

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)  
Negotiating Group on Trade-Related  
Investment Measures

MEETING OF 30 OCTOBER - 2 NOVEMBER 1987

Note by the Secretariat

1. The Group held its fourth meeting on 30 October and 2 November 1987 under the chairmanship of Ambassador T. Kobayashi (Japan). The agenda set out in GATT/AIR/2494 was adopted.

Identification and Examination of the Operation of GATT Articles on the  
Basis of National Submissions

2. The Chairman recalled that seventeen Articles had been identified for examination. The Group had begun its examination of the operation of Article III, VI, and XVI at the last meeting. He invited participants to make further observations on the operation of these Articles, and then to proceed with their observations on Articles I, II, VIII, X, XI, XII, XIII, XV, XVII, XVIII, XXII, XXIII, XXIV and XXIX.

3. One participant expressed the view that the Group should begin with the examination of those Articles that had been invoked in the past in respect of the trade effects of investment measures. These, it appeared from the Secretariat's documentation, were the Articles that had been the subject of consideration by the FIRA Panel. Only then should the Group proceed to examine other Articles that had been identified in submissions as being related to the trade restrictive and distorting effects of investment measures.

4. One participant asked the Secretariat whether there had been any instance other than that considered by the FIRA Panel when GATT Articles had been invoked in relation to the trade effects of investment measures. The Secretariat replied that it had included only those instances in its background note (MTN.GNG/NG12/W/3) where it had felt confident that GATT Articles had been examined in relation to the trade effects of investment measures. It would need further guidance from the Group on which investment measures were considered to have relevant trade effects if it were to do more work in this area. Another participant stated that it would appear that it was still not clear what were considered to be investment measures. The Chairman stated that it was to be hoped that a practical approach through the Group's examination of the operation of GATT

Articles related to the trade restrictive and distorting effects of investment measures would lead to a better understanding of this issue.

5. Another participant recalled the Group's negotiating mandate and plan and stated that these provided guidelines and sequence for the Group's work. These were; the Group should examine GATT Articles but not GATT principles or objectives; the negotiations should address merchandise trade problems, and deal mainly with the trade effects of investment measures rather than with the measures themselves; a clear distinction should be made between trade problems and investment problems; discussions should focus on those trade-related investment measures that have a direct, significant restrictive or distorting effect on trade; and the approach should be not to examine or question any investment measure on the grounds that it was trade-related or had a trade impact, but that its trade effects represented a form of distortion to trade.

6. The Chairman stated that in this initial phase it was clear that the Group was to examine the trade restrictive and distorting effects of investment measures and not the measures themselves.

#### Article III, VI and XVI

7. One participant stated that the FIRA Panel had found that the trade effects of local content requirements were inconsistent with Article III:4, and that Article III:5 would appear to be relevant to local content requirements formulated as quantitative restrictions. Another participant considered it important to examine further whether Article III applied only to the trade effects of local content requirements or also to the trade effects of manufacturing requirements, trade-balancing requirements and other investment measures. The trade effects of some of these measures might be related more appropriately to Article XI.

8. Some other participants stated that Article III was not related to investment measures such as manufacturing requirements that involved local production rather than local purchase, since the products in question did not exist at the time the investment measure was applied and like imported products could not, therefore, be treated less favourably. One of these participants stated that the trade effects of manufacturing requirements and trade-balancing requirements should be examined in relation to the operation of Article XI.

9. One participant stated that many of the so-called measures that had been mentioned were not relevant to the Group's work since the Group should not analyze the investment policies of different countries. With regard to the trade effects of local content requirements, it was important to make a distinction between imports and imported goods as well as between importation and local production. The decision to utilize local content in itself should not be considered by this Negotiating Group to be trade-related since, where there was no import prohibition on the product,

the decision was not an act between contracting parties with effects at the border and it was not, therefore, a matter that was dealt with in the GATT. Article III concerned the treatment applied to imported products and not the decision to import or not, so that while local content requirements might have effects on trade, they should be examined on a case-by-case basis by looking at traditional trade flows. This measure in itself should not be considered as infringing Article III.

10. One participant enquired how the Group would consider taking account of the provisions for special and differential treatment for developing countries in Part IV of the GATT in the event that it appeared that local content requirements contravened Article III:4 or III:5. One view was that it would be necessary for the Group to consider how its entire discussions fitted in with the accepted principle of special and differential treatment. Another view was that the provisions for special and differential treatment were already developed and clear and should be taken into account by the Group. The FIRA Panel had referred in its findings to the possible relevance of Article XVIII to disputes involving less-developed contracting parties.

#### Article I

11. Some participants stated that the provisions of Article I were important since a number of investment measures could have discriminatory trade effects, in particular where they were negotiated on a case-by-case basis with individual investors. One or these participants stated that even the lack of enforcement of an investment measure could contribute to creating an uncertain investment environment. Some of the other participants considered that local content requirements could have discriminatory trade effects, and that the relation of Article I to other investment measures should be examined on a case-by-case basis.

12. One participant stated that she would welcome further elaboration of the measures and their relationship to Article I.

#### Article II

13. One participant stated that Article II aimed at protecting the value of tariff concessions and that the trade effects of investment measures could reduce the value of these concessions and add an extra level of protection. Article II was a potential vehicle for avoiding the trade restrictive and distorting effects of investment measures, but other Articles might be more effective. Article II should therefore be held in abeyance until the operation of other Articles had been examined.

#### Article VIII

14. One participant stated that Article VIII, like Article II, reflected the desire of the drafters of the GATT to obligate countries to employ duties should they wish to protect domestic industries or products. The Article banned "fees and charges of whatever character" (other than those imposed consistently with Articles II and III) to the extent they exceeded the approximate cost of services rendered. Such fees and charges were not to represent indirect protection to domestic products. Although trade-related investment measures did not commonly take the form of fees or formalities or involve charges, several of them could increase the cost of imports and have protective effects. To the extent that they were imposed to provide protection to domestic products or industries, they did raise problems under GATT Articles and Article VIII warranted examination in this respect.

15. Some participants agreed that the operation of Article VIII could be relevant for the Group's work and should be examined. Some other participants doubted the relevance of Article VIII to the Group's work.

#### Article X

16. Several participants stated that the principle of transparency was particularly important in relation to the trade effects of investment measures. Transparency was helpful for economic operators and for policy makers to correct their perceptions of measures applied by other governments. Transparency was important in all legislation affecting trade and having a bearing on the rights and obligations of other contracting parties. Lack of transparency could act as an effective barrier to trade, leading to both restrictions and distortions.

17. One participant noted that the provisions of Article X:2 required sufficient advance publication of changes in government policy affecting trade. These provisions contributed to predictability and transparency. The terms of Article X applied to "requirements, restrictions and prohibitions on imports or exports", and "requirements" under the FIRA Panel decisions included "voluntary undertakings" that were enforceable under the domestic law of the investor's host country. Virtually all trade-related investment measures were subject to Article X, and this participant urged contracting parties to comply with these existing obligations in respect of these measures.

18. One participant, while endorsing fully the need for transparency, questioned whether the existing provisions of Article X were sufficient since these related to measures of "general application" and trade-related investment measures were often applied on a case-by-case basis to individual investors. Another participant agreed that this question needed further examination, but noted that even though trade-related investment measures were often negotiated on a case-by-case basis with individual

investors, they typically operated under national legislation that had the purpose of being generic. The case-by-case negotiation of investment measures led frequently to a lack of transparency in the application of legislation that could affect everyone.

19. One participant stated that it would seem natural for governments to advertise investment measures that were designed to attract investment, and noted that the relevance of Article X had not been examined by the FIRA Panel. Another participant stated that the FIRA Panel had not been asked to examine the conformity of Canada's FIRA legislation with Article X since the legislation had been published and fully transparent.

20. Some participants stated that it was important to distinguish the principle of transparency from the scope of application of Article X. Article X concerned trade regulations, not trade-related regulations, and investment measures were not trade regulations. Article X concerned measures of general applicability which trade-related investment measures frequently were not. Article X:2 concerned the publication and administration of trade regulations but did not address the practice of notifying them to the GATT. Article X:1 did not require contracting parties to disclose confidential information that would, inter alia, "prejudice the legitimate commercial interests of particular enterprises, public or private", and it was necessary to respect the confidentiality of case-by-case negotiations between investors and governments. One of these participants considered that it would be impractical for the GATT to receive publications on all the measures covered by Article X:1. The same participant stated that transparency had perhaps merits in facilitating the examination of the Group's subject but without being linked to the provisions of Article X; with the caveat contained in Article X:1 concerning the disclosure of confidential information, there was scope for transparency across-the-board for all economic operators, governmental and nongovernmental, if the Group was to consider examining the area of trade-related investment measures.

21. One participant stated that the regulations covered by Article X:1 included those "affecting" the sale, distribution etc. of products, and that certain trade-related investment measures were therefore covered by the existing provisions of this Article. Another participant recalled that in the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, contracting parties had undertaken, to the maximum extent possible, to notify their adoption of trade measures affecting the operation of the General Agreement. To this, one participant stated that there remained an important distinction between publication and notification.

22. One participant considered that as the Group's examination of the operation of other Articles progressed, it would become clearer how the provisions of Article X were related to the trade effects of investment measures.

Article XI

23. Some participants stated that the provisions of Article XI had a considerable degree of general applicability to the trade effects of investment measures and did not relate only to border restrictions on imports or exports. This was clear from Article XI:1 which did not permit the imposition of prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures.

24. In the view of these participants the provisions of Article XI were related to the trade effects of local content requirements, and some considered that the trade effects of one or more of the following investment measures were also related: domestic sales requirements, exchange restrictions, manufacturing requirements, manufacturing limitations, product mandating requirements, remittance restrictions, technology transfer requirements and trade-balancing requirements. These measures could have effects similar to border import or export restrictions for the host country or for other countries. One participant stated that export performance requirements could result in export encouragement and distort the free flow of trade and that the operation of Article XI should be examined also in respect of the trade effects of this measure even though it did not directly restrict exports and was not, therefore, in direct violation of the provisions of Article XI.

25. One participant considered that the provisions of Article XI were related to the trade effects of local content and trade-balancing requirements, but that their trade effects should be seen in the light of the provisions in the General Agreement for special and differential treatment of developing countries.

26. Another participant agreed on the importance of taking account of the provisions for special and differential treatment, and stated that because Article XI was broad in nature, as some other participants had pointed out, it allowed for several escape provisions that could be relevant to the trade effects of local content requirements.

27. Some participants stated that the trade effects of most or all of the investment measures that had been cited in relation to Article XI were not direct or significant, nor restrictive or distorting, and that they did not fall within the Group's negotiating mandate. One participant illustrated their positive, trade-creating effects by noting that Article XVIII:C and Part IV of the GATT provided for the setting up of infant industries in developing countries and that investment measures could help to ensure their efficient operation.

28. Two participants stated that care should be taken not to interpret the applicability of the provisions of Article XI too broadly so that any production incentive or export promotion effort could be viewed as

distorting trade flows, since in that way the scope of the Group's discussions would become unacceptably wide.

29. Some participants stated that the trade effects of export performance requirements were not related to the provisions of Article XI since these requirements led to increased exports, not restricted exports. One of these participants added that if these requirements resulted in dumping or if they involved government subsidies to exports, the GATT provided for appropriate remedies.

30. One participant doubted the relevance of Article XI for the trade effects of manufacturing requirements and technology transfer requirements since these did not involve border restrictions. The provisions of Article XI related mainly to the imposition of quantitative restrictions at the border.

31. Two participants recalled that the FIRA Panel had concluded that local content requirements were not inconsistent with the provisions of Article XI:1 (paragraph 5:14 of L/5504, and BISD 30S/162). Another participant recognized that the FIRA Panel had rendered an opinion on the distinction between measures affecting imported products and measures affecting the importation of products, finding only the latter to be related to Article XI. However, the Panel had not been required to interpret Article XI authoritatively in respect of local content or local supplier requirements since it had found already that these were in violation of Article III. Also, the FIRA Panel had not examined manufacturing requirements.

32. Two participants stated that more work needed to be done on clarifying how the trade effects of investment measures were related to Article XI.

33. One participant stated that he had noted the views expressed on the operation of Article XI and that he was not in a position to comment in substance for the time being.

#### Article XIII

34. Some participants stated that Article XII set out numerous limitations on the use of import restrictions for balance-of-payments purposes. Its provisions, which related to short-term adjustment policy and not to general investment policy, could be seen only with difficulty as justifying the imposition of trade-related investment measures, since these tended to be imposed on an ad hoc rather than a general basis and to apply in a narrow range of circumstances. Many of these participants stressed that it would be necessary to establish which GATT disciplines applied to the trade effects of investment measures before the operation of exceptions to these disciplines such as Article XII could be examined satisfactorily in the Group. It was difficult to discuss exceptions in a general context. Some of these participants added that Article XII related only to restrictions

on imports, so that it was excluded in any event as a possible justification for measures such as export performance and product mandating requirements.

35. One participant stated that he saw no basis for examining the operation of Article XII in conjunction with Articles XV and XVIII as had been suggested by the Chairman. The record should not reflect that the Group had begun an examination of the balance-of-payments justification for trade-related investment measures. Since investment measures were not trade measures, there was no question of having to justify any investment measure under the GATT. Nor was there any question of having to justify all measures taken for balance-of-payments purposes or development purposes under the GATT.

36. Some other participants stated that they also did not see the relevance of examining the operation of Article XII as a justification for the imposition of trade-related investment measures. There was no obligation in the GATT to justify investment measures for balance-of-payments reasons. Any relationship there might be between the trade effects of investment measures and the operation of GATT Articles had first to be established before the Group turned to examine the operation of exceptions to GATT disciplines.

37. One participant stated that, without empirical evidence of the trade effects of investment measures, it was not possible to determine whether they impinged on the balance of rights and obligations of contracting parties.

#### Article XIII

38. One participant stated that some trade-related investment measures may run afoul of these provisions, although his delegation knew of no particular case in point.

39. Another participant stated that Ad Article XIII seemed to imply that the application of commercial considerations by governments as a rule for the allocation of quotas may not always be practicable. This might be applicable to the work of the Group.

#### Article XV

40. One participant stated that exchange actions which permitted an investor to remit increased profits if imports were decreased or exports increased would run counter to the provisions of Article XV by, respectively, frustrating the provisions of Article XI or running counter to the injunction that GATT members not encourage dumping.

41. Another participant stated that the operation of Article XV was not relevant to the Group's work.



42. Other comments made by participants that were related, inter alia, to the operation of Article XV are recorded in paragraphs 35 and 36 of this Note.

#### Article XVII

43. Some participants stated that the provisions of Article XVII could be relevant to the trade effects of a number of investment measures. These provisions were complex and, to a certain extent, ambiguous. The FIRA Panel had interpreted the provisions one way and found that they would not apply to export performance requirements. It had not reached a conclusion regarding the consistency of local purchase requirements with Article XVII:1(c). The operation of Article XVII warranted examination, in this Group as well as in the Negotiating Group on GATT Articles, in order to establish how it might be related to the trade effects of investment measures.

44. One participant stated that Article XVII had not been designed to deal other than with trade in goods governed by the GATT, and that not all of the many measures through which governments intervened on considerations other than commercial considerations could be viewed as contrary to Article XVII or as distorting trade. Article XVII did not concern government intervention but rather the rôle of state trading enterprises in merchandise trade. No investment measures had been identified as having trade restrictive or distorting effects that were the result of an application of Article XVII or in violation of Article XVII.

45. Another participant stated that the activities of state trading enterprises implied intervention by the government and that Article XVII permitted intervention of this kind. The final investment decision, whether taken by a state trading enterprise or not, was up to the investor and government intervention in this decision could not be considered ipso facto to be bad.

#### Article XVIII

46. Comments made by some participants that were related, inter alia, to the operation of Article XVIII are recorded in paragraph 34 of this Note. In addition, these participants doubted that the long-term use of investment measures for development purposes could be justified under Article XVIII.

47. Comments made by some other participants that were related, inter alia, to the operation of Article XVIII are recorded in paragraphs 35 and 36 of this Note. In addition, one participant stated that since the FIRA Panel had mentioned, but not examined, Article XVIII:C in its findings, he did not see the relevance of this Article to the Group's work. One participant saw no basis for separating Article XVIII:B and XVIII:C and

objected to the Group examining specific justifications for investment measures when these measures did not fall under the purview of the GATT. No country had to justify under the GATT an investment régime that it had adopted in accordance with its development policy.

#### Article XXII

48. Some participants considered that Article XXII was an important Article for the Group to examine and that it could be applicable in any situation. Once the Group had reached agreement on which GATT disciplines were applicable to the trade effects of investment measures, it would be natural to apply procedures for consultation on them. For the time being it was too early to expand in any detail on the operation of this Article.

#### Article XXIII

49. Some participants made similar comments on the operation of Article XXIII to those made on the operation of Article XXII which are recorded in paragraph 48 of this Note. In addition, one of these participants considered that this Article was broad enough to reach almost all trade-related investment measures. Another participant stated that not even a violation of a GATT Article was needed for a contracting party to invoke the provisions of Article XXIII:1, but that its provisions should be examined in relation to the trade effects of investment measures on a case-by-case basis.

50. Some other participants considered that it was too sweeping to state that Article XXIII could be related to the trade restrictive and distorting effects of all investment measures, and that this Article would have no relevance to these trade effects in the absence of them being subject to GATT disciplines.

#### Article XXIV

51. Some participants considered the provisions of Article XXIV:12 were relevant to the Group's work to the extent that any GATT Article was related to the trade restrictive and distorting effects of investment measures.

#### Article XXIX

52. One participant stated that the Group should bear in mind the historical perspective of the issue of investment and that the provisions of Article XXIX might be relevant in this respect.

53. One participant agreed that a historical perspective was useful. Another participant reserved the right to return to this Article later.

54. Some participants stated that the FIRA Panel had discussed the provisions contained in the Havana Charter on investment, and that this discussion had been convincing. The Havana Charter could not be invoked, through Article XXIX, to justify the application of trade-related investment measures.

Clarification of points made by participants in earlier discussions

55. Two participants expressed concern that their views had not been adequately reflected in the Secretariat's Note on the last meeting (MTN.GNG/NG12/3), and they restated their views.

56. The first stated that he had drawn attention to a sentence contained in a Secretariat Note on Past Discussions in GATT on Trade-Related Investment Measures (MTN.GNG/NG12/W/3, page 4, second full paragraph, beginning "The language ...") and had endorsed this sentence. The task of this Group must be to focus on those trade-related investment measures that had a particularly direct and significant restrictive or distorting impact on trade and that were directly related to existing GATT Articles.

57. His delegation could not accept the view that the objective of negotiations was to establish within GATT a new system to regulate trade-related investment measures or to provide for a smooth development of the international exchange of investment, as had been stated in the Submission by the Japanese Government (MTN.GNG/NG12/W/7). The objective of the Group's work was to clarify the operation of GATT Articles and to elaborate such further provisions as may be necessary. This could not be construed as a licence to create a new régime or agreement. It was clear that the negotiating mandate could not provide a basis to question the sovereign right of governments to regulate foreign direct investment and lay down conditions of establishment for foreign enterprises. Nor could it allow national policies on investment, industrialization and treatment of foreign capital to be questioned on the grounds that these were trade-related.

58. The negotiating mandate provided for a sequence in the Group's work which the Group had now begun to adhere to. The object of the Group's work was to focus not on the measures per se but on the trade restrictive and distorting effects of the measures. It was the operation of GATT Articles that was to be examined, and not underlying GATT philosophy or objectives.

59. Participants were not talking about the rights and obligations of signatories to the MTN Agreements and Arrangements in this Group, but about the examination of the operation of GATT Articles and how the adverse trade restrictive or distortive effects of investment measures impinged upon their operation. There was a clear nexus established there, and the

disciplines under the MTN codes would not be relevant. By this was meant codes that addressed different issues from those such as in the Subsidies Code which was an elaboration of what Articles VI and XVI were about; codes such as the Dairy Arrangement, the Civil Aircraft Agreement and the Government Procurement Agreement were disciplines that it would not be pertinent to look into.

60. Also, there could be no assumption that the trade restrictive and distorting effects of investment measures were a function of government action or policies. The trade-related investment measures of private enterprises also had distortive and restricting trade effects.

61. These were some of the elements that should guide the Group's work in the initial phase and in a proper understanding of what the negotiating mandate was.

62. In addition, it was his delegation's views that there was no causal relationship between export performance requirements and dumping. Nor did the existence of export performance requirements or any other investment measure imply government encouragement of dumping. The view that it was preferable to curb dumping at its source was based on the hypotheses that investment measures led to dumping and that they should be proscribed, and there was no instrumentality available under the GATT to curtail such practices. The proper response to dumping was through anti-dumping measures. The third country effects of dumping was a larger issue that should be taken up in the broader examination that was taking place elsewhere of the dumping rules.

63. The second of these participants stated that the focus of discussions should be the examination of direct, significant, negative effects to trade caused by investment measures. In order to make GATT Articles applicable, such effects must necessarily bring about a concrete negative result on trade since investment measures per se were not covered by the General Agreement. The absence of a real link to trade for some effects of investment measures was leading some countries to apply subjective elements of presumption of eventual harm to trade flows. This was the case of such measures as remittance restrictions, technology transfer requirements, licensing requirements and others. Measures of this kind related to issues of foreign capital treatment, in the scope of industrial policies, which were not of GATT's competence.

64. As far as the issue of export performance requirements was concerned, the conclusions of the FIRA Panel left no doubt that, if this mechanism induced practices of dumping or subsidies, these effects should be treated under the specific existing dispositions. Therefore, the only one of the so-called trade-related effects enumerated in the submissions that were being considered which had a link with the Ministerial mandate would be local content requirements. However, as these measures were also taken in the broad scope of national industrial and development policies, account should be taken, in each specific case, of only their eventual trade

effects which could be considered in the light of the concepts of national treatment (Article III:5) and quantitative restrictions (Article XI) of the General Agreement.

65. Regarding the rôle of economic operators that took investment decisions, their investment practices took place outside of GATT as the General Agreement did not cover investment as such nor intra-corporation relationships. However, if there was a desire to expand its disciplines in order to create new obligations in the trade of goods originating from trade-related investment measures, these disciplines should necessarily consider the question of the activities of transnational corporations and their influence on the trade of goods.

Consideration of the Group's work programme for the remainder of the initial phase, including documentation requirements

66. The Chairman requested the Secretariat to prepare an informal paper containing a factual, balanced summary of the views that had been expressed in the Group on the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures. He noted that many participants had supported the preparation of such a paper but that some others had hesitations. The paper would be distributed as soon as possible so that the Group could examine it at its next meeting and decide whether to transform it into a formal document that could be added to in the light of further discussions or whether to treat it as a paper that individual participants could use for their own purposes but which would have no status for the discussions in the Group. The paper would not be submitted to the GNG at the end of the initial phase of negotiations.

67. Some participants recognized the technical desirability of having such an informal paper for working purposes. Many participants stated that it should not be viewed as wrapping up the initial phase of the negotiations, nor should it replace the Notes prepared by the Secretariat summarizing the discussions at each meeting. It should be more comprehensive than these Notes, and cover factually and in a balanced way all the statements made on the operation of each Article that had been discussed. Two participants doubted whether the paper could be an adequately balanced reflection of the Group's views even if it was factually correct: one stated that it could not give sufficient weight to the views of those participants who had not yet found it possible to present their own written submissions or a comprehensive statement to the Group; the other stated that he had for the most part reserved his position on the views expressed so far.

68. With respect to the future work programme, some participants stressed that the Group was still at an initial stage of its work. There had been a first round examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, and no common assessment existed yet. A number of participants considered it necessary for the Group to go into greater detail and clarify whether

investment measures had significant, negative effects on trade and whether these effects had any relationship to GATT Articles. One participant stated that the trade effects of local content and export performance requirements seemed to be quite relevant to the Group's work, but that the relevance of the trade effects of other investment measures was not clear; investment measures were designed to promote investment which in turn promoted trade, and he doubted that they had restrictive and distorting, spillover effects on trade. The Group should continue its discussions on the basis of past experience in GATT related to the trade effects of investment measures.

69. Two participants stated that the Group should include in its discussions an examination of the measures and policies applied by investing (home) countries, such as the placing of limits on technology transfer, the prohibition of investment in certain sectors and the restriction of marketing activities.

70. One participant repeated a request made at an earlier meeting for empirical information on the incidence of trade-related investment measures and on their distorting trade effects. There was little point in discussing ways and means of putting restraints on local governments from applying certain measures on account only of a hypothetically assumed impact. Such an impact would have to be sizeable in order to envisage some kind of multilateral rule that would remedy adverse trade effects.

71. Some other participants supported the need for empirical evidence on the trade effects and incidence of investment measures.

72. Some participants expressed concern that the Group was proceeding in its work without clarifying the Ministerial mandate for negotiations that it had been given. One participant stated that a delegation which had made a written submission to the Group appeared to have expressed the view that the purpose of the Group was to establish an agreement or a régime on trade-related investment measures. This was contrary to the Group's negotiating objectives which were more modest. His authorities would not have allowed their sovereign right to determine their investment régime to be open to question nor permitted a multilateral determination of the conditions under which investment was to be allowed without a reference to the importance of investment to the development process.

73. Another participant stated that it was not his delegation's intention to deviate from the Punta del Este mandate. He would not rule out the possibility of establishing a system or régime to regulate trade-related investment measures as had been stated in his delegation's written submission. It was a matter of interpretation of the mandate and of negotiation.