

**COMMUNICATION FROM CHINA**

The following communication, dated 15 October 2002, has been received from the Permanent Mission of the People's Republic of China with the request that it be circulated to Members of the Committee.

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

Statement by the Representative of China at the meeting  
of the Committee on Trade-Related Investment Measures of 14 October

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 resources. 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-Owned 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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