

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

The following communication, dated 20 September 2002, has been received from the Permanent Delegation of the European Commission.

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

I. GENERAL

1. In connection with the Chinese accession to the WTO, China took upon itself a number of commitments with respect to existing WTO obligations. A number of these commitments relate to the WTO Agreement on Trade-Related Investment Measures ("TRIMs") and are reflected primarily in paragraph 18 of the Chinese Protocol on Accession as well as paragraph 203 of the Report of the Working Party on the Accession of China.

2. More specifically, China committed itself to abolish legislation and other measures constituting TRIMs upon joining the WTO as a member. It should be borne in mind that the TRIMs Agreement contained an obligation for developed countries to abolish TRIMs no later than two years after the entry into force of the Agreement, whereas developing countries were granted a 5-year period for their abolition (a longer time-period of 7 years applies in the case of LDCs). China did not insist on a right to extend any of its TRIMs, nor have any such request for extensions been made at any later point in time.

3. Finally, in Article 18 of the Chinese Protocol of Accession to the WTO regarding the Transitional Review Mechanism, China has taken upon itself an obligation to "provide relevant information, including information contained in Annex 1A, to each subsidiary body in advance of the review."

4. In conclusion, China is under an obligation to have abolished its TRIMs as of the date of joining the WTO and to inform the TRIMS Committee of all existing, amended and abolished TRIMs.

II. CHINESE TRIMS

5. Given that China had assumed a commitment to abolish its TRIMs as of the date of joining the WTO, China never made any *formal* notification of its TRIMs to the relevant WTO bodies.

6. However, document WT/ACC/CHN/20 dated 16 June 2000 contains a draft table of Chinese legislation which would need amendment in order to ensure conformity with existing WTO agreements.¹

7. As regards the TRIMs Agreement, the table lists a total of 8 Chinese laws and regulations which are deemed in need of amendment in order to comply with the TRIMs Agreement. For 5 of these it is indicated that the amendment would be needed as of the date of accession, whereas for the remaining 3 the amendment would be needed "at the expiry of the commitment period". This distinction would appear to be in contradiction with the statement later made by the Chinese representative to the Working Party that China would comply fully with the TRIMs Agreement upon accession, and, that the Chinese authorities would not enforce contracts containing TRIMs commitments assumed by producers (see below for this statement).

8. Document WT/ACC/CHN/20 further contains two separate tables purporting to be notifications under Article 5 of the TRIMs Agreement. One table sets out legislation relating to local content requirements as included in the illustrative list of the TRIMs Agreement, whereas the other table sets out legislation relating to foreign exchange balancing requirements as also included in the illustrative list.

9. Under entry 8 in each of the two tables – "provision for its phasing-down and/or elimination" – all answers with the exception of one left blank are either:

- "under modification", or,
- "it's under modification now".

10. The three tables in the document identifying various Chinese laws and regulations offer an initial indication of what TRIMs-related legislation exists and questions to be put to the Chinese should therefore focus primarily - but not exclusively - on this legislation.

11. In addition to the listing of legislation contained in document WT/ACC/CHN/20, the Chinese representative to the Working Party on China's Accession explicitly confirmed that China would "comply fully" with the TRIMs Agreement upon accession. The representative further assured the Working Party that all foreign exchange balancing, trade balancing, local content and export performance requirements would be eliminated and that Chinese authorities would not enforce the terms of contracts containing such requirements.

"The representative of China confirmed that upon accession, as set forth in the Draft Protocol, China would comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and would eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. Chinese authorities would not enforce the terms of contracts containing such requirements. The allocation, permission or rights for importation and investment would not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers. Consistent with its obligations under the

¹ WT/ACC/CHN/20, p. 3.

WTO Agreement and the Draft Protocol, the freedom of contract of enterprises would be respected by China. The Working Party took note of this commitment."²

12. Finally, in Annex 1A of the Chinese Protocol of Accession to the WTO, setting out the information to be provided by China ahead of the TRM, information relating to the TRIMs Agreement is mentioned under a number of headings, including II, 3 (a) "Investment Regime; IV, 1 Tariff Rate Quotas; and; IV, 8 Trade-Related Investment Measures. As of 16 September 2002 it would appear that the Chinese authorities have yet to provide this information.

13. Questions for China are contained in Annex 1 below.

² See WT/ACC/CHN/49, para. 203.

Annex 1

Question 1:

Annex 1A of the Chinese Protocol of Accession to the WTO sets out the information which China cf. Article 18 of the Protocol has undertaken to provide to the relevant bodies of the WTO for purposes of the Transitional Review.

The information relating to the TRIMs Agreement is contained in Annex 1A II, 3 (Investment Regime); IV, 1 (Tariff Rate Quotas); and; IV, 8 (Trade-Related Investment Measures).

Please indicate when the information relating to TRIMs will be provided to the TRIMs Committee.

Question 2:

Document WT/ACC/CHN/20, page 3, lists a number of Chinese laws and regulations (hereinafter referred to generically as "legislation") which would need to be amended or abolished to ensure compliance with the WTO TRIMs Agreement.

The same document, pages 22 and 24, contain tables setting out legislation as it relates to local content requirements and foreign exchange balancing requirements respectively.

For all the legislation in the tables on pages 22 and 24 (with one exception) it is indicated that the legislation is "under modification".

Please indicate for all legislation listed in the document when these modifications were implemented, what the modifications consist of, and where the modifications have been published.

Question 3:

In view of the statement by the Chinese representative to the Working Party on the Accession of China, paragraph 203, in instances where foreign producers have entered into commitments under non-TRIMs conform legislation – be it through the signing of memoranda of understandings, contracts or other legally enforceable undertakings – do such undertakings continue to be enforceable against the producers or are they considered null and void following the amendment or abolishment of the supporting legislation? And is the decision by the Chinese authorities not to enforce the terms of such contracts a discretionary one or is it mandated by legislation, guidelines or other measures? If the latter is the case, which measures, when were they adopted and where are these measures published?

Question 4:

In addition to the legislation listed in WT/ACC/CHN/20, and in the light of the statement by the Chinese representative to the Working Party on the Accession of China, para. 203, explicitly guaranteeing the elimination of "foreign-exchange balancing and trade balancing requirement, local content requirements and export performance requirements", what other legislation, administrative guidelines of general application, government decrees or other measures apply to the issue of TRIMs, including not only local content requirements and foreign exchange balancing requirement but also export performance requirements and technology transfer requirements? And, if such measures have been abolished in order to ensure compliance with the TRIMs Agreement and the explicit Chinese undertaking, when did this abolition take place and where was it published?
