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## **1 ARTICLE 5**

### **1.1 Text of Article 5**

#### ***Article 5***

##### *Notification and Transitional Arrangements*

1. 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.<sup>1</sup>

(*footnote original*)<sup>1</sup> 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.

2. Each Member shall eliminate all TRIMs which are notified under paragraph 1 within two years of the date of entry into force of the WTO Agreement in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.

3. On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under paragraph 1 for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.

4. During the transition period, a Member shall not modify the terms of any TRIM which it notifies under paragraph 1 from those prevailing at the date of entry into force of the WTO Agreement so as to increase the degree of inconsistency with the provisions of Article 2. TRIMs introduced less than 180 days before the date of entry into force of the WTO Agreement shall not benefit from the transitional arrangements provided in paragraph 2.

5. Notwithstanding the provisions of Article 2, a Member, in order not to disadvantage established enterprises which are subject to a TRIM notified under paragraph 1, may apply during the transition period the same TRIM to a new investment (*i*) where the products of such investment are like products to those of the established enterprises, and (*ii*) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Any TRIM so applied to a new investment shall be notified to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

### **1.2 General**

1. The Panel in *EC – Bananas III* declined to consider a claim based on Article 5 on the grounds that it had not been properly identified in the panel request.<sup>1</sup>

2. In *Indonesia – Autos*, the Panel noted that "a violation of Article 2.1 of the TRIMs Agreement may be justified under Articles 3, 4 or 5 of the TRIMs Agreement".<sup>2</sup>

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<sup>1</sup> Panel Reports, *EC – Bananas III*, para. 7.31.

3. In *China – Rare Earths*, one member of the Panel dissented on the question of whether Article XX of the GATT 1994 is applicable to Paragraph 11.3 of China's Accession Protocol. In this dissenting panelist's view, an acceding Member may waive its rights to have recourse to certain benefits under the covered agreements, but this must be done explicitly. As an example of such a waiver, the dissenting panelist observed that "in Paragraph 7.3 of China's Accession Protocol, China explicitly agrees not to have recourse to notification and transitional arrangements under Article 5 of the TRIMs Agreement".<sup>3</sup>

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<sup>2</sup> Panel Report, *Indonesia – Autos*, para. 14.92.

<sup>3</sup> Panel Reports, *China – Rare Earths*, para. 7.137.