

WORLD TRADE ORGANIZATION

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(09-5275)

REPORT (2009) OF THE COMMITTEE ON TRADE-RELATED INVESTMENT MEASURES

I. GENERAL

1. This report is submitted pursuant to Article 7.3 of the Agreement on Trade-Related Investment Measures ("TRIMs" Agreement), which requires the Committee on Trade-Related Investment Measures (the "Committee") to report annually to the Council for Trade in Goods. The Report covers the period October 2008 – October 2009.¹

2. The Committee met formally twice in 2009. The first meeting was held on 20 May 2009 under the Chairpersonship of Mr. Henry Liu (Chinese Taipei) and the second was held on 16 October 2009 under the Chairpersonship of Dr. Octavia Cerchez (Romania).² The minutes of the formal meetings may be found in documents G/TRIMS/M/28 & Corr.1 and G/TRIMS/M/29. The meetings were open to all Members, governments with observer status in the WTO and international intergovernmental organizations to which the Committee has accorded regular observer status (IMF, OECD, UN, UNCTAD and World Bank). Decisions on requests for observer status made by several other international organizations are pending. The Committee also met informally on 17 March 2009 to discuss ways to improve the timeliness and completeness of notifications and other information flows on trade measures falling within the TRIMs area.

II. NOTIFICATIONS

3. Pursuant to Article 5.1 of the Agreement on TRIMs, Members were required to notify any trade-related investment measure ("TRIM") inconsistent with the Agreement within 90 days after the entry into force of the WTO Agreement. Article 5.2 of the Agreement allows for transition periods for the elimination of measures notified under Article 5.1 and which were in existence at least 180 days preceding the entry into force of the WTO Agreement. Pursuant to a decision adopted by the General Council in April 1995, governments eligible to become original WTO Members that accepted the WTO Agreement after 1 January 1995 had a period of 90 days after the date of their acceptance of the WTO Agreement to make the notifications foreseen in Article 5.1, with the period for the elimination of TRIMs notified under Article 5.1 being governed by reference to the date of entry into force of the WTO Agreement itself.³

¹ The annual report for 2008 is contained in document G/L/860 of 29 October 2008.

² At its formal meeting of 20 May 2009, the Committee elected Mr. Vasile Radu (Romania) as its Chairperson for the period 2009-2010. In a letter dated 30 June 2009, the Permanent Mission of Romania informed the Secretariat that due to unforeseen circumstances, Mr. Radu would not be able to fulfil his duties as the Chairperson of the Committee. At its meeting of 7 October 2009, the Council for Trade in Goods agreed on Dr. Octavia Cerchez (Romania) to become the Chairperson of the Committee. The Committee formally elected Dr. Octavia Cerchez at its meeting of 16 October 2009.

³ WT/L/64.

4. Annex 1 to this report contains a list of all notifications of measures under Article 5.1.⁴ In the case of some Members, notifications have been submitted later than the 90-day period foreseen.

5. Some Members have notified to the Committee that they do not apply any TRIM inconsistent with the Agreement. Annex 2 to this report lists all Members that have made such notifications.

6. Article 6.2 provides for notification to the Secretariat of publications in which information on TRIMs can be found. Annex 3 lists the Members that have submitted such notifications. During the period covered by this report, notifications were made by Malaysia and Saudi Arabia, while Thailand submitted an updated notification. The latest updated list of these notifications has been circulated in G/TRIMS/N/2/Rev.19. The European Communities informed the Committee that it will soon submit an updated notification under Article 6.2.

III. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS RELATED TO THE TRIMS AGREEMENT

7. Pursuant to the Decision adopted by the General Council on 1 August 2004 (WT/L/579) and paragraph 37 of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC), the TRIMs Committee continued its consideration of the Category II Special and Differential Treatment ("S&D") proposals which were referred to it by the Chairperson of the General Council.

8. The proposals were originally submitted by the African Group in document TN/CTD/W/3/Rev.2 and relate to Articles 4 and 5.3 of the TRIMs Agreement. In April 2007, Kenya on behalf of the African Group submitted a revised version of the proposals, which deals more specifically with the concerns of the proponents.⁵ In June and October 2007, the Chairperson held informal discussions with interested delegations on the revised proposals. These were further discussed at the meeting of the Committee held on 1 November 2007 at which the representative of Kenya said that they were open to listen to any new ideas concerning its proposals, particularly with respect to the drafting, and that the African Group felt that it had gone as far as it could on this issue, unless there were other suggestions by other Members. No further revisions to the draft proposals have been received from the proponents since then. In accordance with paragraph 37 of the Hong Kong Ministerial Declaration, the Chairperson of the TRIMs Committee submitted an oral report (18 December 2007)⁶ to the General Council on the work undertaken by the Committee with respect to the S&D proposals.

9. At the Committee meeting of 23 October 2008, the Chairperson said that he would be willing to continue his informal consultations on this issue should Members so wish and would report back to the Committee and the General Council at an appropriate time on any further developments.

10. At the Committee meeting of 16 October 2009, no delegation took the floor with respect to this issue and the Chairperson indicated that she had no further developments to report to the General Council in this respect. The Chairperson reiterated her willingness to continue informal consultations on this issue should Members so wish and would report back to the Committee and the General Council at an appropriate time on any further developments. She invited Members requesting such consultations to contact her or the Secretariat in this regard.

⁴ Notifications under Article 5.1 circulated in 1995 have been derestricted since 28 May 1996. Pursuant to the General Council's Decision of 14 May 2002 (WT/L/452), documents containing notifications under Articles 5.1, 5.5 and 6.2 are issued unrestricted.

⁵ The latest revised version of the African Group's proposals was annexed to document G/TRIMS/M/27, and is reproduced in Annex 4 to this report.

⁶ WT/GC/M/112, paragraph 142.

IV. COMMUNICATIONS BY MEMBERS AND RELATED DISCUSSIONS

11. At its meeting of 20 May 2009, the Committee considered the joint communication submitted by the European Communities and the United States, entitled "Certain New and Proposed Measures by Indonesia Addressing Local Content in Investment in the Telecommunications Sector"⁷. The communication contained a list of questions posed by the proponents which basically laid out the areas where information and further clarifications were requested from Indonesia. A discussion took place at the Committee in this respect and further informal consultations were held amongst interested delegations. Written answers to the written questions contained in this communication were submitted by Indonesia.⁸ The European Communities and the United States placed this issue on the agenda of the Committee's regular meeting held on 16 October 2009 at which both Members, supported by Canada and Korea, raised additional follow-up questions. Japan also posed questions with respect to certain written responses made by Indonesia and contained in document G/TRIMS/W/63. Indonesia requested to receive the questions posed in writing.

12. At its meeting of 16 October 2009, the Committee considered the joint communication submitted by the European Communities and the United States, entitled "Certain Indonesian Laws and Draft Implementing Regulations on Mineral and Coal Mining".⁹ The communication contained a list of questions posed by the proponents which basically laid out the areas where information and further clarifications were requested from Indonesia. A discussion took place at the Committee in this respect at which Canada shared the concerns of the proponents. Indonesia requested to receive the questions posed in writing.

V. INFORMAL CONSULTATIONS ON WAYS TO IMPROVE TIMELINESS AND COMPLETENESS OF NOTIFICATIONS AND OTHER INFORMATION FLOWS ON TRADE MEASURES IN THE TRIMS AREA

13. Pursuant to the request of the Chairpersons of the General Council and the Trade Policy Review Body, the Chairperson of the Committee held informal consultations with Members on 17 March 2009 to discuss ways to improve the timeliness and completeness of notifications and other information flows on trade measures falling within the TRIMs area.

14. The discussion focused only on Article 6.2 of the TRIMs Agreement and its related decision adopted by the Committee and contained in document G/TRIMS/5. The Chairperson emphasized the obligation under this article to provide publications relating to all TRIMs Members maintain, not necessarily those inconsistent with the Agreement, but those consistent with the Agreement too. He further explained that in case a Member did not maintain any TRIMs which were inconsistent with the Agreement, but maintained TRIMs consistent with the Agreement, that Member would have an obligation to report all publications where such consistent TRIMs might be found. He strongly urged the 49 Members that did not do that to date to provide such a notification promptly. In addition, the Chairperson indicated that Members that did provide such notification, and had not updated the information notified, though changes might have occurred in this regard, were urged to update such information without delay¹⁰.

15. Accordingly, the Committee, at its formal meeting of 20 May 2009, agreed that:

- The Secretariat would issue reminders in this regard every six months.

⁷ G/TRIMS/W/61.

⁸ G/TRIMS/W/63.

⁹ G/TRIMS/W/70.

¹⁰ On 23 March 2009, the Chairperson of the Committee reported back to the Chairperson of the General Council on the results of his consultations.

- These reminders should contain guidance for all Members to indicate what Article 6.2 and its related decision required and to request that any information submitted should also contain, if possible, any websites where relevant information could be found.
- The reminders would also request all Members that had never notified such publications to do so without delay and would request all Members that had previously notified to constantly update their notifications, if appropriate, without delay.¹¹

VI. TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA¹²

16. Pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China, the Committee carried out the eighth annual review of China's implementation of its commitments under the TRIMs Agreement and related provisions of the Protocol of Accession. In a communication dated 29 September 2009, China submitted information on Annex 1A of its Protocol of Accession in connection with this review. This submission was circulated in document G/TRIMS/W/64, dated 29 September 2009. Written questions concerning China's Transitional Review were received from the European Communities (G/TRIMS/W/69), Japan (G/TRIMS/W/68), and the United States (G/TRIMS/W/67). The review took place at the meeting of 16 October 2009. The Report of the Chairperson of the Committee on China's eighth Transitional Review was submitted to the Council for Trade in Goods in document G/L/899. The discussions held by the Committee on this item are reflected in the relevant section of the minutes of the meeting (G/TRIMS/M/29).

VII. ELECTION OF OFFICERS

17. At its meeting of 16 October 2009, the Committee elected Dr. Octavia Cerchez (Romania) as its Chairperson for the period 2009-2010.

VIII. DATE OF THE NEXT MEETING

18. The next Committee meeting will be held on Friday, 1 October 2010.

¹¹ The first reminder in this regard was circulated in document G/TRIMS/W/62 on 24 June 2009.

¹² WT/L/432.

ANNEX 1

Members that have Submitted Notifications under Article 5.1 of the Agreement on Trade-Related Investment Measures

<u>Member</u>	<u>Document Symbol</u>	<u>Date of Communication</u>
Argentina	G/TRIMS/N/1/ARG/1	30 March 1995
Argentina	G/TRIMS/N/1/ARG/1/Add.1	21 March 1997
Barbados	G/TRIMS/N/1/BRB/1	31 March 1995
Bolivia ¹	G/TRIMS/N/1/BOL/1	24 June 1998
Chile ²	G/TRIMS/N/1/CHL/1	14 December 1995
Colombia	G/TRIMS/N/1/COL/1	31 March 1995
Colombia	G/TRIMS/N/1/COL/1/Add.1	4 June 1995
Colombia ³	G/TRIMS/N/1/COL/2	31 July 1995
Colombia	G/TRIMS/N/1/COL/2/Corr.1	30 September 1996
Costa Rica ⁴	G/TRIMS/N/1/CRI/1	30 March 1995
Cuba ⁵	G/TRIMS/N/1/CUB/1	18 July 1995
Cyprus ⁶	G/TRIMS/N/1/CYP/2	30 October 1995
Dominican Republic	G/TRIMS/N/1/DOM/1	26 April 1995
Ecuador	G/TRIMS/N/1/ECU/1	20 March 1996
Egypt	G/TRIMS/N/1/EGY/1	29 September 1995
India	G/TRIMS/N/1/IND/1	31 March 1995
India	G/TRIMS/N/1/IND/1/Add.1	22 December 1995
India	G/TRIMS/N/1/IND/1/Add.1/Corr.1	18 March 1996
India	G/TRIMS/N/1/IND/1/Add.2	11 April 1996
Indonesia	G/TRIMS/N/1/IDN/1	23 May 1995
Indonesia	G/TRIMS/N/1/IDN/1/Add.1	28 October 1996

¹ Bolivia subsequently submitted a notification indicating that it does not apply any trade-related investment measures that are not in conformity with the Agreement (G/TRIMS/N/1/BOL/1/Add.1).

² Chile subsequently submitted a notification indicating that it has eliminated measures notified under Article 5.1 (G/TRIMS/N/1/CHL/1/Add.1).

³ Colombia subsequently submitted a notification indicating that it had issued Decree No. 1473 of 10 May 2004, whereby Decree No. 2439 of 1994 establishing import control mechanisms for certain agricultural products had been repealed (G/TRIMS/N/1/COL/3).

⁴ Costa Rica subsequently submitted a notification indicating that it intended to eliminate measures notified under Article 5.1 in advance of the expiry of the transition period (G/TRIMS/N/1/CRI/1/Add.1).

⁵ Cuba subsequently informed the Committee that the measures notified by Cuba under Article 5.1 are no longer in force (G/TRIMS/M/3, paragraph 5).

⁶ This notification superseded Cyprus' previous one (G/TRIMS/N/1/CYP/1) of 29 June 1995; Cyprus subsequently submitted a notification indicating that it has eliminated measures notified under Article 5.1 (G/TRIMS/N/1/CYP/2/Add.1).

<u>Member</u>	<u>Document Symbol</u>	<u>Date of Communication</u>
Malaysia	G/TRIMS/N/1/MYS/1	31 March 1995
Malaysia	G/TRIMS/N/1/MYS/1/Rev.1	14 March 1996
Mexico	G/TRIMS/N/1/MEX/1	31 March 1995
Mexico ⁷	G/TRIMS/N/1/MEX/1/Rev.1 ⁸	31 March 1995
Nigeria ⁹	G/TRIMS/N/1/NGA/1	17 July 1996
Pakistan	G/TRIMS/N/1/PAK/1	30 March 1995
Peru	G/TRIMS/N/1/PER/1	3 March 1995
Philippines	G/TRIMS/N/1/PHL/1	31 March 1995
Poland ¹⁰	G/TRIMS/N/1/POL/1	28 September 1995
Romania	G/TRIMS/N/1/ROM/1	31 March 1995
South Africa	G/TRIMS/N/1/ZAF/1	19 April 1995
Thailand	G/TRIMS/N/1/THA/1	30 March 1995
Uganda	G/TRIMS/N/1/UGA/1	17 June 1997
Uruguay	G/TRIMS/N/1/URY/1	31 March 1995
Uruguay	G/TRIMS/N/1/URY/1/Add.1	30 August 1995
Venezuela	G/TRIMS/N/1/VEN/1	31 March 1995

⁷ Mexico subsequently submitted a notification indicating that all provisions under the Automotive Decree had ceased to be operative as of 1 January 2004 (G/C/42).

⁸ In English only.

⁹ Nigeria subsequently submitted a notification indicating that the Nigerian Enterprises Promotion Act of 1989 has been repealed and replaced with the Nigerian Investment Promotion Commission Decree 1995 (G/TRIMS/N/1/NGA/1/Add.1).

¹⁰ Poland subsequently submitted a notification indicating that it has eliminated measures notified under Article 5.1 (G/TRIMS/N/1/POL/1/Add.1).

ANNEX 2

Notifications Indicating that No TRIMs Inconsistent with the Agreement on Trade-Related Investment Measures are Maintained

<u>Member</u>	<u>Document Symbol</u>	<u>Date of Communication</u>
Bolivia	G/TRIMS/N/1/BOL/1/Add.1	4 March 1999
Costa Rica	G/TRIMS/N/1/CRI/1/Add.1 ¹	16 September 1999
Cyprus	G/TRIMS/N/1/CYP/2/Add.1	26 May 2000
El Salvador	G/TRIMS/N/1/SLV/1	5 November 2003
Haiti	G/TRIMS/N/1/HTI/1	27 February 1998
Honduras	G/TRIMS/N/1/HND/1	7 July 1995
Israel	G/TRIMS/N/1/ISR/1	24 October 1996
Jamaica	G/TRIMS/N/1/JAM/1	9 June 1998
Jordan	G/TRIMS/N/1/JOR/1	22 May 2000
Maldives	G/TRIMS/N/1/MLV/1	30 September 1999
Mali	G/TRIMS/N/1/MLI/1	27 May 1997
Mauritius	G/TRIMS/N/1/MUS/1	27 March 1995
New Zealand	G/TRIMS/N/1/NZL/1	20 May 1999
Nicaragua	G/TRIMS/N/1/NIC/1	18 July 1996
Oman	G/TRIMS/N/1/OMN/1	20 December 2000
Saint Lucia	G/TRIMS/N/1/LCA/1	14 February 1996
Saudi Arabia	G/TRIMS/N/1/SAU/1	3 October 2006
Singapore	G/TRIMS/N/1/SGP/1	9 October 1996
Slovenia	G/TRIMS/N/1/SVN/1	27 March 1995
Sri Lanka	G/TRIMS/N/1/LKA/1	14 March 2000
Switzerland	G/TRIMS/N/1/CHE/1	8 August 1995
Chinese Taipei	G/TRIMS/N/1/TPKM/1	27 May 2002
Trinidad & Tobago	G/TRIMS/N/1/TTO/1	1 April 1996
Zambia	G/TRIMS/N/1/ZMB/1	13 April 1995

¹ A Corrigendum to the English version was issued in G/TRIMS/N/1/CRI/1/Add.1/Corr.1, dated 26 October 1999.

ANNEX 3

Members that have Submitted Notifications under Article 6.2 of
the Agreement on Trade-Related Investment Measures

Albania	Malaysia
Angola	Maldives
Argentina	Malí
Armenia	Mauritius
Australia	Mexico
Bahrain	Moldova
Bolivia	Mongolia
Brazil	Namibia
Brunei Darussalam	New Zealand
Burundi	Nicaragua
Cameroon	Nigeria
Canada	Norway
Chad	Oman
Chile	Panama
China	Paraguay
Colombia	Peru
Costa Rica	Philippines
Croatia	Qatar
Cuba	Saudi Arabia
Dominica	Senegal
Dominican Republic	Singapore
Ecuador	South Africa
El Salvador	Sri Lanka
European Community (including the member States ¹)	Suriname
Fiji Islands, Rep. of the	Switzerland
Gabon	Chinese Taipei
Georgia	Thailand
Ghana	Trinidad and Tobago
Haiti	Tunisia
Hong Kong, China	Uganda
Iceland	Ukraine
India	United States
Indonesia	Uruguay
Israel	Venezuela, Bolivarian Rep. of
Jamaica	Zambia
Japan	Zimbabwe
Jordan	
Korea	
Kuwait	
Kyrgyz Republic	
Liechtenstein	
Macao, China	
Madagascar	

¹ Cyprus and Hungary did not provide that notification.

ANNEX 4

April 2007

S&D CATEGORY II PROPOSALS ON THE TRIMS AGREEMENT

Revised proposal received from the delegation of Kenya on behalf of the African Group

Proposal related to Article 4 of the TRIMs Agreement

Members shall interpret and apply Article 4 of the TRIMs Agreement in accordance with the balance-of-payments provisions referred to in Article 4 of the TRIMs Agreement, and in a manner that fully supports measures taken by developing and least-developed country Members to safeguard their external financial position, balance-of-payments and sufficiency of reserves, taking full account of paragraph 1.1 of the Ministerial Decision on Implementation-Related Issues and Concerns.¹

Members shall interpret and apply Article 4 of the TRIMs Agreement in accordance with the provisions of Article XVIII of GATT 1994 referred to in Article 4 of the TRIMs Agreement, and in a manner that fully supports measures taken by developing and least-developed country Members to promote the establishment of a particular industry, taking full account of paragraph 1.1 of the Ministerial Decision on Implementation-Related Issues and Concerns.²

- In considering requests to apply TRIMs under Article XVIII of the GATT 1994, Members shall take into account any difficulties encountered by least-developed and developing countries in meeting the notification and consultation requirements contained in Article XVIII, paragraphs 14 to 19, and the WTO Secretariat shall accord them such technical assistance and support as they may need in order to prepare their notifications and to carry out those consultations.
- In order to assist **least-developed and other low-income developing** countries whose dependence on primary production is particularly high and whose overall level of industrialisation is particularly low to accelerate their industrialisation process and to diversify the structure of their economies in line with the objective recognized in Article XXXVI:5 of the GATT 1994 and its Ad Note, the phrase "free to deviate temporarily from the provisions of Article 2" that is contained in Article 4 of the TRIMs Agreement shall be understood to refer, in the case of these countries, to a reasonable period of time sufficient to establish the particular industry in question on a competitive footing.

Proposal related to Article 5.3 of the TRIMs Agreement

Further to the Hong Kong Ministerial Decision in favour of least-developed countries on Special and Differential Treatment relating to the Agreement on Trade-Related Investment Measures³, other low-income developing countries that demonstrate difficulties in implementing the provisions of the TRIMs Agreement shall be provided with a new opportunity to notify TRIMs and to request transition periods to eliminate the measures.

¹ Paragraph 1.1 of the Ministerial Decision on Implementation-Related Issues and Concerns, adopted on 14 November 2001, "reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provision for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994".

² Ibid.

³ WT/MIN(05)/DEC.

With regard to requests made in this area by **least-developed and other low-income developing country** Members under Article IX of the WTO Agreement, account shall be taken of their particular circumstances when setting the terms and conditions, including time-frames, under which transition periods are granted.
