

**Committee on Trade-Related Investment Measures**

**CONSIDERATION OF PROPOSALS ON S&D TREATMENT PROVISIONS**

Report by the Chairman of the Committee on Trade-Related Investment Measures  
to the General Council

1. Pursuant to the Decision adopted by the General Council on 1 August 2004 (WT/L/579, paragraph 1(d)), the Committee on Trade-Related Investment Measures has considered two Category II proposals on special and differential treatment related to Article 4 and Article 5.3 of the TRIMs Agreement. The proposals were submitted by the African Group originally in document TN/CTD/W/3/Rev.2. A revised version of the proposals was submitted by the proponents in May 2005 (see Annex).
  2. Specifically, the Committee held three formal meetings (26 October 2004, 4 March and 12 July 2005) and two informal open-ended meetings (29 November 2004 and 9 May 2005) to discuss the S&D proposals. In addition, I have conducted various rounds of informal consultations with interested Members on this topic. At the informal meeting of 9 May 2005, the Committee discussed a revised version of the proposals submitted by Kenya on behalf of the African Group, which target more specifically the interests of the African countries.
  3. While discussions in the Committee allowed for a frank exchange of views and shed more insight into the underlying concerns that the proponents seek to address, the Committee has been unable to arrive at a solution that would have enabled it to agree to these proposals or to alternative compromise solutions.
  4. My personal assessment is that, while it would appear possible to reach agreement on the first part of the revised African Group proposal on Article 4, certain fundamental questions remain unresolved with respect to other elements in the second part of the proposal on Article 4 and in the proposal on Article 5.3, including, in particular, the country-scope and the time-horizon for their application. Nevertheless, I have sensed that there might be room for progress also in these areas if Members manage to work with creativity and flexibility to find a satisfactory solution. My recommendation to the General Council, therefore, would be to keep this matter under consideration.
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ANNEX

S&D PROPOSALS ON THE TRIMS AGREEMENT

Revised Text

Proposals 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<sup>1</sup>.

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<sup>2</sup>.

- 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 African 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, which normally shall be understood to refer to a period of not less than 6 years.

Proposal related to Article 5.3 of the TRIMs Agreement

Least-developed countries and other developing countries which are party to a regional agreement within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (L/4903), at least half of the current membership of which is made up of countries currently on the United Nations list of least-developed countries, that demonstrate difficulties in implementing

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<sup>1</sup> 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".

<sup>2</sup> 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".

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. With regard to requests made in this area by these 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.

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