

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNG/NG12/W/12
9 June 1988
Special Distribution

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

Original: English

SUBMISSION BY JAPAN

The following communication has been received from the delegation of Japan with the request that it be circulated to members of the Group.

I. Introduction

The Japanese Government appreciates the vigorous discussions which have taken place thus far concerning the trade restrictive and distorting effects of trade-related investment measures (TRIMs) that had been identified by participants, as well as the identification and examination of the operation of GATT Articles related to these trade restrictive and distorting effects. Japan considers that participants have gone through a first examination of these issues in the past meetings and have expressed their views on trade effects and the relevancy of the GATT provisions and that our understanding on these issues has deepened. These discussions should be continued, but, at the same time, Japan considers that the Negotiating Group should now take up the question of what disciplines are to be set up in order to avoid restrictive and distorting effects of investment measures on trade. Japan submits the following proposal on the general orientation of the work of the Negotiating Group with a view to further contributing to the progress of the negotiation.

II. Proposal on future negotiation

1. In the work of the Group thus far, the discussions on the trade effects of investment measures have not only been limited to their trade restrictive and distorting effects but also other effects were covered.

However, as is clear from the Punta del Este Ministerial Declaration, the trade effects that the Negotiating Group should study are those which restrict and distort trade. Thus, in our future meetings, discussions must be oriented towards the identification of trade restrictive and distorting effects of investment measures and ways to avoid them.

2. The Ministerial Declaration of Punta del Este states that following an examination of the operation of GATT Articles, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid trade restrictive and distorting effects of investment measures.

In order to achieve the above-mentioned negotiating objective, the Negotiating Group should proceed to a comprehensive analysis and classification of the actual practices of TRIMs identified so far, their trade restrictive and distorting effects and the relevancy of GATT provisions, in the light of the applicability of existing GATT provisions. Such a study, at the same time, would enable us to identify those trade restrictive and distorting effects of TRIMs that are not covered by existing GATT provisions.

3. Japan has categorized the trade effects of TRIMs into the following two types taking account of the relationship with existing GATT provisions.

Type A: trade restrictive and distorting effects of investment measures which are considered to be inconsistent with existing GATT provisions.

Type B: trade restrictive and distorting effects of investment measures which are not considered to be obviously inconsistent with, but considered to have some relevancy to existing GATT provisions.

In order to obtain a better understanding of its proposed methodology in a concrete manner, Japan has applied the above-mentioned methodology to the five TRIMs which Japan had pointed out in its earlier submission as well as to manufacturing requirements and product mandating requirements. The latter two were added as Japan considers that these two measures, among the TRIMs identified by other participants, have similar effects to the ones Japan identified in its earlier submission. The tentative result of the work is shown in the annex.

Japan believes that the views which have been expressed thus far by the participants on the 14 TRIMs, including the seven TRIMs shown in the annex, should be further examined and classified according to the above-mentioned methodology. Japan hopes that other participants will join in this approach.

4. On the basis of the above-mentioned work, the Negotiating Group should orient its discussion towards establishing concrete rules to avoid trade restrictive and distorting effects of TRIMs. The general framework of rules that Japan is considering at present is as follows:

(1) Rules to be applied to the TRIMs which have Type A effects.

The TRIMs which have Type A effects (such as local content requirements) have trade restrictive and distorting effects that are considered to be inconsistent with existing GATT provisions. Uruguay Round participants therefore should confirm the applicability of existing GATT articles to these measures. It is also necessary for the participants to agree to prohibit them in principle, and to lay down concrete procedures to reduce or abolish them.

(2) Rules to be applied to the TRIMs which have Type B effects.

The TRIMs which have Type B effects (export performance requirement) are not considered to be obviously inconsistent with existing GATT articles, but have trade restrictive and distorting effects. It is therefore necessary to "elaborate further provisions" in order to avoid their trade restrictive and distorting effects. Uruguay Round

participants should agree, in principle, to prohibit measures with Type B effects like Type A measures, since they too have trade restrictive and distorting effects. They should also agree on concrete procedures to reduce or abolish these measures.

(3) Rules to be applied to all TRIMs

Rules on non-discrimination, transparency, consultations and dispute settlement should be applied to all TRIMs, which have trade restrictive and distorting effects.

(4) Rules on exceptions

With regard to exceptions to general rules, it is necessary for the Group to consider the specific cases in which exceptions could be admitted and also the cases in which such exceptions are to be phased out, referring to the GATT provisions on special and differentiated treatment mentioned thus far.

It is appropriate, however, that such considerations should be taken up after the establishment of disciplines to avoid trade restrictive and distorting effects of investment measures.

Annex

Trade-Related Investment Measures (TRIMs)
 - their trade restrictive and distorting effects and their relevance to
 existing GATT provisions

ANNEX

	Type A	Type B
Actual practices of investment measures	trade effects of investment measures which are considered to be inconsistent with existing GATT provisions	trade effects of investment measures which are not considered to be obviously inconsistent with, but considered to have relevance to existing GATT provisions
1. Local content requirements		
(1) those which require that local content ratio of products be not less than certain specified percentage.	Imported goods are accorded less favorable treatment than products of national origin. Therefore trade effects of the measures are inconsistent with Article III: 4.	<ul style="list-style-type: none"> ◦ They have import restrictive effects as a result of requiring that a specific proportion of a product be from domestic sources. Therefore these trade effects have relevancy to Article XI:1. ◦ They are quantitative regulations which require that a certain proportion of a product must be supplied from domestic sources. Therefore trade effects of the measures are inconsistent with Article III:5.

- (2) those which require that certain components of final products must be procured domestically
 - Concerning components which can also be procured from overseas markets, imported goods are accorded less favorable treatment than products of national origin. Therefore the trade effects of those measures are inconsistent with Article III: 4.
 - They are quantitative regulations which require that a specific amount of products must be procured from domestic sources. Therefore the trade effects of the measures are inconsistent with Article III: 5.
 - Imports of the like components required to be procured domestically are restricted. Therefore the trade effects of the measures are inconsistent with Article XI: 1.
- (3) those which require or virtually oblige foreign investors to manufacture locally some components of products in order to fulfill local content requirements.
(an example of (1) above)
 - Imports of the like components required to be manufactured locally by the investor are restricted. Therefore the trade effects of the measures are inconsistent with article XI: 1.
 - Since the investor is required to use the manufactured components, imported products are accorded less favorable treatment than products of national origin. Therefore the trade effects of those measures are inconsistent with Article III: 4.

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2. Export performance requirements
those which require that a specified amount of products must be exported.

The trade effects of requirements have relevance to Article VI: 3 and Article XVI, in cases where they are imposed on investors with some incentives and to Article VI in cases where investors are obliged, as a result of measures taken by the host country to set prices at levels equivalent to dumping, thereby causing disruptions in export markets. Furthermore, even though the trade effects of export performance requirements are not considered to be inconsistent with Article XI: 1, artificial increase of export as a result of the host country's measures, can be considered to distort trade. It is therefore necessary to elaborate further provisions in order to avoid these adverse effects.

3. Trade balancing requirements

those which require that an investor covers part or all of its imports by the export of its own products

- o Imports of components and others related items are restricted to a certain amount in accordance with the amount of exports of the finished product. Therefore the trade effects of the measures are inconsistent with Article XI: 1.
- o Since the investor is obliged to procure materials from domestic sources, imported products are accorded less favorable treatment than products of national origin as in the case of local content. Therefore the trade effects of the measures are inconsistent with Article III: 4

4. Domestic sales requirements

those which require that a certain amount of products be sold domestically

- o The requirements are export restrictions on the products which must be sold domestically. The trade effects of the measures are inconsistent with Article XI 1.
- o Investors are required or virtually obliged to manufacture locally the components related to the technology to be transferred. The result is that the imports of the like components are restricted. Therefore the trade effects of the measures are inconsistent with Article XI: 1.

5. Technology transfer requirements

those which require or virtually oblige the investor to produce some of the components used by itself locally, in order to bring about the technology transfer

- o Since the investor is obliged to use the locally manufactured components, imported products are accorded less favorable treatment than products of national origin. Therefore the trade effects of the measures are inconsistent with Article III: 4.
- 6. Manufacturing requirement
 - o Imports of the like components are restricted. Therefore the trade effects of the measures are inconsistent with Article XI: 1.
 - o Imported products are accorded less favorable treatment than products of national origin since the investor is obliged to use the components required to be manufactured locally. Therefore the trade effects of the measures are inconsistent with Article III: 4.
- 7. Product mandating requirements
 - o In the cases where the amount of exports to a designated country or region is more than that the investor initially intended, the amount of exports to other countries or regions inevitably will decrease by the same amount. Thus exports to these areas are restricted. In such cases the trade effects of the measures are inconsistent with Article XI: 1.
 - o The trade effects of the requirements have relevance to Article VI: 3 and Article XVI in cases where they are imposed on investors with some incentives and to Article VI in cases where investors are obliged as a result of measures taken by the host country to set prices at levels equivalent to dumping, thereby causing disruptions in export markets.