

**PREPARATORY COMMITTEE  
FOR THE  
WORLD TRADE ORGANIZATION**

RESTRICTED

**PC/IPL/8**

30 November 1994

(94-2539)

---

**SUB-COMMITTEE ON INSTITUTIONAL,  
PROCEDURAL AND LEGAL MATTERS**

**RECOMMENDED FORMAT FOR NOTIFICATIONS  
UNDER ARTICLE 5.1 OF THE TRIMs AGREEMENT**

**Report by the Chairman of the Informal Contact Group on TRIPS  
as approved by the Sub-Committee on 28 November**

1. At the meeting of the Sub-Committee on Institutional, Procedural and Legal Matters on 14 September, it was agreed that the Contact Group on TRIPS should undertake any necessary preparatory work on notification procedures for the TRIMs Agreement (PC/IPL/M/4, paragraph 5). The Contact Group on TRIPS discussed this matter at its meeting of 23 September. At that time, the Chairman noted that the TRIMs Agreement requires all trade-related investment measures which are not in conformity with the provisions of the Agreement to be notified to the Council for Trade in Goods within 90 days of the entry into force of the WTO Agreement. TRIMs thus notified would benefit from the transition arrangements provided in the Agreement. He further noted that any decision to give effect to this notification procedure should be prepared in advance so that it could be taken by the Council for Trade in Goods without delay after the entry into force of the WTO Agreement.

2. Attached is a recommended format for the notification of TRIMs together with their principal features as required under the provisions of Article 5.1 of the TRIMs Agreement. Article 5.1 of the Agreement on TRIMs requires that:

"Members, within 90 days of the date of entry into force of the WTO Agreement, 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."

A footnote to this provision states that: "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."

3. One point that emerged from the consultations was that, while the burden on notifying Members should be kept to a minimum, it was important for the legal security of both the notifying Member and other Members that each notification provide sufficient information to define clearly the measure that would benefit from legal cover during the transition period and which the notifying Member was undertaking to eliminate during this period.

4. It is suggested that notifying Members be invited to use the format, on the understanding that responsibility for the nature and scope of notifications and the extent to which such notifications meet the requirements of Article 5.1 rests with the notifying Member.

5. There are other notification requirements in the TRIMs Agreement, in Article 5.5 and Article 6, but it is suggested that these could be addressed by the Committee on TRIMs itself once the Agreement is in force.

6. A further point, which it is suggested should be examined at an early stage by the competent WTO body, is the question of the arrangements for notification of TRIMs by countries eligible to become original Members of the WTO but who accept the Agreement during the period of two years following its date of entry into force that is envisaged in Article XIV:1 of the WTO Agreement. For such countries, the period of 90 days for making Article 5.1 notifications under the TRIMs Agreement, which is dated from the entry into force of the WTO Agreement itself, may have expired. The transition period for the elimination of the TRIMs in question would, of course, be governed by the provisions of Article XIV:2 of the WTO Agreement and thus continue to be dated by reference to the time of entry into force of the WTO Agreement. The same would apply to the 180 day period of Article 5.4 of the TRIMs Agreement. The situation of States who accede to the WTO would depend on the provisions of their Protocols of Accession.

FORMAT FOR NOTIFICATIONS UNDER ARTICLE 5.1 OF THE AGREEMENT ON TRIMs

This format is without prejudice to the rights and obligations of Members under the TRIMs Agreement.

(i) Description of the Measure and of its Main Features

The notification should clearly identify the measure that is being notified under Article 5.1 of the Agreement on TRIMs. Any more general information about the programme of which the measure forms a part and which the notifying Member wishes to communicate should be provided under point (ii) below. Where such a programme involves more than one TRIM, they should be notified separately.

The measure and its main features should be described in sufficient detail to enable the nature and scope of the measure to be clearly defined. In particular, along with the measure itself, the following principal features should be described whenever relevant:

1. The category in the illustrative list under which the measure falls.
2. Whether the TRIM is applied by the government of the Member under discretionary authority or mandatory legislation. In the former case, each specific application shall be notified and enterprises subject to the measure identified.<sup>1</sup>
3. Where the TRIM is general in nature, the criteria for determining to which enterprises it applies in sufficient detail to enable those enterprises to be identified.
4. Where the TRIM is applied pursuant to mandatory legislation, whether the legislation requires the measure to be applied to new enterprises or new investments of existing enterprises.
5. Whether compliance with the measure by the enterprise is (a) mandatory or enforceable under domestic law or administrative rulings or (b) necessary to obtain an advantage. In the latter case, the nature of the advantage should be described.<sup>1</sup>
6. When the TRIM relates to specific products, sufficient detail on these products to define the scope of the measure.
7. The date of implementation of the TRIM and the nature of any modification of the TRIM effected within 180 days prior to the entry into force of the WTO Agreement.
8. Whether the TRIM, as applied under domestic law, includes provision for its phasing-down and/or elimination. If so, details should be given.
9. The domestic law, regulation or administrative guideline under which the TRIM is applied; a copy should be submitted to the Secretariat to be available for inspection by interested Members.
10. The level of government applying the TRIM, the name of the implementing agency and any information on the procedures governing its application necessary to enable its nature and scope to be understood.

---

<sup>1</sup>Information that would prejudice the legitimate commercial interests of particular enterprises need not be notified.

(ii) General Information on the Programme in Question

Where appropriate, Members should provide more general information about the programme of which the notified TRIM forms a part.