

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. Pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China, the Committee on Trade-Related Investment Measures carried out the fifth annual review under China's Transitional Review Mechanism (TRM) at its meeting on 25 October 2006.
 2. Written questions regarding China's TRM were submitted in advance of the review by the United States and the European Communities. These submissions were circulated as documents G/TRIMS/W/47, and G/TRIMS/W50, respectively.
 3. In a communication dated 20 October 2006, China submitted information on Annex 1A of its Protocol of Accession in connection with its TRM. This submission was distributed in document G/TRIMS/W/51 dated 23 October 2006.
 4. Annex 1 to this report reproduces the relevant sections of the Minutes of the TRIMs Committee's meeting held on 25 October 2006 in which Members' substantive discussions regarding China's TRM are reflected.
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Annex 1

Relevant Sections of the Minutes
of the meeting held on 25 October 2006

(G/TRIMS/M/25)

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

4. The Chairman recalled that under Paragraph 18 of China's Protocol of Accession the TRIMs Committee was required to review annually, over a period of eight years after China's accession, the implementation by China of the TRIMs Agreement and the related provisions of the Protocol and to report to the Council for Trade in Goods (CTG) on the results of its review. The fourth annual review had taken place on 10 October 2005 and the relevant report had been submitted to the CTG as document G/L/751.

5. With respect to this year's review, he said that in order to discharge its reporting obligations in a timely manner the TRIMs Committee needed to undertake the review and submit its report in advance of the next meeting of the Council for Trade in Goods which was scheduled for 7 November 2006. Pursuant to paragraph 18 of China's Protocol of Accession, the Council for Trade in Goods would in turn report to the General Council by the end of the year. He then said that the Committee had received communications from the United States and the European Communities, containing questions regarding China's Transitional Review Mechanism (TRM). These submissions had been circulated in documents G/TRIMS/W/47 and 50, respectively. In addition, the Committee had also received a communication from China, dated 20 October 2006, concerning information provided under Annex 1A of its Protocol of Accession. This had been circulated in document G/TRIMS/W/51.

6. He proposed that, in keeping with previous practice, the Committee conduct the review in the following manner: he would first give the floor to those delegations that had submitted questions to China, and to any other delegation that wished to comment on this item. He would then invite the delegation of China to answer the questions and provide any other information they might wish to share with the Committee.

7. The Committee so agreed.

8. The representative of the United States said that after this fifth annual Transitional Review Mechanism for China more than one-half of the required reviews would have been completed. The United States continued to believe that the TRM was a useful mechanism. It helped to provide needed additional transparency for China's trade regime. It also provided Members with a multilateral forum for conveying their concerns with China's WTO compliance efforts. In the latter sense, the TRM was a useful supplement to ongoing bilateral discussions with China.

9. For the present exercise, the United States had submitted questions addressing (1) China's auto policy, (2) China's steel policy, (3) China's new regulations on Mergers and Acquisitions, and (4) the State Council Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries.

10. The Auto Policy questions focussed on two conditions for making investments in China that raised WTO concerns. One of these was a research and development requirement, and the other was a

technology transfer requirement. The Steel Policy questions also raised WTO concerns about conditions for investment. In the Steel Policy some conditions only applied to foreign firms, not domestic firms, and at least one condition for investment involved technology transfer. In its written questions, the United States had asked China to explain how these various conditions for investment were consistent with China's commitments in paragraph 7.3 of its Protocol of Accession and paragraph 203 of China's Working Party Report. Those cited provisions proscribed conditioning investment approvals on the conduct of research in China or on technology transfer, among other things.

11. The remaining questions that the US had submitted addressed a troubling trend in China. Instead of relying more on the market to dictate outcomes, China increasingly was resorting to industrial policies that restrict foreign investment while promoting domestic companies. One example of this could be seen in what was contemplated by the State Council Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries, issued in June 2006. Those Opinions called for new controls on foreign investment for 16 types of equipment manufacturing, such as the manufacturing of semiconductor equipment, aircraft engines, pollution control equipment and textiles machinery. The State Council Opinions combined these new controls on foreign investment with a number of initiatives designed to promote and develop domestic companies and to expand their market share in China.

12. China's new regulations on Mergers and Acquisitions, issued in August 2006, fitted right into these policies. They gave China's Ministry of Commerce broad discretion to approve or reject mergers and acquisitions. The United States viewed China's increasing use of policies that restrict foreign investment while promoting domestic companies as a step backwards and urged China to resume its progress toward the full institutionalization of market mechanisms. His delegation looked forward to China's responses to its written questions.

13. The representative of the European Communities said that his delegation welcomed the opportunity to participate in the fifth TRM exercise for China. Since the EC's concerns had been set out in detail and in writing in document G/TRIMS/W/50, he intended just to highlight the EC's key concerns and questions, rather than dwell at length on the document. As a preliminary remark, he said that it was regrettable that the EC was obliged to raise again in its submission a good number of issues that had been raised in the TRIMs Committee in the past and to repeat questions that had not yet been answered in a fully satisfactory fashion. While the EC thanked the Chinese authorities for their own written contribution to this exercise – document G/TRIMS/W/51, which had been circulated only the day before the meeting – it noted that the contribution very largely only reiterated information provided during the TRM in 2005 and that it did not provide answers, or even preliminary comments, to the questions posed by the EC earlier that month. The EC hoped very much that China would be able to provide additional information and respond in a more substantive fashion in the course of the present meeting.

14. The EC therefore wished to reiterate its request to China for further clarification on the following four areas: (i) Clauses contained in contractual arrangements that are incompatible with China's obligations under its Accession Protocol and the Regulation for the Implementation of the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures; (ii) New Automobile Policy; (iii) Steel Industry Development Policy; and (iv) JV Ownership Limitations and Local Content Requirements in the Petrochemical, Chemical, Energy and Environment sectors.

15. Regarding the first area on which the EC requested further clarification, he said that in previous TRM exercises, China had emphasized and insisted on the sanctity of private contracts, stating for example during the 2005 TRM that a Chinese court or any other administrative body was not able to alter or invalidate existing contracts, or any articles thereof, without the consensus of the parties involved. At the same time, under Paragraph 7.3 of the Protocol of Accession, China had

undertaken the commitment not to enforce provisions of contracts imposing "trade and foreign exchange balancing requirements, local content and export or performance requirements". The EC invited China to clarify how it was ensuring the implementation of this commitment.

16. During the last TRM, China had also stated that amendments had been made to the Law on Sino-Foreign Equity Joint Ventures of the People's Republic of China with a view to removing all articles that were in contradiction with the TRIMs Agreement. The EC noted, however, that Articles 41 and 43 of the Regulations for the Implementation of this Law still imposed requirements on technology transfer agreements concluded by Joint Ventures.

17. The EC therefore invited China to explain how these requirements related to the relevant provision of the Accession Protocol and whether it considered that they result in equal treatment for imported goods as compared to domestic products.

18. On the New Automobile Policy, he said that during the last TRM China had stated that the shareholding requirement restricting the participation of foreign investors was based on the fact that China's automotive industry was at a preliminary stage of development and that it did not contradict any WTO principle or any of China's accession commitments. Such considerations seemed less pertinent given the significant development of the industry in China over the last years and its bright prospects. In particular, heavy regulation and arbitrary restrictions on investment were hard to reconcile with a booming automobile industry and will clearly impede its successful consolidation.

19. In this regard, the EC urged China to allow foreign majority investment and to eliminate the "2+2" regulation. In addition, the EC asked China to provide information on the latest developments on the "Automotive Industry Development Policy" with regard to export promotion and revised investment conditions for foreign manufacturers, including those from the EU.

20. Regarding the Steel Industry Development Policy, he said that in light of the lack of information provided during the last TRM, the EC reiterated its request that China provide Members of the Committee with information regarding the Steel Industry Development Policy. In its submission for this item at the present meeting (G/TRIMS/W/50), the EC had set out its concerns and requests for clarification on the provisions of Articles 17, 18, and 23 of the Steel Industry Development Policy. The EC invited China to respond to the questions raised in this communication.

21. On JV Ownership Limitations and Local Content Requirements in the Petrochemical, Chemical, Energy and Environment sectors, he said that the Chinese Authorities maintained foreign investment ceilings in these sectors – in some cases limiting foreign partners to below 50 per cent – which impeded further growth and investment. Moreover, local content requirements applied for the construction of new plants. In particular, these local content requirements could be as high as 60 per cent for new projects in the renewable energy sectors. Such requirements might also be extended to other sectors such as chemicals. These measures appeared to be clearly inconsistent with both the TRIMs Agreement and the specific commitments of China under Paragraph 7.3 of its Protocol of Accession. Accordingly, the EC invited China to provide the clarifications requested in its written communication.

22. In conclusion, he said that the EC looked forward to the further responses and additional information that China could provide at the present meeting on these and all the other points raised in its communication in G/TRIMS/W/50.

23. The representative of China said that his delegation was pleased to have the opportunity to exchange views where delegations had raised questions, comments and concerns under this TRM item of the agenda.

24. He wished first of all to draw attention to paragraphs 13 and 14 of the Committee's draft annual report in G/TRIMS/W/49 – and particularly to paragraph 14 concerning the TRM report. He thought that the year mentioned in that paragraph should be 2006 rather than 2005 but sought clarification as to whether the present review referred to the TRM one year ago or today. He thought a simpler way to refer to the TRM review was to put the two paragraphs together and just mention that this review had taken place on whatever day and refer to what documents had been received. One paragraph would be cleaner and would be without any misunderstanding about specifically the time of the transitional review.

25. With regard to the questions and documents submitted by the US and the EC under the TRM agenda item, he first wished to make some general comments and then would invite the Chinese representative from Capital to address some of those specific issues or questions.

26. First, his impression was that Members obviously had expectations beyond the mandate of this TRM item or beyond this Committee. He had carefully read the documents submitted by the EC and the US in which, for instance, they had raised some issues concerning equity, investment limits, or the "2+2" issue. He had tried to find how these elements related to the TRIMs Agreement and to China's specific accession commitment but failed to do so. He understood, of course, that in the on-going Doha negotiations Members had also put some similar requests to China. For instance, in the negotiations in Services that China had been asked to raise its equity limit or investment ratio for foreigners in certain sectors. Although that was understandable, he hoped that the delegations who submitted questions in the TRIMs Committee could find that their questions and comments related to either the TRIMs Agreement itself or to China's specific accession commitment. China had no obligation to respond to those issues that were beyond the mandate of this Committee under this item, or beyond the mandate and scope of the TRIMs Agreement.

27. Another point he wished to make concerned the procedural issue. For instance, in his statement at the present meeting, the EC delegate had said that in the past China had failed to provide to them answers in a fully satisfactory fashion and that was the reason why the European Communities had been repeatedly asking the same questions. He would be grateful if the EC delegation could provide China with a definition of what was a "fully satisfactory fashion answer" to help it prepare an answer that hopefully would fully satisfy the EC. As far as he understood it, the purpose of this [TRM] exercise was to carry out the mandate under Paragraph 18 of China's Accession commitment for a transitional review. Paragraph 18 did not say that China had to provide an answer in a fully satisfactory fashion to a certain Member. If Paragraph 18 had this kind of requirement he was sure his delegation would be more than willing to try to fully satisfy the request of Members. Otherwise, he hoped that Members could refrain from making these kinds of requests that were beyond the mandate because it would be impossible and very difficult for China to provide the kind of satisfaction wanted by some Members.

28. Concerning China's communication in G/TRIMS/W/51, which the EC said had been circulated only yesterday, he understood that China had provided this document to Members some days ago. If one looked at the legal requirement for this matter, China was to provide relevant information to the relevant bodies under the TRM and Paragraph 18. There was no requirement as to how far in advance China had to provide this kind of information. Therefore, as long as the information was provided in advance of the present session – for instance even five minutes before the meeting – that was legitimate. He hoped that the European Communities therefore understood better the nature, the characteristics, the requirements, and the mandate of Paragraph 18 on the transition review and would refrain from making requests that went beyond the mandate of the TRM.

29. He wished once again to thank the delegations of the EC and the US for their questions and said that his colleague from Capital would address some of those specific questions.

30. The representative of China said that under the agenda item of the transitional review of the TRIMs Committee this year, he was willing to clarify the following issues in relation to the questions and comments that China had received before the meeting.

31. Firstly, regarding the new *Automobile Industry Development Policy*, China noted that there were concerns regarding Article 47 of the Policy which involved the establishment of R&D facility. China would like to make the following clarifications. First of all, as China had explained in previous meetings, the industry development policies promulgated by the Chinese government aim at providing macro development guidance for the industries. They were not compulsory themselves. According to his knowledge, so far, the Chinese government had not enacted any follow-up rules on administration of the investment in the auto manufacturing sector to implement the policy.

32. Secondly, Article 47 of the Policy referred to the automobile manufacturing project, instead of the foreign investment or investor that may be involved in the project. In view of the fact that foreign investment in auto manufacturing sector can not go beyond 50 per cent, China did not see that this was a mandatory requirement on the foreign investor, or that the right of investment of foreign investors was conditioned upon the conduct of R&D. Therefore China believed that it was not necessarily inconsistent with either the TRIMS Agreement or China's accession commitment.

33. As to the "technology transfer" issue, he said that it was surprising that this was brought up again at the present meeting. He believed that China had already made clear and complete clarification on this issue in previous meetings. He wished simply to repeat China's positions which could be found in the minutes of previous meetings. The document regarding the source of technology as required to be provided during the registration of an automobile manufacturing project aimed at examining the authenticity of the source of technology and of the content of project, not at technology transfer. This requirement was applied across the board both to domestic and foreign enterprises. Furthermore, requirement of such a document was also important to the protection of intellectual property rights with the legitimate right of the technology transferee, if applicable, and the right of the holder safeguarded.

34. Regarding the "2+2" issue which was also a repetition, China believed that it was legitimate for the Chinese government to provide guidance on development of the industry based on its independent judgment of the maturity of the industry. This was not in any way related to WTO rules or China's accession commitment.

35. Regarding the amendment to the new *Automobile Industry Development Policy*, China would highly appreciate if the Member that brought that question could identify its source of information, for the Chinese government currently had no plan to revise or amend the *Automobile Industry Development Policy*.

36. With regard to the *Steel Industry Development Policy*, China did not see that the question regarding the requirement of 40 per cent self-owned capital in the investment for a project was related to the mandate of this Committee, or rules of this Organization, or China's accession commitment. Questions regarding foreign stake limitation, as well as criteria for foreign investors in this sector, were not related either. These were, rather, issues to be discussed if there would be a multilateral investment agreement.

37. On questions regarding outdated equipment, they referred to those with high level of energy and resource consumption, poor product quality and heavy pollution which cannot reflect the development trend of the steel industry. The catalogues of outdated production capacity, techniques and products were determined with reference to such criteria as energy consumption level, resource consumption level, quality of the products and environment pollution level, etc.

38. On questions regarding Article 18 of the Policy, the Chinese government had not enacted any implementing measures.

39. On questions regarding ownership of independent technology by investment party as said in the Policy, China believed this was a qualification criterion on the investor, which was different in nature from a compulsory technology transfer requirement. China saw no inconsistency with China's accession commitment as contained in Article 7.3 of the Accession Protocol and Paragraph 203 of the Working Party Report.

40. On the issue of differentiation in treatment between domestic and foreign enterprises, he first wished to quote a few lines from paragraph 22 of the document provided by the EC, which read "As for foreign non-steel investors, the same Article states that 'overseas non-steel enterprises wishing to invest in the steel sector must demonstrate a high level of public trust'." Article 23 appeared thus to discriminate between domestic and foreign companies in that higher production volume thresholds were being set for foreign investors as compared to domestic common steel enterprises." Here, he wished to refer to the original text of the *Steel Industry Development Policy*. Just two lines above the EC quotation of "overseas non-steel enterprises wishing to invest in the steel sector must demonstrate a high level of public trust", it clearly stipulated that "domestic non-steel enterprises wishing to invest in the steel sector must demonstrate a high level of fund and public trust". The requirement in this regard on domestic enterprises was the same as foreign ones.

41. Regarding the recently promulgated *State Council Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries*, he wished to point out that there was no restriction on foreign investment stipulated. It only stipulated that for those enterprises which concerned national security and national welfare, the State should have a controlling ownership. This was a common practice in many countries. The Opinion applied to the manufacturing industry, and there was no plan to extend it to other sectors. China saw no inconsistency of this document with its obligations under the TRIMS Agreement, other WTO rules and its accession commitment.

42. Regarding the question on enforcement of the contracts which contain conflicting terms with provisions in the TRIMs Agreement, China had 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. The revision included the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance, compulsory technology transfer, and etc. The Chinese government will respect freedom of contract. If the articles of association or contract of enterprises with foreign investment approved before amendment of the relevant laws contained terms on foreign exchange balance, local contents, and export performance, the investors may decide by themselves whether to change the terms. If there was an agreement to change, they may file the application to relevant authorities to change their articles of association or contract of enterprises accordingly. And the application will be processed timely and in a manner consistent with the TRIMs Agreement. A related question in this regard was on "local content requirement" in the energy and chemical industry. In view of the legislation revision mentioned above, China was not aware of any local content requirement in these sectors.

43. Regarding the revision of the *Industrial Catalogue for Foreign Investment*, the Chinese government was currently doing studies with considerations including the economic and social development need, the future trend in absorbing and utilizing FDI, and the consistency with WTO rules.

44. Regarding the *Regulations for the Implementation of the Law of the People's Republic of China on Sino-Foreign Equity Joint Venture*, Article 41 of the Regulation aimed at making sure that the technology was "appropriate and advanced", while "display conspicuous social economic results

domestically or to be competitive on the international market" was the result of the "appropriate and advanced" technology. The purpose of this provision was to stress the importance of technology being "advanced and appropriate", not to enforce a performance requirement.

45. Regarding the new Merger and Acquisition regulation, it should be pointed out that before the regulation was promulgated, the Chinese government held public consultations by way of meetings with academic scholars and industry experts, as well as with quite a number of companies, law firms and consulting firms, both foreign and domestic. On other questions concerning the regulation, frankly speaking China did not see that it was related to the TRIMS Agreement, or the mandate of this review mechanism. China was entitled to improve further its FDI regime and in this respect it saw no inconsistency with WTO rules and the accession commitment.

46. The Chairman said that, as concerned the competence of the Committee as well as the adequacy of the questions asked under the mandate of this Committee, it was not his role to decide about the competence of the Committee. This was something that depended on the will of the Members. He wished to recall that this exercise in this Committee was an exercise in transparency. It was based on cooperation and was to allow all Members to understand better the Chinese legislation on a whole series of matters connected to investment. It was not a point of challenging the Chinese legislation, whether it was compatible or incompatible. He believed that all Members were interested in seeing that the discussions in the Committee be as complete, as precise, and as cooperative as possible. There were other fora in the Organization where one could challenge the compatibility of the legislation of Members with the WTO rules. In the TRIMs Committee Members should have a complete and precise discussion on all these matters and it seemed to him that, at the present meeting, Members had heard the precise questions raised by the United States and the European Communities and the replies by the Chinese delegation. He thanked both the United States and the European Communities for their questions, and also thanked China for having participated in this exercise and for their comments.

47. The representative of the United States agreed with the Chairman's comments on the importance of transparency in this type of exercise and said they were very eloquent and appropriate for the present meeting. He urged the Chinese delegation to take those comments into consideration. He said he was puzzled at China's resistance to answer questions that had been provided in a recently held bilateral dialogue with China where many of these questions had been answered.

48. The representative of the European Communities thanked China for its responses and the information it had provided. He considered that China's statement contained some quite important material, and said that it would be very helpful to receive the statement in writing, if possible, rather than having to wait for the Minutes of the meeting to be circulated. On a more broader point, he said that the purpose in the TRM was one of transparency against the mandate of reviewing implementation by China of its commitments. That process of review depended, for practical purposes, on a question-and-answer process and on an opportunity for Members to bring their concerns to the table, and for China to give its response. The EC continued to believe that for the TRM to be as useful as it should be a certain amount of preparation was also called for. It was clear that the preparation of the Chinese statement at the present meeting had been quite substantial and quite significant for which the EC wished to thank China. Of course, if the document had been received a little earlier the EC could have prepared some follow-up questions as well and could have struck out some of the questions to which China had already given a response. However, he was reluctant to engage in a discussion on the consideration as regards the mandate of the relevance to the TRIMs Agreement. Also, it seemed to him that China had not responded, or had responded differently, to some particular questions, for example those put by the United States on requirements concerning technology transfer. Essentially, the European Communities wished to thank China for at least providing some material and some substance in their response. He reiterated the EC's request that China share their response with the Committee by providing it in writing. The EC would, of

course, study the response and if there were any further points for which they needed clarification, his delegation would probably contact China bilaterally.

49. The representative of Malaysia said that his delegation did not have any question concerning China's TRM. However, if he had understood well what the Chairman had said about looking at transparency with relation to investment, Malaysia was not sure that the TRIMs Committee had a mandate to discuss investment *per se*. This was a Committee on TRIMs, and it was basically an issue of trade-related investment measures and those issues related to TRIMs were just part of the Chinese accession. His delegation just wanted to be sure that what was being done corresponded to the mandate of the Committee and to what the TRM exercise was all about.

50. The Chairman said that he sensed that Malaysia's last question might be directed at himself more than at China. He did not, of course, expect the TRIMs Committee to take up the entire WTO negotiations on investment; the TRIMs Committee was not the place to do that and there might be other times and other places where this would be done. His remark had only been directed at making all Members understand that the interest of this Committee, and the interest of all the Members, was to have a broad discussion so that it was clearly understood what Members were doing in order to avoid problems that might end up in other forums of the Organization. His wish was therefore to have the broadest discussion possible in the TRIMs Committee and, of course, within the mandate of the Committee.

51. The representative of China said that he understood the Chairman's wish to have a broader complete discussion and, as he had also mentioned, of course within the mandate of this Committee and its Agreement. He wished first to take the opportunity to thank Malaysia for its remarks because he believed that the questions raised were not only pertinent to the Chairman but to every Member; how this Committee handled its discussion and work deliberations. For instance, there were a lot of investment measures, but not all of them were related to trade. So the mandate of this Committee or the TRIMs Agreement only applied to those investment measures related to trade in goods. Of course China was willing to help to promote transparency for this Committee within this mandate, but if the transparency requirement of a Member went beyond this mandate, it would be difficult for China to apply and to try to help them to do that. If China did that it would be illegal because it was against the mandate or went beyond the mandate. So, on China's part, it had to refrain from doing things that went beyond the mandate of the TRIMs Committee.

52. China would again like to take the opportunity to thank the EC delegate for his comments. Although China had no obligation to provide a written response or answer to the questions or comments from Members, he said that China could give positive consideration to this particular request by the EC, and could discuss it with the EC delegate to help him in his work and in the work of the EC delegation as a whole. The EC had mentioned the issue of technology transfer. China said that the point he wanted to draw participants' attention to was that Members had to make a distinction between the performance requirements of technology transfer and the requirement of demonstrating necessary investor competence. For instance, if China's regulation requested an investor to demonstrate necessary competence in terms of a possessed modern technology, that did not mean that China was requiring them to transfer that technology. For example, if the Chinese delegate asked someone to demonstrate his driving skills, that did not mean that that person was being asked to transfer his driving skills to the Chinese delegate. He asked Members to make a distinction between the two.

53. With regard to the US questions, there had been several points that mentioned that China seemed to have failed to address specific issues such as the Merger and Acquisition regulation, industrial machinery, and the US had requested that China provide information on the legal effect of Opinions and describe this kind of legal effect. The questions that China wished to put to the United States were the following: Could the US please help China to establish the relation of its question

with TRIMs. How did it relate to TRIMs Article 1. How did it relate to a specific commitment of China and of TRIMs. If the US was able to provide China with legal evidence that there was a relation between Article 1 of the TRIMs Agreement and the US questions, China would be more than willing to help the United States with this kind of information.

54. The representative of Korea said that his delegation understood China's logic and legal point of view, as well as China's reluctance to provide a written response. As the Chairman had mentioned, Korea felt that it was a good exercise to try to understand each other in a cooperative way and not to put pressure on anyone. This was a trade policy review, and his delegation thought it was better to have a dialogue among Members, to raise questions and to exchange information. Korea could also understand China's intention and the policy implications which it wished to raise. If one was to raise the question of the competence of the TRIMs Committee it would be very difficult to continue the discussion, so Korea hoped that Members were not going to engage in that kind of discussion. Of course, Members could raise the question, but if one was aiming at doing things in a cooperative way, all trade in goods was related to all the policies. So, in that sense, Korea could understand why such a question had been raised. China had provided information and Members had to continue this kind of mechanism in a cooperative way.

55. The representative of the United States said that some of the questions put by his delegation did directly raise concerns about China's commitments either under the TRIMs Agreement or under its Protocol of Accession. He referred here to the US questions about the Auto Policy and about the Steel Policy. Not all of the United States' questions dealt with specific concerns about whether or not China may or may not be adhering to particular commitments. He reiterated that this was a transparency exercise and in some areas the United States was just trying to learn more to get clarification from China as to what its policies were. It was difficult to know whether particular provisions of the TRIMs Agreement may be implicated or not. With regard to the State Council opinions and the Merger and Acquisition regulations, the United States was just trying to gain more information at this point consistent with the Chairman's statement about the fundamental principle of transparency.

56. The Chairman said that with respect to the Committee's reporting obligation to the Council for Trade in Goods, he understood that Members would wish the Committee to follow the same procedure that had been adopted in previous years, i.e., the Chairman would submit a brief, factual report, which would include references to the submissions made in connection with this year's review and would contain in the Annex the relevant parts of the Minutes of this meeting. He had taken the liberty of asking the Secretariat to prepare a draft outline of his report for Members' consideration. This had been circulated as document G/TRIMS/W/48. If Members agreed to this outline, and once the relevant sections of the Minutes had been attached to it, he would forward the report to the Council for Trade in Goods.

57. The Committee took note of the statements made under this item and agreed on the proposed procedure to discharge its reporting obligations concerning China's TRM.
