

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 held the second annual review under China's Transitional Review Mechanism (TRM) at its meeting on 3 October 2003.
3. Written comments and questions in connection with China's TRM were submitted in advance of the review by the European Communities and the United States. These submissions were distributed in documents G/TRIMS/W/31 and G/TRIMS/W/32, respectively.
4. In a communication dated 1 October 2003, China submitted information on Annex 1A of its Protocol of Accession in the context of the TRM. This submission was circulated as document G/TRIMS/W/34, dated 2 October 2003.
5. Reproduced as Annex 1 to this document are the relevant sections of the Minutes of the TRIMs Committee meeting held on 3 October 2003 in which the substantive discussions on China's TRM are reflected.

Annex 1

Relevant Sections of the Minutes
of the Meeting held on 3 October 2003

(G/TRIMS/M/18)

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 WTO 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 first review had taken place in October 2002 and the corresponding report had been forwarded to the Council for Trade in Goods as document G/L/586. He said that with respect to the review for 2003, in order to fulfill its task in a timely manner, it would be necessary for the TRIMs Committee to undertake the review and submit its report in advance of the meeting of the CTG scheduled for 24 November. 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 information submitted by China on Annex 1A of its Protocol of Accession had been circulated in document G/TRIMS/W/34, dated 2 October 2003. In addition, questions in connection with China's Transitional Review Mechanism had been submitted by the European Communities (G/TRIMS/W/31) and by the United States (G/TRIMS/W/32). He then announced his intention to conduct the review as follows: the floor would be given to the delegation of China to introduce its submission; delegations that had addressed questions to China – in this instance, the European Communities and the United States – would then be invited to take the floor; other Members would then be given the opportunity to speak; and finally, the delegation of China would be invited to make any additional comments. As regards the Committee's reporting obligation to the Council for Trade in Goods, he referred to the 2002 review for which the Committee had agreed that the Chairman should submit to the CTG a short, factual report referring to all relevant documentation submitted for that review. In addition, the minutes of the meeting reflecting the substantial discussions held by the Committee on this issue were attached to the report. It was his understanding that Members would wish the Committee to follow the same course of action as last year's review. In other words, he would put up a draft factual report which would include references to all the submissions made on this issue and to which the relevant parts of the Minutes of this meeting would be attached. The report would be circulated to all Members before it was submitted to the Council for Trade in Goods.¹

5. In reply to a question by Brazil regarding the Committee's approval of the final report to the Council for Trade in Goods, the Secretariat said that the Chairman's proposal concerned procedure and not the adoption of the report itself. The report that should be made to the CTG would be a report on the responsibility of the Chairman and the pertinent sections of the Minutes and all other relevant documentation would be attached to the report.

6. The Committee agreed on the procedure proposed by the Chairman.

7. The Chairman then invited the representative of China to introduce its submission.

8. The representative of China introduced its submission in G/TRIMS/W/34, which elaborated on China's efforts and achievements in implementing its relevant obligations during the second year

¹ A draft Report of the Chairman was distributed to the Members at the meeting for their consideration.

since its accession, and also replied to written questions that had been submitted by Members (statement reproduced in Annex 1).

9. The representative of the European Communities thanked China for its written submission and for its oral presentation which completed the information given therein. He said that since his delegation would need to digest and analyse all the information, he was not in a position to provide any definitive reactions at the present meeting. His delegation therefore reserved the right to come back to those questions with possible follow-up comments and questions.

10. The representative of the United States thanked China for its written submission and said that, together with the oral presentation made at the present meeting, it was clear that China was trying to be responsive to the questions that had been put. He would forward the information to his authorities and if the United States had any further follow-up comments to make then this would be made known.

11. The representative of Japan thanked the Chinese delegation for its submission and explanation regarding its efforts and achievements in preparing for the second TRM review, and also thanked the European Communities and the United States for their submissions. As his delegation had already explained at the Committee's last TRM review, Japan registered its strong interest in the Chinese new automobile industry policy as well as its measures related to the TRIMs Agreement and China's commitments. It was Japan's understanding that such a new automobile industry policy would be implemented in consistency with the TRIMs Agreement and the current commitments of China. Japan hoped that the new policy would soon be published and its details made known.

12. The representative of China thanked the European Communities, the United States and Japan for their comments and questions and reiterated that China was prepared to work very closely with its trading partners and WTO members to fulfil its commitments under the TRIMs Agreement and under the terms of its Protocol of Accession. China's goal was to see that all its policies as far as they related to TRIMs were consistent with its requirements and commitments. China wanted to continue to make its investment climate attractive to foreign investment and believed that this would be very helpful to China's economic development. For that purpose, he said that China would be very cooperative with the WTO Members and with all foreign investors.

13. The Chairman commended the delegation of China for its efforts in preparing for the review and in replying to the questions that had been submitted. He also thanked all other delegations for their active participation in the exercise.

14. The Committee took note of the statements, approved *ad referendum* the Report of the Chairman to the Council for Trade in Goods, and agreed that the Report, to which would be attached as an annex the relevant sections of the Minutes of the present meeting, be submitted to the Council for Trade in Goods.

Annex 1

Statement by the Representative of China

1. Thank you for giving me this opportunity to introduce China's implementation of Agreement on Trade-Related Investment Measures (TRIMs Agreement) and its relevant commitments upon accession.

2. In advance of this meeting, China has submitted the information required by Annex 1A to the Protocol of Accession to the TRIMs Committee, which elaborates on China's efforts and achievements in implementing its relevant obligations during the second year since its accession. As the document containing the information has been circulated by the committee, I will not repeat the content in my presentation for the sake of brevity.

3. Mr. Chairman, before review, we have received some questions raised by some members concerning China's implementation of TRIMs Agreement. In response, I would like to make some necessary explanation and clarification on these issues.

1. On the revision of the Guiding Industrial Catalogue for Foreign Investment.

On February 11, 2002, State Council of China promulgated newly-amended the Regulation on Guiding the Foreign Investments. Afterwards, strictly according to WTO rules and commitments upon accession to WTO, China amended the original Guiding Industrial Catalogue for Foreign Investment in a comprehensive manner. It was made effective as of April 1, 2002. The Catalogue lists 371 industries and divides them into three categories including "encouraged", "restricted" and "prohibited" for foreign investment, of which 262 are encouraged, 75 restricted and 34 prohibited. All the industries not listed in the Catalogue are considered as permitted. The contents in relation to liberalization committed by China upon accession are listed in the Attachment to the Catalogue. In addition, requirement for technology transfer has been eliminated in approving the foreign investment.

2. On the enforcement of the contracts which contain conflicting terms with provisions in TRIMs agreement.

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. The revision includes the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance, compulsory technology transfer, and etc. This revision has got extensive media coverage. Chinese government respects freedom of contract. If the articles of association or contract of enterprises with foreign investment approved before amendment of the relevant laws contain the terms on foreign exchange balance, local contents, and export performance, and the investors on both sides can reach an agreement, they may file the application to relevant authorities to alter or nullify those terms. The application will be processed timely and in a manner consistent with TRIMs agreement.

3. Questions concerning the new Policy on the Development of Auto Industry

Upon join the WTO, China has eliminated or ceased to implement the provisions like foreign currency balancing requirement, local content and etc., which were contained in the 1994 Automobile Industrial Policy.

The newly drafted Policy on the Development of Auto Industry is now with the State Council for approval. During the process of enactment, we published the draft of new policy on the website for the opinions from all walks of the society. General Motors, Association of Automobile Industry in Japan and some companies in EU are among those who submitted comments. Afterwards, we have sent the draft directly to the companies in the industry, the research institute and scholars alike for their inputs, and explicitly require the Chinese parties of joint ventures to solicit the opinions of their foreign partners. Beside that, extensive and in-depth exchanges of ideas, discussions and consensus building have been conducted with many foreign auto makers on a number of specific issues.

4. I hope the information provided by China and my statement could help members to understand China's fulfilment of TRIMS Agreement and its commitments. My colleague and I would like to have further exchange of views with members if they may have follow up questions on the issues mentioned above.
