China was conducting a review and a research-study on how to promulgate a new policy. With regard to the tariff rates for car parts, China's policy was consistent with the custom classification rules. He suggested that if Japan had further questions on this issue, it should raise them in the Committee on Custom Valuation. On the question concerning the time-schedule for China to repeal the restrictions for licensing of auto production, he said that the dead-line China had committed to under the Working Party Report was 11 December 2003. He confirmed that China would abide by its commitment and would eliminate the restrictions before the deadline. Until then, if possible, China might make some improvement in this regard, because there were different kinds of restrictions on the categories and types of production. However, he was not in a position to provide a fixed schedule. With regard to the approval by provincial governments, China's commitment was that by the end of 2002 it would promulgate a new regulation to increase the limits of the approval by provincial governments for investment in motor vehicle manufactures. The new circular would satisfy the commitment made in the Working Party Report, i.e., upon promulgation of the regulation, the provincial governments would have the authority to approve investments in motor vehicle manufacturing in line with China's commitment in the Working Party Report.

56. The representative of the European Communities appreciated the constructive spirit and detail in which China had provided answers to the questions submitted to it. He found it was very significant that such an important country as China had chosen to join the WTO with a clear commitment not to apply any TRIMs. This should be borne in mind when discussing another proposal that had been

submitted to the Committee for that meeting, and it would also be useful for Members to enquire what were the motives for such a commitment to phase out TRIMs. His delegation looked forward to receiving a written version of China's statement in order to identify whether the questions it had posed had been fully answered. This would be extremely important for his delegation's assessment. The intervention and the document China had previously submitted clearly showed that China had gone through a major process in order to come into compliance with its TRIMs obligations. Since several of the questions submitted by the EC and its member States (G/TRIMS/W/21) had already been answered either wholly or in part, he would focus only on questions 3 and 4. He pointed out that his delegation would need more time to be able to both take into account what had been stated by the Chinese delegate at the meeting and also to read in detail what was contained in China's written statement.

57. With respect to question 3, he said that the question his delegation had raised implicitly and explicitly was that of contractual obligations of any sort entered into by foreign enterprises or enterprises operating within China. He had taken note of China's reference to freedom of contract, allowing companies to enter into various contractual obligations, but the issue that needed to be addressed and for which he sought clarification was: what happened in the event that laws, regulations and other measures were abolished but these contractual obligations of a private law nature remained nevertheless in force? Were these considered null and void? If that was not the case, how would foreign investors ensure that they would not be faced with a law suit or administrative action taken against them in order to ensure their enforcement and application? If, in fact, steps had been taken and implemented by China towards ensuring that this was not the case, was that on the basis of some discretionary measure or was it a legally binding undertaking on which foreign investors and producers could actually rest? Regarding question 4, he noted that China had already replied to some of the questions made by Japan regarding export performance and technology transfer requirements. He sought further clarification as to the extent that these requirements had actually been abolished. He recalled that there was a very clear statement by the Chinese delegate in paragraph 203 of the Working Party Report on China's accession, which explicitly set out that China would abolish these measures.

58. The representative of the United States, reacting in an overall manner to China's statement, said that it was clear that China had taken the matter very seriously and had produced a substantial amount of documentation. He thanked the Chinese delegation for all the work they had put into their presentation to the Committee. It was also clear that it was very difficult to deal with the information in the form in which it had been presented at the meeting. Noting that there was an obligation in China's Protocol to provide in advance answers to the questions that had been asked, he found it very difficult to go through the questions that the United States had put forward and determine whether they had been answered in the material that had been provided in writing at the start of the meeting or in the oral statement that had been made. There was the additional problem that what mattered was not so much what his reaction at the present meeting was, but what his authorities in the capital would have had to say if they had had the information in advance. They might have felt that their questions were fully answered or they might have wanted to ask follow-up questions. Thus, it was very difficult for him at the present time to come up with an overall evaluation. If necessary, his delegation would like to have the opportunity to submit additional questions to China as part of the review process, as it considered it had the right to do so under the Transitional Review Mechanism.

59. He then referred to the specific questions the United States had posed in document G/TRIMS/W/22, and asked the Chinese delegation whether in fact these questions had been answered in the material that Members had received at the meeting. He also sought clarification from the Chinese delegation on a couple of general points. One referred to US concerns about continuing pressure from various Chinese officials for transfer of technology by foreign investors despite the obligations undertaken by China to eliminate mandatory technology transfer. In some instances, this pressure could amount to *de facto* transfer requirements which could effectively nullify the rights of

other Members. Secondly, some officials had acknowledged that they continued to consider factors such as local content when deciding whether to approve an investment or recommend long approvals. His delegation was interested to know what steps China had taken to eliminate this practice. Finally, he enquired about the reporting and notification requirements with which foreign investors in the petroleum sector had to comply.

60. The representative of Chinese Taipei expressed his appreciation for the Chinese delegation's oral presentation and replies to the written questions made by several delegations, including his own. His delegation was waiting for the circulation of China's written report for further in-depth assessment and evaluation. As one of China's major trade and investment partners, Chinese Taipei had felt the need to identify a number of legitimate questions and concerns in areas where China might have lapsed in its implementation of the accession protocol. His delegation considered that the smooth implementation of the Protocol was in the best interest of all Members, including China.

61. The representative of Pakistan thanked the Chinese delegation for its very detailed and comprehensive replies to the questions submitted to it. He said that, despite this onerous and unprecedented obligation, not only in the TRIMs Committee but also in all other WTO bodies, China had responded very satisfactorily to the questions posed to it in pursuance of the TRM. His delegation also wished to place on record its appreciation for the measures China had undertaken to implement its WTO commitments in letter and spirit, especially its TRIMs commitments. He thanked again the Chinese delegation for both its initial and supplementary responses and wished it a successful conclusion of the review.

62. The representative of Canada joined others in thanking the Chinese delegation for the clarifications given at the meeting and for the report on its efforts to date to comply with its commitments. He also thanked the Chinese delegation for circulating its oral statement, which would help his delegation fully appreciate China's efforts.

63. The representative of Cuba congratulated China for the comprehensive responses it had provided in the context of this complex exercise, which was proceeding simultaneously in a wide range of WTO bodies. This exercise was taking place within one year of China's accession to the WTO, upon which China had undertaken onerous commitments. Therefore, her delegation considered that China was moving along in the right direction and at the right pace, overcoming the difficulties and costs of the commitments it had undertaken. In the context of the Committee, Members should not forget that China was one of the main destinations of interest for foreign investors from developed countries. Such investors had found confidence and security in the Chinese market. This was an important element to be taken into account.

64. The representative of Switzerland thanked the Chinese delegation for the documentation it had made available and for the answers it had provided during the meeting, the written version of which his delegation also awaited with great interest. His delegation had a key interest in addressing the issue of the TRIMs included in contracts concluded before China's WTO accession. He explained that some companies faced serious difficulties because not all relevant laws and regulations were consistent with China's WTO commitments. It was therefore quite difficult to have provisions such as local content requirements removed from contracts concluded before China's accession. He would appreciate if the Chinese delegation could provide further insight on this issue in order to deal with this substantial problem.

65. The representative of China expressed appreciation for the objective and fair assessments of Members concerning China's implementation of its TRIMs obligations. Before responding to Members' comments and questions, he wanted to clarify that China was not bound legally to provide written answers to the questions raised by Members. He recalled that in the TRM undertaken in the Committees on Agriculture, Import Licensing and Market Access, there had been an intensive debate

on this issue, which he did not wish to repeat. China's position that it had no legal obligation to provide written replies was still valid and he had no room for manoeuvre in this regard. He had agreed to circulate his statement to the Members, but that did not mean that China had changed its position. His delegation's intention was to cooperate with the Committee in order to allow Members to have a better understanding of China's efforts to implement the TRIMs Agreement. He hoped to avoid any misunderstanding on this point.

66. With regard to the issue raised by the European Communities concerning contract changes, he explained that there were two different situations for different enterprises. Before China's accession, because the Chinese Government maintained mandatory requirements on local content, export performance and technology transfer, those requirements had to be incorporated in contracts. After accession, China had abolished those requirements, so it was subject to the enterprises to incorporate any articles on which they reached agreement. For example, if the enterprises, the producers and investors reached agreement on any performance requirements, it would be their legitimate right to do so. For those enterprises established before China's accession, if they reached agreement to change some articles of the contract, they were allowed to do so according to the legal procedures they had applied to change the original contract or the articles of association.

67. With respect to the application of WTO rules in China, he explained that, according to the Chinese legal system, the WTO Agreement was not automatically applicable in China, so China needed to promulgate and revise laws and regulations to make them consistent with WTO rules as well as the way in which it implemented those laws, regulations and administrative rules. He recalled paragraph 68 of the Working Party Report, which stated that "…China confirmed that administrative regulations, departmental rules and other central government measures would be promulgated in a timely manner so that China's commitments would be fully implemented within the relevant time frames. If administrative regulations, departmental rules or other measures were not in place within such time frames, authorities would still honour China's obligations under the WTO Agreement and Draft Protocol". He explained that this was the case of the 1994 Automobile Industry Policies. Although China had not finished the revision of these policies, those articles regarding local content, export performance and mandatory technology transfer which were inconsistent with China's obligations under the WTO were no longer valid in China. However, because there were other articles to be discussed with domestic and foreign enterprises, the formulation of the new regulation was still in a drafting process.

68. Referring to the point raised by the United States that they hoped to present additional questions, he said that his delegation had no difficulty to accept any follow-up questions on China's regime, not only on the implementation of the TRIMs Agreement. However, he made China's position clear that this kind of questions-and-answers exercise was not part of the review process; there were many other channels besides the TRM for that. China would welcome any questions a Member wanted to present, but it would respond to them through other channels.

69. With regard to the technology transfer requirements, he reiterated his previous statement that China had changed its laws and abolished these mandatory requirements. As Members were aware, the previous provision was that the establishment of a foreign-invested enterprise "…must adopt advance technology". It was a mandatory requirement, but the revised law had only stipulated that: "The State encourages the establishment of wholly foreign-owned enterprises with….adoption of advance technology". His delegation believed that it was legitimate for China or any other Member to have this kind of policy to encourage technology transfer if it was not a mandatory requirement.

70. With respect to the regulations on oil resources exploitation, he repeated that these kinds of regulations were available on MOFTEC's web site and in the Gazette of Foreign Trade and Economic Cooperation. He said he would be ready to answer any additional questions or comments Members might have.

71. The representative of the United States recalled that, in its written communication to China, his delegation had raised five very specific questions about particular articles of various laws and regulations. He admitted that it was entirely possible that China had answered those questions in the material that it had already provided. However, if China had not done so, he would appreciate getting some reaction from the Chinese delegation.

72. The representative of China confirmed that in his statement he had covered all the questions raised by the United States.

73. Referring to the point made by China that any additional questions were outside of this review, the representative of the United States said that, although he agreed that there was nothing in China's Protocol that required answers to be in writing, the Protocol did require that the answers be provided in advance of the meeting. The implication of this was that capitals would have been in a position to review the information and perhaps pose further questions at the present meeting, which would then have been part of the review. His delegation thus believed that it had the right to pose further questions and would not consider the review completed until it had the right to put those questions forward.

74. The representative of the European Communities said that, given the late arrival of the Chinese answers and the fact that Members would only be given the opportunity to see China's written statement after the meeting, his delegation encouraged a practical solution be found to the possibility of submitting further questions, which would be in the interest of those parties posing the questions and in the interest of China itself.

75. The representative of Japan supported the statements by the United States and the European Communities. His delegation appreciated the answers from China, but it had expected to have their oral statement in advance of the meeting. Japan still had some clarifications outstanding, so his delegation would also support some kind of procedure allowing for the opportunity to make further clarifications that would then be reflected in the report to the CTG.

76. The representative of China reiterated that his delegation would welcome any additional questions and comments besides the TRM. However, if any Member insisted that this kind of exercise was part of the TRM process, his delegation would refuse to accept any additional questions. If during the present TRM any Member had additional questions, China would make additional replies and supplementary comments. If Members still had questions after the meeting, they could forward them through China's enquiry point and China would respond to them within 30 days according to its commitment under the Protocol of Accession. He added that, in the future, Members would have sufficient opportunity to put forward their questions, since they would have at least nine years under the TRM to continue this exercise.

77. Members engaged in an exchange of views on procedural aspects, namely whether an additional meeting to complete the first review under China's TRM would be needed, and on the specific nature and contents of the report to be submitted by the Chairman to the CTG on this issue. The representatives of the United States, the European Communities and Japan felt that they should be allowed more time to consider China's replies and to submit additional questions and comments, if necessary. They also considered that the Chairman's report to the CTG should reflect the substantive discussions and comments made by Members. The representatives of China, Cuba, Pakistan and Brazil felt that the review under China's TRM should be concluded at the present meeting and expressed support for a short, factual report.

78. Referring to the TRIMs Committee's reporting obligation to the CTG, the Chairman said that it was his understanding that Members would wish the TRIMs Committee to proceed in the same manner as other WTO Committees in discharging this obligation.

79. After some discussion, it was agreed that the Chairman would prepare a short, factual report to which would be attached the relevant paragraphs of the minutes of the present meeting where the substantive discussion on this issue would be reflected, as well as references to all written submissions made on this topic. The report would be distributed to Members prior to its submission to the CTG. Members would then have an opportunity to verify whether the comments they had made had been properly reflected in the report. If there were any observations by Members on the facts included in the report, these would be taken into consideration and the report would then be submitted to the CTG. There would be no need for a new meeting to discuss this agenda item nor to approve the Chairman's report.

D. ANNUAL REPORT (2002)

80. The Chairman recalled that Article 7.3 of the TRIMs Agreement required the Committee to report annually to the Council for Trade in Goods. As a basis for the Committee's consideration of this matter, he had asked the Secretariat to prepare a draft annual report, which had been circulated in document G/TRIMS/W/23. He said that the report would be updated, as appropriate, to take into account discussions at the present meeting. As he intended to suspend the meeting, the report would also take into account any subsequent discussions. He then proposed that the Committee examine the report paragraph by paragraph and then adopt it *ad referendum*, pending the Secretariat's completing and updating it in light of the discussions.

81. The Committee adopted *ad referendum* its Annual Report (2002) to the CTG, on the understanding that paragraphs 11 and 13 of the report might need to be modified in the light of developments regarding the reports referred to in those paragraphs which were still pending.

E. OTHER BUSINESS

82. The Committee agreed to suspend its meeting and to reconvene on 4 November to discuss the outstanding implementation issues under item B of the agenda.

Annex

Statement by the Representative of China

1. Thank you for giving me this chance to address the committee on the China's implementation of TRIMS agreement and related commitments in China's protocol of accession.

2. First of all, I would like to begin my presentation with a brief account of the preparations by our country prior to this review:

3. Pursuant to Article 6.2 of the TRIMS Agreement, on May 28, 2002, China notified the TRIMS Committee the publication where investment measures related to trade can be found, which is the Gazette of Foreign Trade and Economic Cooperation of the People's Republic of China. By doing so, we have completed our normal notification exercise as laid out by the TRIMS agreement.

4. Annex 1A of China's accession protocol lays down the information to be provided by China in the context of the Transitional Review Mechanism. China has submitted its responses to the annex with regard to the TRIMs before this meeting.

5. During this very first year after accession, the Chinese government has been fulfilling its commitments, in a systematic and faithful manner, according to the timetable for implementation as set forth in China's accession protocol and working party report.

6. Firstly, China has revised the *Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture; Law on Chinese-Foreign Contractual Joint Venture; and Law on Wholly Foreign Owned Enterprises* and their respective implementing regulations, including the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance, compulsory technology transfer, and etc.

7. *Law on Chinese-Foreign Equity Joint Venture; Law on Chinese-Foreign Contractual Joint Venture; and Law on Wholly Foreign Owned Enterprises* are the three laws of fundamental importance concerning foreign investment administration.

8. Upon approval by the National People's Congress and its Standing Committee, modifications have been made on the following laws and regulations at the time given: in October 2000, *Law of the People's Republic of China on Chinese-Foreign Contractual Joint Venture*; in October 2000, *Law of the People's Republic of China on Wholly Foreign Owned Enterprises;* in March 2001, *Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture*; and in July 2001, *Implementation Rules on Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture*. Modifications relating to implementation of commitments made in the WTO are as follows:

1. deletion of the following provisions on foreign exchange balancing requirements

(1) Provisions in Article 20 of the *Law of the People's Republic of China on Chinese-Foreign Contractual Joint Venture*, i.e., "a contractual joint venture shall maintain foreign exchange balance by its own; if not, it may, in light of the State regulations, request for assistance from the authorities concerned ";

(2) Provisions in Article 18.3 of *Law of the People's Republic of China on Foreign-Invested Enterprises*, i.e., "a wholly foreign owned enterprise shall maintain foreign exchange balance; in case a foreign-invested enterprise, upon approval by the authorities concerned, engages in sales in the Chinese domestic market, which causes

imbalance of its foreign exchange, the authorities granting the approval of its sales in the domestic market shall be responsible";

2. modification or deletion of the following provisions on local content requirements

(1) Article 9 of *Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture* has been modified as "within its business scope approved, an equity joint venture can purchase raw materials, fuel and others that it needs in the domestic market as well as in the international market".

(2)Article 15 of *Law of the People's Republic of China on Wholly Foreign Owned Enterprises* has been modified as follows: "within its business scope approved, a wholly foreign owned enterprise can, in light of fair and reasonable principle, purchase raw materials, fuel and others that it needs in the domestic market or in the international market "; previous provision, i.e., "in the same conditions, priority shall be given to purchase in the domestic market", has been deleted.

3. modification or deletion of the following provisions on export performance requirements

Article 3.1 of *Law of the People's Republic of China on Wholly Foreign Owned Enterprises* has been modified as follows: "the establishment of a wholly foreign owned enterprise shall be conducive to the development of Chinese national economy. The State encourages the establishment of wholly foreign-owned enterprises with export orientation and adoption of advanced technology". Previous provision, i.e., the establishment of a foreign-invested enterprise "must adopt advanced technology, or export all or the most of its products", has been deleted.

In addition, the authorities concerned have repealed a number of regulatory measures including *Notice concerning Export for Balancing Foreign Exchange of Chinese-Foreign Joint Ventures*, which are incompatible with the commitments made by China for accession to the WTO.

9. Secondly, China has comprehensively revised the guiding catalog of investment to ensure WTO consistency.

10. To implement its commitments made for the accession to the WTO, China modified its policy on foreign investment in 2002 by promulgating the revised *Provisions on Guiding Foreign Investment Direction* and *Industrial Catalogue for Foreign Investment*, which came into force as from 1 April 2002. To fully embody the commitments made for the accession to the WTO, China has liberalized further the restrictions imposed on the proportion of foreign equity in investment projects and opened new sectors to foreign investment. The newly-opened sectors include telecommunications, urban water supply and drainage, construction and operation of gas and heat distribution network, which all were previously prohibited from any foreign investment. In light of commitments made in the WTO with respect to geographic restrictions, quantitative restrictions, business scope, proportion of equity and timeframe, China has opened further such service sectors as banking, insurance, distribution, trading right, tourism, telecommunications, transportation, accounting, auditing and legal services. The timeframe and pace of opening of these markets, as committed in China's accession to the WTO, has been contained in annexes to the Industrial Catalogue for Foreign Investment.

11. Thirdly, China has revised the industrial policy for automotive sector as required by the accession commitments.

12. China has revised the Law on Chinese-Foreign Equity Joint Venture; Law on Chinese-Foreign Contractual Joint Venture; and Law on Wholly Foreign Owned Enterprises and their respective implementing regulations, including the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance and etc. Provisional Regulations on Improving Domestic Production of Cars Using Tax Breaks has been abolished. With these measures taken, corresponding provisions contained in 1994 Automobile Industrial Policy have ceased to be valid and have not been enforced since China's WTO accession. The new Guidelines for Current Development Of Automobile Industry is in a process of review and drafting.

13. China will strictly abide by its accession commitments to completely lift the restrictive measures applicable to motor vehicle producers on categories, types or models permitted for production in two years time since accession.

14. As for the right of approval for provincial authorities with regard to investment in automotive sector, relevant regulations are in the process of consideration and formulation which will be released according to legislative procedures.

15. The laws and regulations of China's foreign investment administration are characterized by their broad coverage and great quantity. The amendment of the legislation and administrative measures entails huge tasks and requires enormous input of manpower and financial recourses. The fulfilment of this task by Chinese government despite of tremendous difficulty is a further testimony to the sincerity and resolve of China to honour its obligations and implement its commitments.

16. Several members have presented questions related to the investment measures of China in advance of the meeting. Though China is not bound legally to provide written answers to those questions, we consider the comments and questions are beneficiary for the preparation of our notification to the Committee. With many of these questions overlapping with each other or reflecting common interests, I would like to provide responses and answers to those areas of concern for members.

1, on the information requested by the committee.

All the requested information in the context of the TRM has been provided to the committee in advance of the meeting.

2, the publication of the revision on the TRIMs-related laws and regulations, and uniform implementation of the revised THREE LAWs, especially by the governments at local level.

The information of revision and implementation of the related laws and regulations has been published in the *Gazette of Foreign Trade and Economic Cooperation* and are available on the official website of MOFTEC.

The current legal system of China effectively ensures the nation-wide uniform implementation of China's accession commitments and China's laws, regulations and administrative rules. Any laws and regulations at local level shall be in line with those at national level. The central government will rectify any laws and regulations once the inconformity is identified. In view of strengthening the uniform implementation, on April 21, 2001, the State Council published *Regulations Prohibiting Barriers between Regions in Market Economic Activities* to strictly prohibit the actions in conflict with national laws by the local governments. The enterprises, which are set up according to the local laws and regulations inconsistent with those at national level, and their operations will not be protected by the law of China in the legal proceedings.

3, whether undertakings under non-TRIMs conform legislation continue to be enforceable against producers, and procedures to amend the contracts.

The government of China respects contract freedom. According to Chinese laws on absorbing foreign investment, the contracts and articles of association of a foreign invested enterprise shall go into effect only after the approval of the competent authority. Therefore, according to the Contract Law of China, their revisions also need approval, so does the major changes to the articles of association of the foreign invested enterprises.

If an enterprise changes its commitments made in the contract, with the unanimous consent of the investors of the enterprise and with the approval of the original contract approval authority, it may stop honouring the contract. Otherwise, the enterprise shall continue to honour its commitment made in the contract. Such commitment cannot be deemed invalid. The amendments to the contracts or the articles of association can be made only after:

(1) the unanimous consent on the revision agreement or the draft of the contract or the articles of association.

(2) enterprises submit the revision agreement or the draft of the contract, the articles of association and related legal documents to the original approval authorities. If the authority is MOFTEC, relevant papers shall be sent to local foreign trade administrative agencies whereby to be presented onto MOFTEC.

(3) examination of the submitted documents by the original approval authorities. Renewed certificate will be approved at the consent of the authority.

(4) in case where the registration items change, enterprises shall fulfill the registration revision procedures at the industrial and commerce administration.

Enterprises may go to the original approval authorities or local foreign trade administrative agencies for relevant information.

4, what TRIMs-related laws and regulations have been eliminated as published by the Gazette of Foreign Trade and Economic Cooperation, and what are the other channels for the publications of this kind.

Chinese government has abolished and revised laws, regulations and administrative rules with contents against the commitments China made for the accession to the WTO. Apart from the legislations listed in our responses to Annex 1A, on November 16, 2001, MOFTEC issued the catalog for the first batch of 6 departmental rules to be abolished (MOFTEC Ordinance No. 13), which includes the *Circular on restricting the Establishment Of Projects Of Peanut Products Using Foreign Capital, Urgent Circular on the Reiteration of The Ban On Projects Of Salted Or Canned Mushrooms Using Foreign Capital, Circular On Stop Setting Up Sino-Foreign Equity Joint Ventures For The Production Of Leather Gloves For Labor Insurance, Circular On The Strict Control Of Using Foreign Capital To Set Up Projects of Exporting Processed Metal Products Using Imported Waste Metals, Circular On The Unified Operation Of The Pearl Business* and *Circular On MOFTEC Being The Authority To Issue Pearl Export Licenses*. On December 19, 2001, MOFTEC issued Ordinance No. 30 declaring the abolition of 3 more rules, including *Supplementary Circular On The Issue Of Wholly Foreign-Own Enterprises Importing Materials For Self Use, Circular By MOFTEC On Issues Related To Foreign-Invested Enterprises Importing Equipments* and *Supplementary Circular On The Unified Operation Of The Pearl Business And Fastening Control Over The Pearl Market*. On March 21, 2002, MOFTEC issued Ordinance No.24 abolishing the *Implementing Rules of the Regulations on the Management of Technology Import Contracts*. On October 6, 2001, the State Council abolished,

among others, *Administrative Measures For The Production Of Electronic and Machinery Products Instead Of Import By Sino-Foreign Equity Joint Ventures Or Sino-Foreign Contractual Joint Ventures, Measures For Sino-Foreign Equity Joint Ventures Or Sino-Foreign Contractual Joint Ventures To Produce Products Instead Of Import* and *Provisional Regulations On The Management Of Technology Contracts.* The above-mentioned information can be found both in the Gazette of Foreign Trade and Economic Cooperation and on the website of MOFTEC.

5, on the alleged inconsistency by some members between two specific investment regulations and China's commitment in Para. 203 in the Working Party Report.

(1) Article 6.3 of the *Regulation on the administration of Foreign Investment in the Road Transportation Industry* requires 50% of an enterprise's registered capital to be used for particular purposes, i.e., the construction and renovation of the passenger transportation infrastructure.

We consider the requirement provides for a fundamental basis for normal operation of an enterprise in passenger transportation business. Moreover, this is a requirement equally applicable to both domestic and foreign enterprises and thus not constituting a restriction for investment. This article is not conflicting with China's WTO commitments and China does not plan to revise or abolish this article.

(2) In *Regulations On The Joint Exploration Of Offshore Oil Resources With Foreign Parties* and *Regulations On The Joint Exploration Of Onshore Oil Resources With Foreign Parties,* foreign partner is required to provide relevant data and admit Chinese participation into the operational design.

The petroleum resources referred to in the regulations are the resources owned by the nation of China. The ownership of any numerical data, records, samples, evidence, and other original data based on these resources is indisputably lies with the Chinese oil company. As one party of the contract, it's in the right of the Chinese oil company to obtain information on the prospecting and development activities covered by the contract. In light of the uniqueness of the oil exploitation business, the Regulations lay out necessary provisions on the rights and obligations of the foreign partner. The obligations contained in the Regulations are fair and appropriate, and they are in proportion to the rights enjoyed by the foreign partners. The content at issue in the regulations has no linkage to the commitment in Para. 203 of the Working Party Report.

6, the relationship between the contribution of technology by a foreign enterprises addressed by Article 6 of the *Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures* and the China's commitment to eliminate mandatory technology transfer.

The laws and regulations on foreign investment make no mandatory provisions on technology transfer and do not condition the approval of foreign invested enterprises on the transfer. Like most developing economies, China hope to benefit from the advanced technology and management skills of other countries apart from the foreign investment. China has not made technology contribution a compulsory requirement. But if a foreign investor is willing to make contribution of technology based on the business merits which is also in line with China's development needs, China welcomes and encourages the transfer. We see no contradiction between this article and our commitments and we have no plan to revise or abolish this article.

7, On the preferential approval treatment to the joint ventures who do not need export quota and license as contained in the Article 6 of *Implementing Regulations for Sino-Foreign Cooperative Enterprises.*

There are no differential treatments in granting approval to the establishment of contractual joint ventures as to whether their exports are regulated by quota and license or not. Currently, the export quota and license for foreign invested enterprises are issued solely by MOFTEC. According to the

regulation, the joint ventures that do not need export quota and license can be approved by local governments or departments authorized by State council, while those enterprises subject to quota and license have to be proved by MOFTEC. This provision can let the enterprises operating with export quota and license know, even before the establishment, whether they can get the export quota and license so as to reduce the possible difficulties for the business of these enterprises. We see no contradiction between this article and our commitments and we have no plan to revise or abolish this article.

8, two issues regarding *Guiding Industrial Catalog for Foreign Investment.*

(1) the justification of Circular Regarding Further Strengthening the Management of Duplicating CD of 1996 under the WTO framework.

For the purpose of Intellectual Property protection, China encourages the production of CD instead of the recording of it. *The Circular on Issues Regarding Setting-up and Equipment import of the Sino-Foreign Equity or Contractual CD Recording and Production Enterprises* issued in November of 2000 jointly by Press and Publication Administration and MOFTEC explicitly provides against, in principle, the establishment of Sino-Foreign equity or contractual enterprises CDROM reproduction. The 1996 circular refer the CD reproduction as the copy and production of CDROM and recordable CD, and the writing of the mother CD. The *Guiding Industrial Catalog for Foreign Investment* came into force on April of 2002 only listed production of recordable CD(CD-R、CD-RW、DVD-R、DVD-ARM) as encouraged without including the reproduction of recordable CD. Both the 1996 and 2000 circular did not set any restrictive measures against the production of recordable CD. The approval procedures for foreign invested CD production enterprises enlisted in the 1996 circular were set out in light of the administrative demand for the CDROM production and had no conflict with the *Guiding Industrial Catalog for Foreign Investment.*

(2) the consistency between the restrictions on production and domestic sales percentage and the Working Party Report.

The regulation on cellular phones production and sales in 1998 has no direct linkage with the China's WTO commitments. However, to improve the development of mobile phone industry and foreign investment inflow, relevant departments are conducting review on the 1998 regulation and requesting the comments from domestic and foreign enterprises alike. We will make efforts to publish the result of the review in a shortest possible time.

9, four issue regarding the automobile industry.

(1) the validity of 1994 policy.

China has amended the provisions on foreign exchange balancing requirements, local content and export performance and technology transfer requirements contained in the Three Laws. As those Three Laws are of fundamental status for foreign investment administration, all the other relevant laws and regulations shall submit to them and be accordingly revised along the line. *Provisional Regulations on Improving Domestic Production of Cars Using Tax Breaks* has been abolished. Automobile Industry Policies are in the process of modification with provisions like domestic production, export requirement and mandatory technology transfer already annulled. As for the revision 1994 industrial policy, it is not difficult for China to abolish the provisions like domestic production as such. Given the great interests and various comments from both domestic and foreign enterprises, however, we are conducting an in-depth research and study with a view to fully reflecting the concerns of all interested parties in the new policy. Once the review concludes, we will issue the new *Guidelines for Current Development Of Automobile Industry* replacing the original policies.

(2) the application of tariff rates for finished automobiles on the imported parts.

This is a issue having nothing to do with the requirement of domestic production. The imposition of finished automobile tariff on excessive imported parts over a certain percentage is based on the custom commodity classification. It's in consistency with the principle of world custom classification to regard the imported car parts over a certain threshold as finished automobile. So, the existing practice has no contradiction to the WTO agreement.

(3) status of the repeal of restrictions for the licensing of auto production.

Please refer to the information provide by China according to the Annex 1A of China's accession protocol. The Chinese government shall completely lift the said measure in line with the commitment made with respect to the timeframe, so as to ensure that motor vehicle producers have right to choose categories, types or models of vehicles they will produce in 2 years.

(4) status of independent approval by provincial governments for investments in motor cycle manufacturing.

Please refer information provided under Annex 1A. It is expected that in compliance with its commitments made with respect to the timeframe, by the end of 2002 the Chinese government will endeavour to publish a circular increasing limits of investment to be approved by provincial authorities.

17. I hope the information provided to the committee prior to the meeting and the explanation I made just now will help members understand the efforts and achievements made by China to implement the TRIMs agreement and its commitments. The written form of my statement will be submitted to the Committee and circulated after the meeting. Please check against delivery. I would like to take this opportunity to thank you and the secretariat for the painstaking preparation and effective work for this meeting.

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