

WORLD TRADE ORGANIZATION

G/L/964
10 October 2011

(11-4919)

REPORT (2011) 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 2010 – October 2011.¹

2. The Committee met formally once in 2011. This meeting was held on 3 October 2011 under the Chairpersonship of Mrs Zhao Hong (China). The minutes of the formal meeting may be found in document G/TRIMS/M/31. The meeting was 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.

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.²

4. Annex 1 to this report contains a list of all notifications of measures under Article 5.1.³ 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 Lesotho and United Arab Emirates. As

¹ The annual report for 2010 is contained in document G/L/928 of 4 October 2010.

² WT/L/64.

³ 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.

agreed by the Committee at its meeting on 20 May 2009, the Secretariat has been circulating reminders every six months.⁴ These reminders 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 also request all Members that had never notified such publications to do so without delay and request all Members that had previously notified to constantly update their notifications, if appropriate, without delay. The latest updated list of these notifications has been circulated in document G/TRIMS/N/2/Rev.21.

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 these 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. At the Committee meeting of 23 October 2008, the Chairperson indicated 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.

9. At the Committee meetings of 16 October 2009⁷ and 1 October 2010, 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, but no such consultations were requested.

10. At the Committee meeting of 3 October 2011, no delegation took the floor regarding this issue and the Chairperson indicated that she had no further developments to report to the General Council in this respect. The Chairperson reiterated the willingness to continue informal consultations on this issue, should Members so wish, and indicated that any further developments would be reported

⁴ Reminders for 2011 were circulated in documents G/TRIMS/W/81 and G/TRIMS/W/82.

⁵ The latest revised version of the African Group's proposals was annexed to document G/TRIMS/M/30, and is reproduced in Annex 4 to this report.

⁶ WT/GC/M/112, paragraph 142.

⁷ Following that meeting, the Chairperson made an oral report to the General Council at its meeting held on 17 December 2009. This report was reflected in document WT/GC/M/124, paragraph 52.

back to the Committee and the General Council at an appropriate time. She invited Members requesting such consultations to contact the Chairperson or the Secretariat in this regard.

IV. COMMUNICATIONS BY MEMBERS AND RELATED DISCUSSIONS

11. Since the last Committee meeting in October 2010, two communications were received from Indonesia on 22 December 2010. The first was entitled "Indonesia's replies to questions posed by the United States and Comments made by Canada and the European Union during the Committee meeting of 1 October 2010".⁸ The second was entitled "Indonesia's Regulations on Communication and Information regarding the Supply of the Universal Telecommunication Service Obligation and the Guidelines for Evaluation of the Achievement of Domestic Component Level in Telecommunication Operations - Indonesia's replies to Follow-up Questions posed by Japan in document G/TRIMS/W/78".⁹

12. At the Committee's regular meeting of 3 October 2011, a number of issues were placed on the agenda of the meeting at the request of Members. The first pertained to certain measures by Indonesia addressing local content in investment in the telecommunications sector, which was placed on the agenda at the request of the European Union and Japan. Written follow-up questions were submitted by Japan, prior to the meeting.¹⁰ Both Members supported by Canada and the United States, posed additional follow-up questions and made comments with respect to this issue. Indonesia provided preliminary oral responses and indicated that detailed written answers would follow in the near future.

13. The second issue related to certain Indonesian laws and draft implementing regulations on mineral and coal mining and was placed on the agenda at the request of the European Union, Japan and the United States. Prior to the meeting, the United States submitted written questions pertaining to certain local content provisions in the Indonesian energy sector (mining, oil and gas).¹¹ The three Members, supported by Canada, posed additional questions to Indonesia pertaining to this issue. Indonesia provided preliminary oral responses and indicated that detailed written answers would follow in the near future.

14. The third issue pertained to India's mandatory local content requirements in project guidelines for phase 1 (batch 1 and batch 2) of the Jawaharlal Nehru national solar mission. It was placed on the agenda of the meeting at the request of Japan and the United States. The United States submitted written questions in this respect, prior to the meeting.¹² Both Members, in addition to the European Union, posed a number of questions and made comments in this respect. India provided oral responses at the meeting followed by written answers to the written questions posed by the United States.¹³ India requested the European Union to submit its questions in writing.

15. The fourth issue related to Nigeria's measures as contained in the "Act to provide for the development of Nigerian content in the Nigeria oil and gas industry" of April 2010. This item was placed on the agenda at the request of the European Union and the United States. The United States submitted, prior to the meeting, written questions in this regard¹⁴, while the European Union submitted a room document containing its questions. Both Members, supported by Japan, posed questions and made comments in this respect. Nigeria referred to its bilateral consultations with the

⁸ G/TRIMS/W/79.

⁹ G/TRIMS/W/80.

¹⁰ G/TRIMS/W/86.

¹¹ G/TRIMS/W/88.

¹² G/TRIMS/W/87.

¹³ G/TRIMS/W/91.

¹⁴ G/TRIMS/W/89.

United States on the issue and affirmed that it would be submitting the necessary answers to the European Union and the United States' questions before the next Committee meeting.

V. TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA¹⁵

16. Pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China, the Committee carried out the ninth and final 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 23 September 2011, 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/90, dated 27 September 2011. A written communication regarding China's Transitional Review was submitted in advance of the review by Japan. This communication was circulated in document G/TRIMS/W/85 dated 21 September 2011. In addition, the European Union, Mexico and the United States made oral statements in connection with the review. The review took place at the meeting of 3 October 2011. The Report of the Chairperson of the Committee on China's ninth and final Transitional Review was submitted to the Council for Trade in Goods in document G/L/963. The discussions held by the Committee on this item are reflected in the relevant section of the minutes of the meeting (G/TRIMS/M/31).

VI. DATE OF THE NEXT MEETING

17. The next Committee meeting will be held on **1 October 2012**.

VII. ELECTION OF OFFICERS

18. At its meeting of 3 October 2011, the Committee elected Mr Patrick Van Gheel (Belgium) as its Chairperson for the period 2011-2012.

¹⁵ 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
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

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

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

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.

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 **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.
