

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Members,

Considering that Ministers agreed in the Punta del Este Declaration that "Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade";

Desiring to promote the expansion and progressive liberalisation of world trade and to facilitate investment across international frontiers so as to increase the economic growth of all trading partners, and particularly developing country Members while ensuring free competition;

Taking into account the particular trade, development and financial needs of developing country Members, particularly those of the least-developed country Members;

Recognizing that certain investment measures can cause trade restrictive and distorting effects;

Hereby agree as follows:

Article 1 Coverage

This Agreement applies to investment measures related to trade in goods only (hereafter referred to as "TRIMs").

Article 2 National Treatment and Quantitative Restrictions

1. Without prejudice to other rights and obligations under the GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of the GATT 1994.

2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in Article III:4 of the GATT 1994 and the obligation of the general elimination of quantitative restrictions provided for in Article XI:1 of the GATT 1994 is contained in the Annex to this Agreement.

Article 3 Exceptions

All exceptions under the GATT 1994 shall apply, as appropriate, to the provisions of this Agreement.

Article 4 Developing Country Members

A developing country Member shall be free to deviate temporarily from the provisions of Article 2 above to the extent and in such a manner as Article XVIII of the GATT 1994, the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, and the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes permit the Member to deviate from the provisions of Articles III and XI of the GATT 1994.

Article 5 Notification and Transitional Arrangements

1. Members, within ninety days of the entry into force of the Agreement Establishing the MTO, shall notify the Council for Trade in Goods of all TRIMs they are applying that are not in conformity with the provisions of this Agreement. Such TRIMs of general or specific application shall be notified, along with their principal features.[1]
2. Each Member shall eliminate all TRIMs which are notified under paragraph 1 above within two years of the date of entry into force of the Agreement Establishing the MTO in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.
3. On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under paragraph 1 above for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.
4. During the transition period, a Member shall not modify the terms of any TRIM which it notifies under paragraph 1 above from those prevailing at the date of entry into force of the Agreement Establishing the MTO so as to increase the degree of inconsistency with the provisions of Article 2 above. TRIMs introduced less than 180 days before the entry into force of the Agreement Establishing the MTO shall not benefit from the transitional arrangements provided in paragraph 2 above.
5. Notwithstanding the provisions of Article 2 above, a Member, in order not to disadvantage established enterprises which are subject to a TRIM notified under paragraph 1 above, may apply during the transition period the same TRIM to a new investment (i) where the products of such investment are like products to those of the established enterprises, and (ii) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Any TRIM

so applied to a new investment shall be notified to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

Article 6 Transparency

1. Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of the GATT 1994, in the undertaking on "Notification" contained in the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance and in the Ministerial Decision on Notification Procedures.
2. Each Member shall notify the MTO Secretariat of the publications in which TRIMs may be found, including those applied by regional and local governments and authorities within their territories.
3. Each Member shall accord sympathetic consideration to requests for information, and afford adequate opportunity for consultation, on any matter arising from this Agreement raised by another Member. In conformity with Article X of the GATT 1994 no Member is required to disclose information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 7 Committee on TRIMs

1. A Committee on Trade-Related Investment Measures shall be established, open to all Members of the MTO. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any Member.
2. The Committee shall carry out responsibilities assigned to it by the Council for Trade in Goods and shall afford Members the opportunity to consult on any matters relating to the operation and implementation of this Agreement.
3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the Council for Trade in Goods.

Article 8 Consultation and Dispute Settlement

The provisions of Articles XXII and XXIII of the GATT 1994, as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes, shall apply to consultations and the settlement of disputes under this Agreement.

Article 9 Review by the Council for Trade in Goods

Not later than five years after the date of entry into force of the Agreement Establishing the MTO, the Council for Trade in Goods shall review the operation of this Agreement and, as appropriate, propose to the Ministerial Conference amendments to its text. In the course of this review, the Council for Trade in Goods shall consider whether it should be complemented with provisions on investment policy and competition policy.

ANNEX

Illustrative List

1. TRIMs that are inconsistent with the obligation of national treatment provided for in Article III:4 of the GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of 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; or

(b) that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of the general elimination of quantitative restrictions provided for in Article XI:1 of the GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(c) the exportation or sale for export by an enterprise of products, 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.

1. In the case of TRIMs applied under discretionary authority each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

