

WORLD TRADE ORGANIZATION

G/L/588
11 November 2002

(02-6193)

Committee on Trade-Related Investment Measures

WORK ON IMPLEMENTATION ISSUES IN ACCORDANCE WITH PARAGRAPH 12(B) OF THE DOHA DECLARATION

Report to the Council for Trade in Goods

1. Paragraph 12 of the Doha Ministerial Declaration states that negotiations on outstanding implementation issues shall be an integral part of the Work Programme, and that those outstanding issues referred to in Paragraph 12(b) shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the TNC by end of 2002 for appropriate action.

2. The Council for Trade in Goods (CTG) agreed on 7 May 2002 to assign to the TRIMs Committee the responsibility for conducting work on the outstanding implementation issues related to the TRIMs Agreement as contained in tirets 37-40 of JOB(01)/152/Rev.1, and for reporting through its Chairman regularly to the CTG on its progress.¹ The TRIMs Committee met four times to discuss the four tirets.² In the course of the discussions, references were made to a joint WTO/UNCTAD background study prepared for the CTG on "Trade-Related Investment Measures and Other Performance Requirements".³

3. With regard to the exercise as a whole, one view was that the proposals contained in tirets 37-40 would involve the re-negotiation of the TRIMs Agreement and were not a matter of implementation. Another view was that all proposals under Paragraph 12(b) of the Doha Ministerial Declaration were matters for negotiation within a given timeframe, as an integral part of the Doha work programme.

4. One view was that the discussion on these tirets has been exhaustive. Another view was that further discussion was warranted.

Tiret 37: Developing countries shall have another opportunity to notify existing TRIMs measures which they would be then allowed to maintain till the end of the new transition period

5. One view was that the TRIMs Agreement and its illustrative list were so complex that most developing and least-developed country Members had no clear idea of what measures they were required to notify, and so had missed the 90-day deadline under Article 5.1 of the TRIMs Agreement to make their notifications of inconsistent measures and qualify for transition periods to eliminate them. Also, the transition periods provided for in the TRIMs Agreement were too short. Therefore, all developing-country Members should be given another opportunity to notify TRIMs and to maintain them for as long as their development needs required. It was suggested that increased transition periods be allowed, with "sunset" clauses linked to some kind of objective criteria. Some of the points described below in paragraphs 13 and 14 of this report were also made in this context.

¹ G/C/M/60, paragraph 6.1.

² Reports on these meetings are contained in G/TRIMS/M/13, M/14, M/15, and M/15/Add.1.

³ G/C/307 and G/C/307/Add.1.

6. One suggestion was to provide another opportunity for developing and least-developed countries to notify measures which had not yet been notified, but at the same time to call on them to do so as soon as possible in order to discuss the conditions for their maintenance.

7. Another view was that developing-country Members that wished to continue applying TRIMs, or to institute new ones, should use the WTO Article IX waiver provisions. Some of the points described below in paragraphs 15 and 16 of this report were also made in this context.

Tiret 38: The provisions of Article 5.3 must be suitably amended and made mandatory

8. One view was that the possibility to extend transition periods under Article 5.3 of the TRIMs Agreement should remain available to developing-country Members as long as their individual development, financial and trade needs justified an extension. Objective criteria could be used to decide on the needs of each Member concerned. Some of the points described below in paragraphs 13 and 14 of this report were also made in this context.

9. Another view was that Article 5.3 was satisfactory as it currently stood, and that there was no reason to modify it. Further extensions of the transition periods could be sought through the WTO Article IX waiver provisions. Some of the points described below in paragraphs 15 and 16 of this report were also made in this context. Also, proponents of modifications to Article 5.3 were invited to submit written proposals in order to analyse their viability.

Tiret 39: Developing countries shall be exempted from the disciplines on the application of domestic content requirements by providing for an enabling provision in Articles 2 and 4 to this effect

10. One view was that domestic content requirements were an essential policy tool for industrialization, particularly at the intermediate stage of a country's development. Many developed and newly-industrialized countries had successfully used them during their early stages of development and had demonstrated the crucial role they could play in the industrialization process, particularly as regards linkage creation. Recent empirical studies had shown the poor record of value-added and linkage creation achieved by transnational corporations. Some of the points described below in paragraphs 13 and 14 of this report were also made in this context.

11. Another view was that amending Articles 2 and 4 as suggested would undermine the TRIMs Agreement's objective to gradually eliminate TRIMs and could infringe basic GATT principles and obligations, particularly GATT Article III. It would alter the balance of rights and obligations in the TRIMs Agreement. Many developing countries had already made considerable efforts to comply with its current provisions. Article 4 provided enough flexibility for developing countries to diverge from the Article 2 obligations, subject to certain conditions. Some of the points described below in paragraphs 15 and 16 of this report were also made in this context. Also, it was felt that the thrust of this tiret was not consistent with the thrust of tiret 37.

Tiret 40: Specific provisions shall be included in the Agreement to provide developing countries the necessary flexibility to implement development policies (intended to address, among others, social, regional, economic, and technological concerns) that may help reduce the disparities they face vis-à-vis developed countries

12. Under this tiret, it was proposed in a written communication by two Members, that developing countries be allowed to use trade-related investment measures in order to: (a) promote domestic manufacturing capabilities in high value-added sectors or technology-intensive sectors; (b) stimulate the transfer or indigenous development of technology; (c) promote domestic competition and/or correct restrictive business practices; (d) promote purchases from disadvantaged regions in

order to reduce regional disparities within their territories; (e) stimulate environment-friendly methods or products and contribute to sustainable development; (f) increase export capacity in cases where structural current account deficits would cause or threaten to cause a major reduction in imports; and (g) promote small- and medium-sized enterprises as they contribute to employment generation.⁴

13. One view, in support of this proposal, was that developing countries should be allowed to use TRIMs flexibly, when, and for as long as, their development process required, and the TRIMs Agreement should be amended to permit that. TRIMs and other performance requirements were valuable tools for countries at an intermediate stage of development to address their developmental objectives, to pursue industrialization, and to offset the trade-distorting effects of certain forms of corporate behaviour which could misallocate resources more decisively than investment measures. Studies had shown that developed countries had successfully used these measures to industrialise. Developing countries were now denied their use, even before they reached the threshold where they could benefit from them in the case of low-income and least-developed countries. There was no conclusive empirical support for the theoretical argument on which the Uruguay Round Agreement to prohibit TRIMs had been based – i.e., that *a priori*, TRIMs caused trade-restrictive or distorting effects. Other measures used in sectors of particular trade interest to developing countries, like agriculture, had revealed themselves to have much more distorting trade effects than TRIMs, yet these measures had not been banned. TRIMs should be sanctioned only to the extent that they had trade-restrictive or distorting effects, on a case-by-case basis. Otherwise, developing countries should have the discretion to decide for themselves whether to use TRIMs for their development purposes.

14. Furthermore, the TRIMs Agreement had established uniform obligations for all Members, failing to take account of structural inequalities among them and disparities in levels of development, technological capabilities, or social, regional and environmental conditions, and failing to incorporate a meaningful development dimension. Aside from transitional periods, it did not provide any S&D treatment that would allow developing countries to address their specific economic, financial and social concerns. Moreover, the transition periods to eliminate TRIMs had not been long enough to allow developing countries to overcome their structural problems, to enter a path of sustainable growth, or to catch up with developed countries. Article 4 of the TRIMs Agreement did not address the specific concerns of developing countries, and was thus insufficient.

15. Another view was that TRIMs had proven, distorting effects on trade, investment, and resource allocation. Some recent studies had shown that the measures were costly and inefficient, and could discourage investments in countries using them, especially smaller developing countries and least-developed countries. Evidence of this was that many Members, both developed and developing, had abandoned their use. Contrary evidence of the positive effects that TRIMs could have on the economies of developing countries was lacking. Other measures that were consistent with WTO rules were available to address the kinds of objectives that were sought through the use of TRIMs, for example competition law and policy in the case of correcting abusive corporate behaviour.

16. The TRIMs Agreement already provided enough flexibility to accommodate developing countries' concerns. It provided for S&D treatment, by including transition periods for developing countries to eliminate measures and the possibility of extending those transition periods. This procedure had already been used successfully by a number of Members. Given that the measures in question were inconsistent with GATT Articles III and XI, it was appropriate for the TRIMs Agreement to take this case-by-case approach rather than a one-size-fits-all approach, to reflect Members' individual development needs and situations. Article 4 of the TRIMs Agreement also provided flexibility to developing countries to use TRIMs in specific circumstances. Additional flexibility could be sought through the WTO Article IX waiver provisions. Also, GATT

⁴ G/TRIMSW/25.

Article XVIII could respond to the development needs raised by some Members. The proposal raised concern because it would alter the balance of rights and obligations of the TRIMs Agreement, including among developing and least-developed countries, particularly those that had chosen already to comply with their obligations under it. It would also undermine the decisions taken by the Council for Trade in Goods to extend the transition period for certain developing-country Members. Also, the objectives underlying the proposal went beyond what had thus far been considered under the TRIMs Agreement or GATT Articles III and XI, and could give rise to disguised trade restrictions.
