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## South-South Integration and the SDGs: *Enhancing Structural Transformation in Key Partner Countries of the Belt and Road Initiative*

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# Opening its Doors to Foreign Investment: The Evolution of Trade-Related Investment Measures and their Economic Impacts in China

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### Abstract

Over the past 40 years, China has developed from a closed and backward agricultural country to the second largest economy in the world, and the evolution of TRIMs policies provides a unique analytical perspective for exploring the "miracle" of China's economic growth. This paper reviews the development of China's TRIMs policy over the past 40 years and its major economic impacts, and explore lessons learned from China's introduction of foreign direct investment while ensuring and using policy space to promote economic development. It mainly provides the policy evolution of four trade-related investment measures, including local content requirements, trade and foreign exchange balancing requirements, export performance requirements and technology transfer requirements. It also discusses the theoretical logic of policy changes in terms of TRIMs from the perspective of economic ground and political consideration. The analysis in this paper indicates that China's gradual reduction of TRIMs is generally beneficial to China's economic growth, export expansion and technological progress. Furthermore, the acceptance of TRIMs-plus rules by developing countries requires comprehensive trade-offs and reciprocal benefits, and the "gradual opening up" policy are able to help developing countries to partially resolve the potential risks they are facing when accepting high-standard international rules.

**Key words:** TRIMs, International trade, FDI, WTO, China



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## Introduction

With the rise of globalization in the 1980s, trade and investment as two sides of the coin of the process have increasingly formed a “symbiotic and integrated relationship” (Ruggiero,1996). Driven by developed countries, trade-related investment measures (TRIMs) have been included in the Uruguay Round of negotiations which launched in 1986. However, there is a deep division between developed countries and developing countries on the issue. Developed countries believe that TRIMs cause distortions in patterns of trade and investment, whilst developing countries argue that some types of TRIMs can be useful policy instruments to promote development goals and strengthen trade balances (UNCTC and UNCTAD, 1991). As the developing countries strong opposition, the finally concluded a short agreement - Agreement on Trade-Related Investment Measures (TRIMs Agreement) - limits the coverage of the agreement to investment measures related to trade in goods. In addition, the TRIMs Agreement is merely the interpretation and clarification of the existing GATT provisions on the national treatment of imported goods (Article III) and the prohibition of quantitative restrictions on imports or exports (Article XI). The TRIMs Agreement does not cover a wide variety of trade-related measures that have been discussed during the Uruguay Round negotiations, such as export performance and technology transfer requirements.<sup>1</sup> Additionally, it is worth noting that the TRIMs Agreement “does not impact directly on WTO members' ability to regulate and place conditions upon the entry and establishment of foreign investment” (UNCTAD, 2007), namely it does not have the function of promoting investment liberalization. Thus, some scholar argued that “the negotiations on investment issues in the Uruguay Round ended before they really got started” (Schott, 1994). However, the TRIMs Agreement provides an opening for further negotiations in the future (WTO Secretariat ed., 1999). After the TRIMs agreement comes into effect, some newcomers to the WTO, including least developed countries, have been obliged to eliminate additional performance requirements as part of the terms of their accession, notably requirements with respect to export performance and technology transfer (UNCTAD,2001).

In 1978, China made a historic decision on reform and “Open-door Policy”. Over the past 40 years, China has developed from a closed and backward agricultural country to the second largest economy in the world. Indeed, China’s reform experience allowed it to not only attain the SDG’s predecessor, the Millennium Development Goals, but to go well beyond them. According to statistics from the Chinese Ministry of Commerce, in terms of foreign trade, the total import and export volume of China's goods increased from US\$20.64 billion in 1978 to US\$4.62 trillion in 2018, an increase of 223 times. Furthermore, in terms of utilizing foreign investment, since the approval of the first batch of three foreign-invested enterprises in 1980, China had established a total of 960,000 foreign-invested enterprises by the end of 2018, with the cumulative actual use of foreign capital exceeding US\$2.1 trillion. China's achievements are closely related to its pragmatic approach of “crossing the river by feeling the stones” to promote its reform and opening up policy, which also includes China's foreign trade and investment policies particularly TRIMs.

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<sup>1</sup> During the Uruguay Round negotiations, GATT participants listed 14 TRIMs, but were strongly opposed by Brazil, India and other developing countries. The 14 TRIMs include investment incentives, local equity requirements, licensing requirements, remittance restrictions, foreign exchange restrictions, manufacturing restrictions, technology transfer requirements, domestic sales requirements, manufacturing requirements, product mandatory requirements, trade balance requirements, local content requirements, export requirements and import substitution requirements. See UNCTC (United Nations Centre on Transnational Corporations) and UNCTAD (1991). The Impact of Trade-Related Investment Measures on Trade and Development (New York: United Nations), p.2.

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Additionally, TRIMs cover a wide range of performance requirements and incentives that governments may impose on foreign investors (UNCTAD,2007). Furthermore, the TRIMs Agreement does not define what is trade-related investment measures, which merely provides in the Preamble that "certain investment measures can cause trade-restrictive and distorting effects"<sup>2</sup>. Therefore, the international community has not yet reached an agreement on its definition. However, an annex to the TRIMs agreement spells out in an Illustrative List of measures that are inconsistent with Article III:4 or Article XI:1 of GATT 1994. The Illustrative List identifies four categories of TRIMs that are local content requirements, trade-balancing requirements, foreign exchange-balancing requirements and exports restrictions. In addition, when China joined the WTO in 2001, China made "WTO-plus" commitments which exceeded the requirements of the WTO TRIMs Agreement in the Protocol on the Accession of China<sup>3</sup>. Combined with China's practice, the following research will focus on the policy evolution of local content requirements, trade and foreign exchange balancing requirements, export performance requirements and technology transfer requirements.

The purpose of this article is to re-examine the development of China's TRIMs policy over the past 40 years and its major economic impacts, and explore lessons learned from China's introduction of foreign direct investment while ensuring and using policy space to promote economic development. The article proceeds as follows, Section 1 mainly provides the policy evolution of four trade-related investment measures, which include local content requirements, trade and foreign exchange balancing requirements, export performance requirements and technology transfer requirements. Section 2 discusses the theoretical logic of policy changes in terms of TRIMs from the perspective of economic ground and political consideration. Section 3 analyzes the role of the TRIMs policy changes in promoting China's economic growth, export expansion and technological progress. Section 4 is the lessons and conclusion.

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<sup>2</sup>TRIMs Agreement, the Preamble.

<sup>3</sup> WTO document WT/L/432, 23 November 2001.

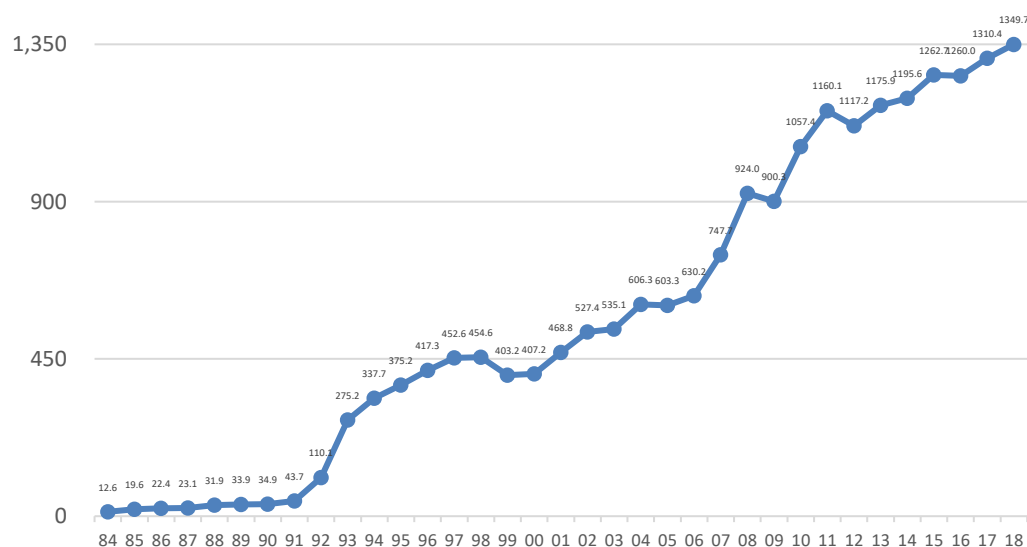
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## 1. The Evolution of China's TRIMs Policy

In the past 40 years of reform and opening up, foreign trade and foreign investment have always been important driving forces for China's economic development. In order to promote foreign trade and attract foreign investment, China has adopted a number of policy measures, including some measures that are inconsistent with the TRIMs Agreement. During China's accession to WTO negotiations, many of them have been eliminated unilaterally. Ultimately, after joining the WTO, China has been striving to eliminate all remaining TRIMs and continuously promote trade and investment liberalization and facilitation.

It is generally believed that the historical process of China's using of foreign capital in the past 40 years can be divided into four stages: the pilot exploration stage (1978-1991), the rapid development stage (1992-2000), the high-level open stage (2001-2011), and all-round opening stage (2012-) (see Fig. 1) (Li, 2019). Among them, the accession to the WTO has played an important role in the reform of regulatory framework of China's using foreign investment. Therefore, the following section will mainly compare and analyze the changes in local content requirements, trade and foreign exchange balancing requirements, export performance requirements and technology transfer requirements based on China's accession to the WTO.

**Figure 1. FDI inflows into China 1984 – 2018 (current US\$)**



Source: Wind Economic Database.

### 1.1 Local Content Requirements

Prior to the accession to the WTO, China had used local content requirements in regulating foreign investment. For instance, article 9 of the first China's foreign investment Law - Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures<sup>4</sup> (Chinese-Foreign Equity Joint Ventures Law) which enacted in 1979

<sup>4</sup> Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures adopted at the Second Session of the Fifth National People's Congress on 1 July 1979, and effective from 8 July 1979; available at <http://en.pkulaw.cn/display.aspx?cgid=44fe519756440da6bdfb&lib=law> . It has been replaced by Foreign

stipulated that an equity joint venture should give first priority to purchase required raw and semi-processed materials, fuels, auxiliary equipment, etc. in China. Article 57 of the Regulation on the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures<sup>5</sup> and Article 15 of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises<sup>6</sup> (Wholly Foreign-Owned Enterprises Law) have similar provisions. The above provisions are inconsistent with the TRIMs Agreement. In accordance with Article 2 of the TRIMs Agreement and the Illustrative list 1(a), the host government may not require the enterprise to purchase or use products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.<sup>7</sup> In the WTO accession negotiations, China made a commitment to eliminate local content requirements. To this end, before the formal entry into the WTO in 2001, China amended the relevant provisions and explicitly stated that the materials such as raw materials, fuels, etc. as needed within the approved scope of business should buy either on the domestic or international market.<sup>8</sup>

After China's accession to the WTO, China complied with the provisions of the TRIMs Agreement and removed local content requirements from its laws and regulations. However, in the case of China – Measures Affecting Imports of Automobile Parts<sup>9</sup>, which is China's first losing case in WTO, the potential conflict between China's elimination of local content requirements and regulation of multinational enterprises was revealed.

The dispute mainly caused by the enactment of the Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles<sup>10</sup> (Decree of the People's Republic of China, No. 125) (Decree 125), which entered into force on 1 April 2005.<sup>11</sup> In

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Investment Law of the People's Republic of China (Issued on 15 March 2019, Effective on 1 January 2020); available at <http://en.pkulaw.cn/display.aspx?cgid=6a88714068b3724dbdfb&lib=law>.

<sup>5</sup> Regulation on the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures promulgated by the State Council on 20 September 1983, and effective from 20 September 1983; available at <http://en.pkulaw.cn/display.aspx?cgid=441904866bbc466cbdfb&lib=law>. It has been replaced by Regulation for Implementing the Foreign Investment Law of the People's Republic of China (Issued on 26 December 2019, Effective on 1 January 2020); available at <http://en.pkulaw.cn/display.aspx?cgid=bb7e08ee6f9a35f4bdfb&lib=law>.

<sup>6</sup> Law of the People's Republic of China on Wholly Foreign-Owned Enterprises adopted at the Fourth Session of the Sixth National People's Congress on 12 April 1986, and effective from 12 April 1986; available at <http://en.pkulaw.cn/display.aspx?cgid=2301cdee64b97477bdfb&lib=law>. It has been replaced by Foreign Investment Law of the People's Republic of China (Issued on 15 March 2019, Effective on 1 January 2020); available at <http://en.pkulaw.cn/display.aspx?cgid=6a88714068b3724dbdfb&lib=law>.

<sup>7</sup> See TRIMs Agreement Annex: Illustrative List.

<sup>8</sup> See Article 10 of the Chinese-Foreign Equity Joint Ventures Law (2001 Amendment), Article 15 of the Wholly Foreign-Owned Enterprises Law (2000 Amendment), and Article 51 of the Regulation on the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (2001 Revision).

<sup>9</sup> WTO document WT/DS342/AB/R, 15 December 2008.

<sup>10</sup> Measures for the Administration of Import of Automobile Components and parts Featuring Complete Vehicles issued by the General Administration of Customs, the National Development and Reform Commission, the Ministry of Finance and the Ministry of Commerce on 28 February 2005 and came into force on 1 April 2005; available at <http://en.pkulaw.cn/display.aspx?cgid=44fe519756440da6bdfb&lib=law>. According to Decision of the General Administration of Customs, the National Development and Reform Commission, the Ministry of Finance and the Ministry of Commerce of the People's Republic of China on Abolishing the Measures for the Administration of Import of Automobile Components and Parts Featuring Complete Vehicles (Order No. 185), which ceased to be effective on 1 September 2009; available at <http://en.pkulaw.cn/Display.aspx?lib=law&Cgid=120964>.

<sup>11</sup> The dispute concerns three legal instruments: Policy on Development of the Automotive Industry (Order of the National Development and Reform Commission (No. 8)), which entered into force on 21 May 2004; Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles (Decree of the People's Republic of China, No. 125), which entered into force on 1 April 2005; Rules on Verification of

accordance with Decree 125, a 25 per cent “charge” shall be imposed on imported auto parts that equal or exceed 60% of the value of the whole vehicle which characterized as complete motor vehicles. The amount of the charge is equivalent to the average tariff rate applicable to complete motor vehicles under China's Schedule and is higher than the average 10 per cent tariff rate applicable to parts and assemblies of motor vehicles. The European Union, the United States and Canada argued that China's measures discriminated against “imported auto parts by encouraging the use of domestic parts in auto parts and vehicle manufacturing in China”<sup>12</sup> and “designed to protect and promote China's domestic auto parts industry”.<sup>13</sup> China contended that the measures were mainly to prevent some multinational auto companies from using the difference in tariff rates between imported motor vehicles (25 per cent) and parts of motor vehicles (10 per cent) under China's Schedule of Concessions. To evade the higher rate of duty that applies to imported vehicles, multinational auto companies import auto parts and components in “multiple shipments”, which are subsequently assembled into a complete vehicle in China.<sup>14</sup> On July 18, 2008, the WTO dispute Panel issued a report ruling that China's measures violated: “(i) Arts. III:2 because they imposed an internal charge on imported auto parts that was not imposed on like domestic auto parts; and (ii) Art. III:4 because they accorded imported parts less favourable treatment than like domestic auto parts by, inter alia, subjecting only imported parts to additional administrative procedures”.<sup>15</sup>

In this case, the Panel has also “avoided directly addressing claims under TRIMs, by choosing to consider the related claims of violation of National Treatment prior to examining the alleged violations of TRIMs” (Trebilcock et al., 2013). Having found that China's measures concerned in this dispute were inconsistent with National Treatment (Article III:2 and III:4, the GATT 1994), the Panel exercised judicial economy with respect to the claim under the TRIMs Agreement and the claims concerning China's obligations under the Accession Protocol.<sup>16</sup> On December 15, 2008, the Appellate Body upheld the Panel's above findings.<sup>17</sup> After losing the case, China notified its compliance with the ruling of the Appellate Body and ceased to implement the Decree 125 from September 1, 2009. It is the first time that China has been forced to revise its industrial policy after China's accession to the WTO. This case vividly reflects the impact of China's entering into the WTO on the formulation of industrial policies by the Chinese government. Compared with the industrial policies of the 1990s, the industrial policies of the Chinese government need to change from the content to the form and to the formulation process after the accession to the WTO (Zhao, 2012). Additionally, compliance with WTO rules has become one of the prerequisites for the formulation of industrial policies. Taking the automobile industry as an example, after China entered into the WTO, the Chinese government is increasingly inclined to manage the automobile industry by formulating fuel consumption standards and emission standards which are in line with WTO rules.

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Imported Automobile Parts Characterized as Complete Vehicles (Public Announcement of the Customs General Administration of the People's Republic of China, No. 4 of 2005), which entered into force on 1 April 2005.

<sup>12</sup> Reports of the Panel, China – Measures Affecting Imports of Automobile Parts, WT/DS339/R; WT/DS340/R; WT/DS342/R, 18 July 2008, paras. 4.13.

<sup>13</sup> Ibid., paras. 7.305.

<sup>14</sup> Ibid., paras. 4.142.

<sup>15</sup> Ibid., paras. 8.1, paras. 8.4, and paras. 8.7.

<sup>16</sup> Ibid., paras. 7.368.

<sup>17</sup> Reports of the Appellate Body, China – Measures Affecting Imports of Automobile Parts, WT/DS339/AB/R; WT/DS340/AB/R; WT/DS342/AB/R, 15 December 2008.

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It is worth noting that local content measures have been favoured by many countries after 2008/2009 financial crisis. A study claims that in the 2008/2009 recession more than 100 new local content requirements have been adopted by advanced economies and developing countries (Hufbauer et al., 2013). Some scholars also define local content measures as “condition the grant of a benefit on the use of local goods and/or services in producing goods and/or services”(Hestermeyer et al., 2014). Compared with the definition of local content requirements in the TRIMs Agreement, this definition greatly expands the scope of local content measures. The local content requirements prohibited in the TRIMs Agreement are limited to trade in goods, excluding trade in services.

## 1.2 Trade and Foreign Exchange Balancing Requirements

Like many developing countries, given its limited reserves of hard foreign currencies to meet the demand for imports, China sought to limit the outflow of foreign currency by introducing requirements on trade balancing and foreign exchange balancing by enterprises in the early days of reform and opening up. To avoid the net loss of foreign exchange, resulting in an imbalance in external revenues and expenditures, a relatively strict foreign exchange management system was implemented in China.

Prior to 2000, article 18 of the Wholly Foreign-Owned Enterprises Law clearly stipulated the balance of foreign exchange receipts and payments of enterprises and required foreign-invested enterprises to balance their own foreign exchange receipts and payments. Article 75 of the Regulation on the Implementation of the Law of the People Republic of China on Chinese-Foreign Equity Joint Ventures provided that foreign exchange receipts and payments of Chinese-foreign equity joint ventures should generally be balanced. From the practice situation in the 1980s, the foreign exchange imbalance of foreign-invested enterprises was relatively common. For Guangdong Province, which uses more foreign capital, about half of Chinese-Foreign Equity Joint Ventures and Chinese-Foreign Contractual Joint Ventures are unable to balance foreign exchange receipts and payments (Zhang,1986). To this end, the State Council issued Regulations on the Balance of Foreign Exchange Income and Expenses of Sino-foreign Joint Ventures in 1986. Subsequently, in 1992, the former Ministry of Foreign Economic Relations and Trade promulgated Measures for Foreign-invested Enterprises to Purchase Domestic Product Exports to Solve Foreign Exchange Balance and proposed that foreign-invested enterprises should be included in the national unified foreign exchange plan and carry out foreign exchange adjustment and comprehensive compensation, as well as reinvest in RMB income and export products in exchange for foreign exchange to solve their foreign exchange balance deficit problem. The above provisions are all due to the strict prohibition of foreign exchange restrictions on the free exchange of RMB into foreign currencies by foreign companies (Yang,2001).

After China officially submitted the application for resumption of its status as a GATT contracting party in 1986, the relevant GATT parties requested China to speed up the reform of the foreign exchange management system and implement Article 8 of the International Monetary Fund Agreement as quickly as possible (Zhen,2001). With the continuous development of China, China's foreign exchange system was undergoing major reforms in 1994, and the RMB current account was conditionally convertible. Since July 1, 1996, the foreign exchange trading of foreign-invested enterprises has been included in the bank's foreign exchange control system, which has eliminated the foreign exchange control under the current account of foreign-invested enterprises. At the end of 1996, China announced its acceptance of the obligations of Article 8 of the

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International Monetary Fund Agreement, thereby realizing the full convertibility of the RMB current account and bringing China's foreign exchange management system in accordance with international practices. Under the new situation, the provisions of the original Wholly Foreign-Owned Enterprises Law on self-solving foreign exchange balances by foreign invested enterprises have not been compatible with China's foreign exchange regulatory system reform and market economy development. At the same time, considering that these provisions are inconsistent with Articles 1b and 2(a) and (b) of the TRIMs Illustrative List, China eliminated the provisions of Article 18 of the Wholly Foreign-Owned Enterprises Law in 2000, and revised the Regulation on the Implementation of the Law of the People Republic of China on Chinese-Foreign Equity Joint Ventures in 2001.

### 1.3 Export Performance Requirements

Unlike local content requirements and trade and foreign exchange balancing requirements, the TRIMs Agreement does not cover export performance requirements<sup>18</sup>, although which is considered one of the most trade-related investment measures (Edwards et al., 1997). However, China has committed to eliminate export performance requirements in a very broad and absolute manner in the Protocol on the Accession of China (Han, 2017). Article 7(3) "Non-Tariff Measures" of the Protocol sets forth China's undertaking, which has been considered as a special "WTO-plus" obligation undertaken by China as a new member to join the WTO (Qin, 2003).

**"..... China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licenses, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on: whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China." <sup>19</sup>**

The issue of product sales of foreign-invested enterprises was once a touchy one for China's introduction of foreign investment. The main purpose of market-seeking multinational enterprises investing in China is to enter into China's large and promising domestic market. Therefore, they are very concerned about whether the products of their invested companies are able to be allowed to sell in China's domestic market, and generally require that all or most of their products are able to be sold in Chinese domestic market. However, judging from the national conditions of China at the time, the shortage of foreign exchange determined that it could not afford foreign exchange for the import of equipment, raw materials and wages for foreign workers (Zhang, 1986). Therefore, before China's accession to the WTO, there are a host of regulations in China's foreign investment regulatory regime that require foreign-invested enterprises to export certain proportions, quantities or values of their products to the international

<sup>18</sup> In a case pitting the United States against Canada in 1984, the panel considered the export performance requirements were not inconsistent with GATT obligations. The Uruguay Round negotiations did not change the situation. See UNCTAD (2007).

<sup>19</sup> Protocol on the Accession of the People's Republic of China, WT/L/432, 23 November 2001, Article 7(3).

market. For instance, Article 3 of the Wholly Foreign-Owned Enterprises Law provides that enterprises with foreign capital shall market all or most of their products outside China. The Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises<sup>20</sup> (Detailed Rules of the Law on Wholly Foreign-Owned Enterprises) further stipulates that one of the statutory requirements for the establishment of wholly foreign-owned enterprises are "[t]he annual output value of the export products accounts for 50% or more of the total output value of all products of the year" by the enterprises.<sup>21</sup> However, such regulations will inevitably lead to a decline in China's attractiveness to market-seeking multinationals. To better resolve or mitigate this contradiction, China has adopted some investment promotion measures that combine export performance requirements with investment incentives. For example, article 6 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises<sup>22</sup> stipulates that the state encourages the establishment of foreign-invested enterprises that export all or most of their products. Article 75(7) of the Detailed Rules for the Implementation of the Income Tax Law of China for Enterprises with Foreign Investment and Foreign Enterprises<sup>23</sup> provides that export enterprises with export value of 70 per cent or more of the output value of the enterprises in that year may enjoy a halving tax concession.

Although the goals of China's making the above provisions is to promote the balance of foreign exchange receipts and payments and adapt to the development of export-oriented economy. However, it is contrary to the principle of market economy. One year before China's accession to the WTO, China amended Article 3 of the Wholly Foreign-Owned Enterprises Law and provided that the state encouraged the establishment of export-oriented or technologically advanced foreign-capital enterprises. The Detailed Rules of the Law on Wholly Foreign-Owned Enterprises had been amended simultaneously, which changed the requirements for export performance of enterprises to encouraging enterprises' exports.

With the development of China's economy, China's foreign exchange funds continue to accumulate, the economic basis for foreign-invested enterprises in China enjoyed the "super-national treatment" no longer exists. The negative effects of preferential taxation enjoyed by foreign-invested enterprises are increasingly prominent, such as the control or monopoly of certain areas by foreign-invested enterprises and the phenomenon of "fake foreign investment", which seriously stifle the development of domestic enterprises in China and destroy the market environment. Therefore, in 2008, China promulgated a new Enterprise Income Tax Law, which imposed a unified 25% income tax rate on state-owned enterprises, private enterprises and foreign enterprises, and

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<sup>20</sup> Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises in China issued by the State Council on 12 December 1990, and effective from 12 December 1990; available at < <http://en.pkulaw.cn/display.aspx?cgid=c3f40f3c809abddebdfb&lib=law>. It has been replaced by Regulation for Implementing the Foreign Investment Law of the People's Republic of China (Issued on 26 December 2019, Effective on 1 January 2020); available at <http://en.pkulaw.cn/display.aspx?cgid=bb7e08ee6f9a35f4bdfb&lib=law> .

<sup>21</sup> See Article 3(2) of Detailed Rules of the Law on Wholly Foreign-Owned Enterprises.

<sup>22</sup> Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises promulgated by the National People's Congress on 9 April 1991 and effective from 1 July 1991. It has been replaced by Enterprise Income Tax Law of the People's Republic of China (Issued on 16 March 2007, Effective on 1 January 2008); available at <http://en.pkulaw.cn/display.aspx?cgid=06114a55ca941eadbdfb&lib=law> .

<sup>23</sup> Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises issued and came into force as of 1 July 1991. It has been replaced by Enterprise Income Tax Law of the People's Republic of China (Issued on 16 March 2007, Effective on 1 January 2008); available at <http://en.pkulaw.cn/display.aspx?cgid=64a4c13e2cdadbf2bdfb&lib=law>.

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made substantial adjustments to China's foreign investment policy, gradually levelling the playing field for domestic and foreign investment enterprises.

## 1.4 Technology Transfer Requirements

Like export performance requirements, technology transfer requirements are not covered by the TRIMs Agreement, as which does not prevent any Member from establishing performance requirements in relation to transfer of technology and local R&D (UNCTAD, 2000). Further, there is currently no uniform rule in regulating technology transfer requirements at the international level, and rules prohibiting technology transfer requirements are mainly reflected in some bilateral investment treaties or the investment chapters of FTAs (Andrenelli et al., 2019). Considering that the TRIMs Agreement does not involve the establishment of foreign investment, it is known that the view that the TRIMs Agreement “forbids a signatory state from requiring technology transfers in return for market access” (Branstetter, 2018) is a lack of WTO legal basis.

China made some additional commitments to technology transfer requirements when it joined the WTO. Article 7(3) of the Protocol stipulates that China shall ensure that the right of importation or investment by national and sub-national authorities is not conditioned on the transfer of technology or the conduct of research and development in China, without prejudice to the relevant provisions of this Protocol. Additionally, the issue of technology transfer was further elaborated in Paragraph 49 of Report of the Working Party on the Accession of China, which provided that:

**“...China would only impose, apply or enforce laws, regulations or measures relating to the transfer of technology, production processes, or other proprietary knowledge to an individual or enterprise in its territory that were not inconsistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") and the Agreement on Trade-Related Investment Measures ("TRIMs Agreement")....[T]he terms and conditions of technology transfer, production processes or other proprietary knowledge, particularly in the context of an investment, would only require agreement between the parties to the investment.”<sup>24</sup>**

At the beginning of reform and opening up, China has established a policy of introducing advanced technology. In the 1980s, Chinese companies were extremely weak in the technology import market and lacked negotiating power. Therefore, the Chinese government has followed the 1970s Latin American countries enacting technology transfer laws and regulations to address abuses issues in technology transfer agreements, such as transfer of obsolete technology, excessive price paid for the technology and limitations on use of new developments by the transferee by grant back provisions (Folsom, 2018). For instance, Regulations of the People's Republic of China on the Administration of Technology Acquisition Contracts<sup>25</sup> promulgated in 1985, which stipulated that the technology import contracts must go through the approval procedures as required<sup>26</sup> and the supplier should not oblige the recipient to accept

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<sup>24</sup>Report of the Working Party on the Accession of China, WT/MIN(01)/3, 10 November 2001.

<sup>25</sup>Regulations of the People's Republic of China on the Administration of Technology Acquisition Contracts promulgated by the State Council on 24 May 1985 and effective from 24 May 1985; available at <<http://en.pkulaw.cn/display.aspx?cgid=c735886ace817ef8bdfb&lib=law>>. It has been replaced by Regulations of the People's Republic of China on Administration of Import and Export of Technologies.

<sup>26</sup>See Article 4 of Regulations of the People's Republic of China on the Administration of Technology Acquisition Contracts.

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requirements which were unreasonably restrictive<sup>27</sup>. After entering the WTO in 2001, China has fulfilled its commitments by abolishing the above regulations and promulgating a new Regulations on Administration of Import and Export of Technologies<sup>28</sup>, which provides that “technologies that can be imported freely may be imported only by registering the import contracts”<sup>29</sup>.

Another controversial policy related to technology transfer requirements in China's technology import policy is “market for technology”. In 1984, China first put forward the policy of “market for technology”, which states that combining foreign commodity trade with imported technology, implementing technology and trade, and using some of our markets in exchange for advanced foreign technology is a major policy to accelerate China's technological progress (Yu, 2018). The background of the “market for technology” policy illustrates that its essence is an investment promotion measure in China, which is opening up the domestic market for the introduction of advanced technology and foreign investment, thereby driving the technical level and innovation capability of domestic enterprises. Furthermore, stipulating technology transfer conditions for foreign investing companies is a strategy OECD countries have used, so that this policy is merely China's taking a leaf from successful past experiences by developed countries (Kwa et al., 2018). However, a large number of empirical studies by the Chinese economics academics on the “market for technology” policy argue that the introduction of foreign capital has not produced significant technological spill over effects in China (Zhao, 2007; Bian et al., 2018). It is easy to understand that multinational enterprises may share a large amount of proprietary technology information through licensing or sales without giving up their core or cutting-edge technology. Therefore, China has developed policies favouring indigenous innovation in recent years.

Whether the multinational corporations are willing to share proprietary technology information through licensing or sales is primarily relevant to the host country's intellectual property environment. In the past 40 years, China has gradually established an intellectual property legal system that are in conformity with WTO rules and China's national conditions. In order to attract foreign investment and advanced technology, China enacted the Copyright Law as early as 1982 and the Patent Law in 1984. Before the accession to the WTO, to meet the requirements of the TRIPS Agreement, China amended the Patent Law in 2000 and committed to amend the Copyright Law and the Trademark Law, as well as relevant implementing rules related to different areas of the TRIPS Agreement upon China's accession.<sup>30</sup> After China's accession to the WTO, China amended the Copyright Law and the Trademark Law in 2001, and further amended the Patent Law in 2008. In 2010, the Copyright Law was further amended. In 2013 and 2019, the Trademark Law was amended. These legal changes touch the foundation of China's political and legal systems and represent a major shift in power to the rule of law, which is impossible to achieve without entering the WTO (Wang, 2011).

In sum, policy changes in local content, trade and foreign exchange balancing, export performance and technology transfer requirements before and after China's accession to the WTO reflect China's gradual establishment of a regulatory system that complies

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<sup>27</sup> See Article 9 of Regulations of the People's Republic of China on the Administration of Technology Acquisition Contracts.

<sup>28</sup> Regulations of the People's Republic of China on Administration of Import and Export of Technologies have been adopted by the 46th Regular Meeting of the State Council on 10 December 2001 and effective from 1 January 2002; available at <http://en.pkulaw.cn/Display.aspx?lib=law&Cgid=38107>. It was further improved and amended in 2011 and 2019.

<sup>29</sup> See article 17 of Regulations of the People's Republic of China on Administration of Import and Export of Technologies.

<sup>30</sup> Report of the Working Party on the Accession of China, WT/ACC/CHN/49, 1 October 2001, paras.252.

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with multilateral trade rules after WTO accession. After its accession, China launched major efforts to review and revise relevant laws and regulations, involving 2,300 laws, regulations and departmental rules at central government level, and 190,000 policies and regulations at sub-central government levels, covering trade, investment, IPR protection, etc.<sup>31</sup>Therefore, China has been fulfilling its WTO commitments after entering into the WTO, learning WTO rules and applying rules to achieve self-development.

## 2. Theoretical Logic of the Evolution of China's TRIMs Related Policies

For developing countries, the use of TRIMs or the elimination of TRIMs are both able to be justified politically and economically. In addition to the important driving factors of WTO accession, economic theory and political considerations also play an important role in the continuous adjustment of TRIMs related policies in China. As a developing country, China needs to constantly choose and adapt between the economic and political theories of supporting TRIMs and opposing TRIMs.

### 2.1 Economic Theory

Mainstream international trade theories, from absolute advantage theory, comparative advantage theory, factor endowment theory, to new trade theory and heterogeneous trade theory, all advocate free trade (Zhang et al., 1996). The main conclusion of this school is that unrestricted allocation of factors based on absolute or comparative advantages is the most efficient, and free trade can improve the welfare of the whole society. On this basis, the opposition to TRIMs holds that if the government restricts the market-driven allocation of factors, it will distort trade activities. For example, for those multinationals that only want to obtain the abundant labor advantages of the host country, other raw materials or intermediate inputs from the host country are not necessarily the most cost-effective. Therefore, these foreign-invested enterprises usually allocate production globally. If the local content requirements are imposed, unnecessary costs will be increased, the production efficiency of these foreign-invested enterprises will be weakened, and the welfare of the whole society will be affected.

However, although the free trade theory holds that through free trade, the world's resources will naturally reach the state of most effective allocation, it is undeniable that free trade will bring economic benefits to the world as well as redistribution of economic benefits among different countries and different interest groups. In order to achieve a certain purpose, a government can and must adopt some means to interfere in the distribution process of such economic benefits both internally and externally (Wang, 2014).

The support for TRIMs is mainly derived from this protectionism thought. The early theory of trade protection may need to be traced back to mercantilism, claiming that the wealth and prosperity of the country come from the surplus of foreign trade. In order to generate the surplus, the government should implement the trade policy of "rewarding out and limiting in" (Guan, 2003). Furthermore, Alexander Hamilton, a US Secretary for the Treasury first coined infant industry argument in 1791, and which later further developed by a German Friedrich List. Infant industry argument believes that the emerging domestic industries, unlike their international counterparts that are mature

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<sup>31</sup> The State Council Information Office of People's Republic of China, White Paper: China and the World Trade Organization, 28 June 2018; available at [http://www.china.org.cn/chinese/2018-07/12/content\\_56233567.htm](http://www.china.org.cn/chinese/2018-07/12/content_56233567.htm).

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and produce commodities which are not perfect substitutes for the domestic products, are obviously lacking the economies of scale advantage, hence, they need to be protected and supported up to the period (Melitz, 2005). Further, if a country allows free trade in the relatively initial stage of economic development, then the domestic infant industry will definitely not be competitive and will never be able to grow up. Therefore, the country should restrict import competition by imposing high tariffs and other means to protect domestic infant industries (Qin et al., 2013). This argument had historically been used by the United States when it was trying to industrialize its economy during the British dominance of the global trade and was also used by South Korea and Japan in their attempt to face global competition (Ado, 2013; Enderwick, 2011).

However, infant industries are not necessarily strategic industries with large potential for economies of scale and large spill over effects, while international competition is ultimately carried out in strategic industries. Therefore, the strategic trade protection theory arises at the historic moment. This school is based on Krugman's new trade theory. It believes that international trade usually takes place in an imperfect competitive market. Market intervention is undoubtedly the most effective means when the market is imperfect (Zhang et al., 2002). For example, when foreign companies set up subsidiaries in the host country for the purpose of market demand, the host country may not be able to obtain trade-induced growth. The best remedy for this is to subsidize exports. If subsidies are not feasible, export performance requirements will be the next best choice.

From the comparison between the above-mentioned free trade theory and the protection trade theory, there are totally different views on the role and influence of TRIMs in the theoretical circle from beginning to end. From a practical point of view, the same is true. On the one hand, many countries (especially developing countries) support the adoption of TRIMs as a means of economic development in trade policy choices. On the other hand, the same country has very different attitudes towards TRIMs in different stages of its economic development. This shows that different countries, or the same country at different stages, TRIMs will have very different impacts on trade and development. It is not to say that TRIMs must have distorting and restrictive effects on trade.

## 2.2 Political Considerations

Politically, China mainly considers the application or cancellation of TRIMs from the situation of developing countries. Before the TRIMs Agreement came into effect, both the capitalist and socialist countries used TRIMs to encourage national goals. This fact justifies that the differences of political systems do not bear any relevance to the considerations of elimination or limitation of TRIMs (Schwarz et al., 1987).

Firstly, the supporters of TRIMs believe that it is an important domestic economic policy tool for the government to actively guide foreign investment to meet the needs of national economic and social development. The opponents argue that countries must accept the need to abandon a certain degree of national sovereignty if they want to promote free trade (Fontheim et al., 1982). Before joining the WTO, TRIMs were important tools for the Chinese government to control foreign investors. They helped the government guide multinational enterprises to serve China's national economic development goals. However, opponents argue that TRIMs run counter to the goals of construction of China's socialist market economy, and which is not conducive to free trade development and fair market environment (Bian et al., 2018). China's accession to the WTO indicates that China has accepted the views of the opponents of TRIMs that in order to promote international trade and enhance China's international status,

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China needs to transfer certain sovereign rights in trade management through the WTO agreement, although this will result in China's sovereign rights in these areas to be restricted.

Secondly, the supporters of TRIMs argue that developing countries can maximize the benefits of international trade through the protection and promotion of national industrial development with TRIMs (Schwarz et al., 1987). Opponents argue that this will cause developing countries to rely on trade restrictions that undermine development and ultimately impact the welfare of the international community at large (Schwarz et al., 1987). The failure of China's auto parts case in the WTO has raised domestic concerns over the effects of WTO rules on China's industrial protection and support policies, which may lead China to become assembly plants and sales market for multinational corporations (Qi, 2008). However, the development of China's auto industry in recent years has lifted this concern.

Finally, China's transition from a planned economy to a market economy is an important era for China to phase out TRIMs. Some TRIMs are important tools of industrial policy, such as local content requirements and export performance requirements. From the end of the 20th century to the beginning of the 21st century, the Chinese government's economic management institutions continued to deepen reforms, which to some extent changed the situation that the goals of industrial policy failed to be reached under the planned economic system. China's accession to the WTO further makes international rules a "hard constraint" for the government to formulate industrial policies. Although the government's space for formulating various industrial policies is constrained, it has also reduced the government's excessive intervention in the market and industrial development to a considerable extent, thus contributing to the role of market mechanisms (Zhao, 2012).

### 3. Economic Impact of TRIMs Policy Changes

The TRIMs Agreement contains transitional arrangements allowing Members to maintain notified TRIMs for a limited time following the entry into force of the WTO (two years in the case of developed country Members, five years in the case of developing country Members, and seven years for least-developed country Members).<sup>32</sup> However, article 7(3) of the Protocol on the Accession of the China provides that "China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement"<sup>33</sup>. In accordance with this provision, China does not enjoy the transition period of the cancellation of trade-related investment measures that are not in conformity with the TRIMs Agreement. Therefore, after the accession to the WTO, the Chinese government comprehensively has adjusted and improved the original foreign investment laws, regulations and rules, and initially has established a foreign economy and trade legal system that meets China's economic development needs and WTO rules. This legal system has increased the transparency of China's foreign investment policy, fulfilled its commitment to open markets, and strengthened the protection of intellectual property rights, thereby providing foreign investors with an environment featuring low operating cost and low risk and increasing their attractiveness to foreign investment. Consequently, it provides a solid foundation for export, technological progress and economic growth. In recent years, as the costs of

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<sup>32</sup> See Article 5 of TRIMs Agreement.

<sup>33</sup> According to Article 5 of the TRIMs Agreement: members shall, within a time limit, cancel all ongoing trade-related investment measures that are inconsistent with the agreement. This period (i.e. the transition period): 2 years for members of developed nations and 5 years for members of developing nations and 7 years for members of the least developed nations.

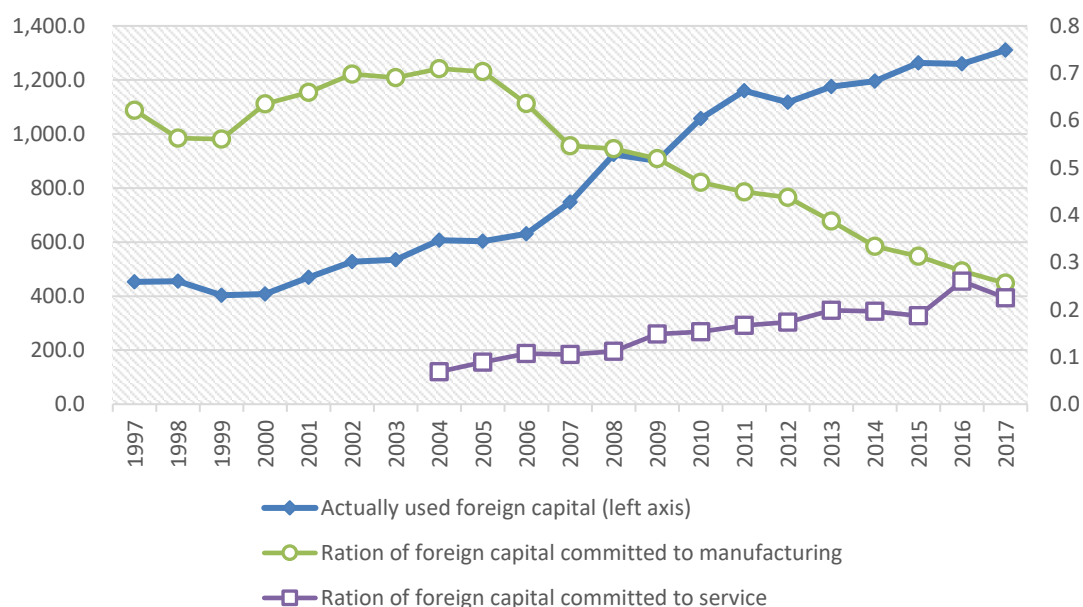
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labor, land, energy and other aspects continue to rise, the traditional cost advantage of attracting foreign investment in China has gradually weakened. Building a more investment-friendly environment that is aligned with international standards has become the main policy development trend for China to attract foreign investment.

### 3.1 The Impact of Changes in TRIMs Policies on Attracting Foreign Investment

With the implementation of China's WTO commitments and the adjustment of foreign investment policies, and due to the adjustment of the global investment strategy of multinational corporations, China's attraction to foreign investment has proceeded to a stage of rapid development, with such characteristics as stable scale expansion and gradually rational flow. First, in 1997, the actual amount of foreign capital utilized by China was 45.26 billion dollars. Until China's accession to WTO in 2001, the actual foreign capital used in China was only 46.88 billion dollars, with an average annual growth rate of only 1.3%. In 2017, the actual foreign capital used in China was up to 131.04 billion dollars, 2.8 times that of 2001. The average annual growth rate of the actual foreign capital used in China from 2002 to 2017 was as high as 6.9%, far exceeding the growth rate before the compliance with the TRIMs Agreement. Second, in 1997, 62.1% of the actual foreign capital used in China was flowing to the manufacturing industry. After joining the WTO, the proportion in 2002 was 69.8%, and then continued to decline. In 2017, this proportion was only 25.6%. Correspondingly, the proportion of actual foreign capital flowing to the service industry has increased year on year. Although it was only 6.9% in 2004, the proportion already increased to 22.5% in 2017.

**Figure 2.** Scale and Structure of Actual Foreign Capital Used in China



Source: Wind Economic Database.

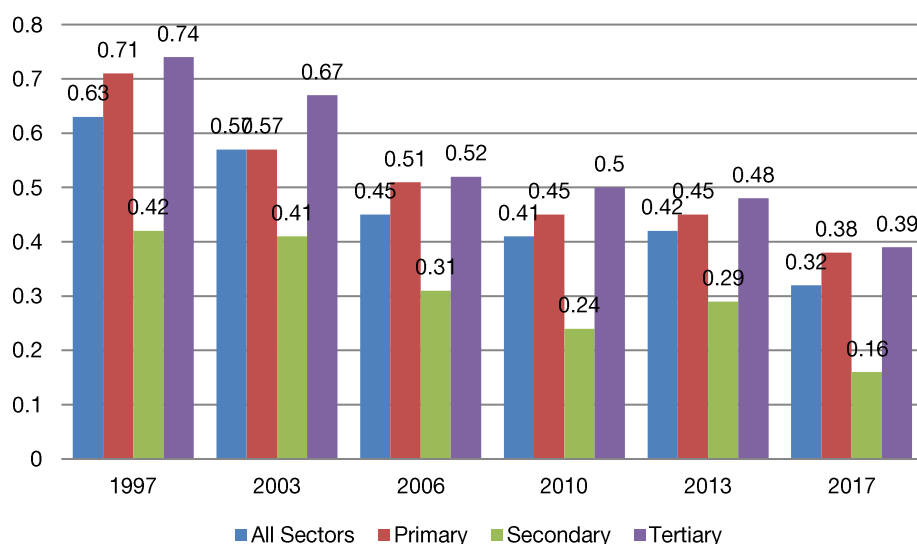
In relation to foreign investment and access management, China developed the Catalogue of Industries for Guiding Foreign Investment (Catalogue) since 1995, which



divided the foreign investment projects into encouraged, restricted and prohibited categories to guide foreign market access and was revised every two or three years in accordance with changes of the economic situation. Through multiple revisions of the Catalogue, China has adjusted its foreign investment industrial policy in a timely manner, and the FDI restrictiveness has been continuously relaxed (see Figure 3), thereby actively using foreign investment to serve China's economic structure optimization and economic development mode transformation.

On March 15, 2019, the new Foreign Investment Law of China adopted at the 2nd session of the 13th National People's Congress. Article 4 of the Law stipulates that “[t]he State maintains a system of pre-entry national treatment plus a negative list management for foreign investment”. With the implementation of the new Law and the continuous “slimming” of the negative list of foreign investment, it is foreseeable that China's business environment will continue to be optimized, and the attractiveness of foreign investment will be further increased.

**Figure 3.** China's FDI Regulatory Restrictiveness Index 1997– 2017



Note: 0 means completely unrestricted market access; 1 means completely restricted.

Source: OECD, <http://www.oecd.org/investment/fdiindex.htm>

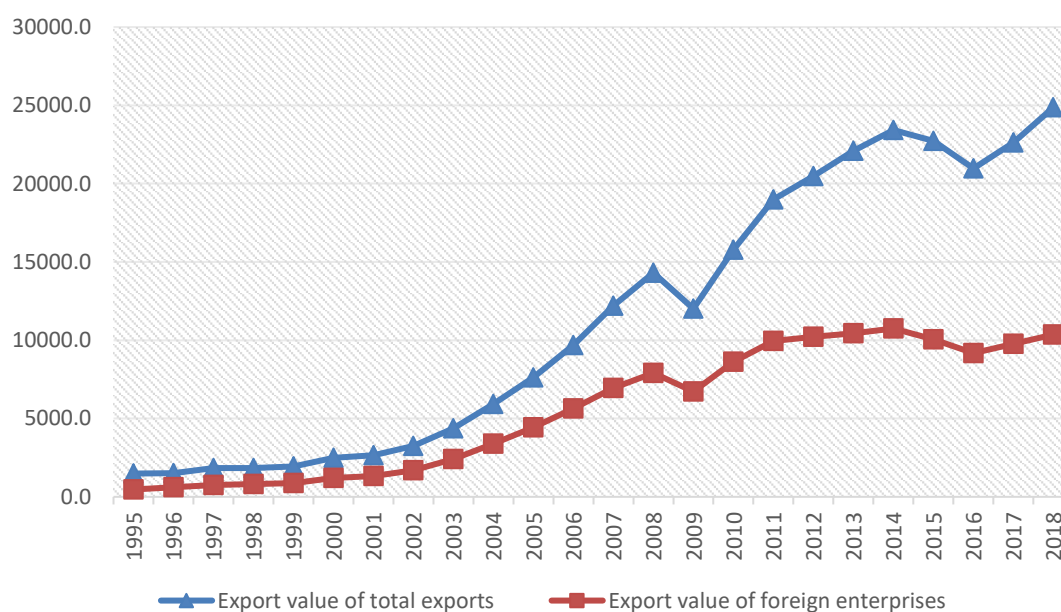
## 3.2 The Impact of Changes in TRIMs Policies on Exports

For China, compliance with the TRIMs Agreement will eliminate export performance requirements, and its export will be reduced for market-seeking foreign investment. According to Figure 4, in 1995, the export value of Chinese foreign enterprises was only 46.88 billion dollars. When it joined the WTO in 2001, the figure already grew to 133.24 billion dollars, an increase of 2.8 times. The average annual growth rate from 1995 to 2001 was 19.5%. However, within 17 years after the cancellation of export performance requirements, that is, from 2002 to 2018, the average annual growth rate fell to 14.1%.

However, from another perspective, compliance with the TRIMs Agreement to eliminate local content, trade and foreign exchange balancing requirements, and technology transfer requirements have brought about a rapid increase in factors-seeking foreign

investment. Most of this type of foreign investment is export-oriented, which lead to an increase in exports. In general, compliance with the TRIMs Agreement has more advantages than disadvantages, and China's exports have shown a rapid increase in scale. For example, in 1995, China's export value was only 148.78 billion dollars. In 2001, it was only 266.10 billion dollars. From 1996 to 2001, the average annual growth rate was 10.6%. Since 2002, China's export scale has almost moved up a level every three years. For example, in 2004, the export volume exceeded 500 billion dollars. In 2007, it exceeded 1000 billion dollars. In 2010, it exceeded 1500 billion dollars. In 2012, it exceeded 2000 billion dollars. In 2018 the export volume was as high as 2486.81 billion dollars, almost ten times the export value in 2001; the average annual growth rate from 2012 to 2018 was as high as 15.0%. In recent years, China's exports have gradually entered a new stage of market diversification and structural optimization. In line with the continuous improvement of the level of trade facilitation and the continuous improvement of the business environment, it is certain that China will continue to promote the high-quality development of trade.

**Figure 4.** Changes in Export Value of Total Exports of China and Foreign Enterprises



Source: Wind Economic Database.

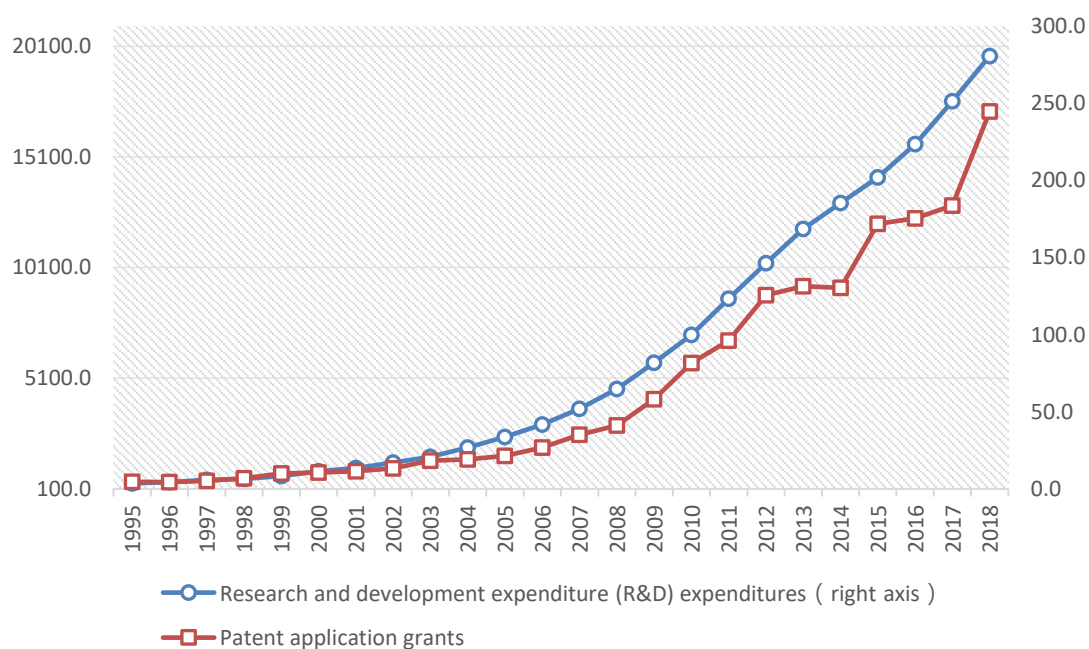
### 3.3 The Impact of Changes in TRIMs Policies on Technological Progress

After joining the WTO, an important issue facing China is to maximize the ability and level of China's technological innovation as soon as possible. From the perspective of countries around the world, the most fundamental thing for encouraging technological innovation is to establish a long-term, stable and sound legal and policy environment for technological innovation. To this end, China has consciously abided by the multilateral agreements directly related to the development of science and technology, including the TRIMs Agreement and the TRIPS Agreement. Therefore, the institutional environment facing China's development of science and technology has undergone

significant changes, directly affecting the direction, scale and speed of China's technological progress.

Usually we use research and development funding (R&D) expenditures and patent application grants to express the input and output of technological progress. According to Figure 5, in 1995, China's research and development expenditure was only 34.87 billion yuan, and the number of patent application grants was only 45,000. In 2001, China's R&D expenditure was 104.25 billion yuan, and the number of patent application grants was 114,000. In 2018, China's R&D expenditures already reached 1965.70 billion yuan, and the number of patent application grants reached a record of 2.447 million. The number of R&D expenditures and patent applications is 18.9 times and 21.4 times that of 2001, respectively. In addition, China's high-tech industries and emerging industries are also growing. In 1996, there were only 13,000 high-tech enterprises in China, and the number of employees was 2.142 million. By the end of 2018, China's high-tech enterprises had reached 181,000, and the number of employees was close to 30 million. Therefore, in the highly internationally competitive field of technology, China has gradually taken an equal foothold. And in some technical fields, such as UHV, quantum technology, etc., China is at the international leading level.

**Figure 5.** China's Technology Input and Output



Source: Wind Economic Database.

According to the theory of growth accounting, economic growth mainly comes from two parts, one is the input of factors and the other is technological progress. As analysed above, China's compliance with the TRIMs Agreement has brought about a rapid increase in foreign investment and exports and a significant advance in technology, which has greatly contributed to the rapid growth of China's overall economy. Currently, China's GDP ranks second in the world. Additionally, the miracle of growth runs parallel with the accelerated optimization of the economic structure. In 2003, China's economy began to transform rapidly towards industrialization and urbanization. In 2011, China's urbanization rate exceeded 50%, and it completed the transition from an agricultural nation to a modern economy. In 2012, the service industry exceeded industry and

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became a new engine of economic development and China's economy has become more and more service-oriented. Today, China's economy has gradually shifted from high-speed growth to medium- and high-speed growth with more emphasis on quality.

## 4. Lessons and Conclusions

The evolution and economic impact of TRIMs policy in China over the forty years allows for some lessons to be drawn.

Firstly, a number of TRIMs reviewed have helped China meet development objectives in the early days of reform and opening up. For instances, export performance requirements have played a role in inducing transnational corporations to sell a certain amount of locally produced goods abroad.

Secondly, although China has extensively utilized TRIMs to attract foreign direct investment and maximize its contribution to its development before WTO accession, China has reduced TRIMs or introduced new policy measures substituting for them, in order to comply with international commitments and improve China's investment environment after WTO accession.

Thirdly, as a developing country, China may lack the capacity to apply some of the strategic trade and investment policies that are used increasingly in developed countries to achieve similar goals as certain TRIMs. This problem has been highlighted since the accession to the WTO. As China's domestic policies are linked to international rules, China's capabilities are constantly improving.

Fourthly, in the context of the constraints of international rules, China faces a delicate balancing act in weighing the potential short-term benefits and long-term benefits that can be attained from the reduction of TRIMs. WTO accession reveals that China chooses to seek long-term benefits. Obviously, China's economic development miracle in the past four decades of development is the result of this choice.

Lastly, the acceptance of WTO-plus rules by developing countries requires comprehensive trade-offs and reciprocal benefits, not just economic interests. In recent years, the WTO-plus rules on TRIMs have been continuously developed in bilateral investment treaties and regional trade agreements. When moving closer to these international rules, developing countries should consider national security, economic, public safety and health reasons. When China joined the WTO, it did not enjoy the transitional arrangement of the TRIMs Agreement and accepted some WTO-plus rules. The main reason for seizing the development space under the constraints of these rules is that China's WTO accession negotiations lasts for 15 years, which gives China time to prepare to accept these high standards. Despite this, some of China's WTO disputes on TRIMs still illustrate that China pays expensive tuition fees in terms of dissolving the negative effects of high-standard rules.

To conclude, before the accession to the WTO, especially in the early days of reform and opening up, TRIMs were valuable policy tools for China to manage foreign investment enterprises and achieve economic development. After China's accession to the WTO, China revised and improved its domestic and foreign investment legal system in accordance with WTO rules, and eliminated TRIMs that were inconsistent with WTO rules. China's gradual reduction of TRIMs has both political considerations and economic grounds, as well as the international factor of joining the WTO. After China's accession to the WTO, China's economy has achieved rapid development, indicating that reducing TRIMs and further optimizing the business environment is conducive to China's economic growth, export expansion and technological progress. In the

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meanwhile, given that foreign investment was regarded as an important regulatory area second only to national defense, China, as a developing country, also feared that the international rules which “encroached on their investment policy autonomy would ultimately undermine national economic and political sovereignty” (UNCTAD 2007). However, fortunately, China's orderly promotion of the opening up policy has partially resolved this risk.

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