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Negotiating Group on Trade-Related
Investment Measures

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STATEMENT BY MALAYSIA

The following statement by Malaysia at the meeting of the Negotiating Group on 14 June 1988 is being circulated at that delegation's request.

1. At the meeting yesterday when we were discussing the schedule of work for the Group for this week, I did mention the need for the Group to examine the other side of the story with regard to trade-related investment measures when we continue with our discussion on item A of the agenda. Our discussions so far have examined the operation of the GATT Articles related to trade restrictive and distortive effects of investment measures on the basis of TRIMs cited by some delegations. Up to now some 14 of them have been cited. In the view of the delegations which have cited these TRIMs, trade restriction and distortion do take place as a result of the application of these TRIMs. Certain GATT Articles have been cited which in the opinion of these delegates do not allow such trade restrictions and distortions.

2. Until now we have not examined the position of the provisions in Part IV and Article XVIII of the General Agreement with regard to TRIMs cited so far. As the Group is aware these Articles of the General Agreement deal with the position of less-developed contracting parties and in particular with special measures that these contracting parties may undertake in pursuit of trade and the development of their economy. These special measures relate to their exports and imports. TRIMs as cited for our examination arise from investment policies of countries which use them, both developed and developing. As TRIMs are used by developing countries the development dimension of these measures has been well stressed during the course of our discussions. TRIMs are a part and parcel of investment policies which are directed towards the

development of trade and economy of developing countries. Although the negotiating objective for our Group talk of the examination of the operation of GATT Articles related to trade restrictive and distortive effects arising from investment measures and as appropriate to elaborate what further provisions may be necessary to avoid such adverse effects, one main objective of the Uruguay Round is to bring about further liberalisation and expansion of trade especially to the benefits of less-developed contracting parties. In other words what we do in the Group must also be consistent with this objective of the Uruguay Round.

3. Coming to the position of the provisions in Part IV and Article XVIII of the General Agreement respectively called Trade and Development and General Assistance to Economic Development there is a need to examine whether or not TRIMs as cited so far are consistent with these provisions in the sense that whether or not the special measures provided for in these provisions of the General Agreement can include measures such as TRIMs when these are used by less-developed contracting parties in pursuit of the development of their trade and their economy. The FIRA Panel has taken due note of the special position of less-developed countries when it made its report of the complaint of the United States against the Canadian government. I quote: "The Panel recognises that in disputes involving less-developed contracting parties full account should be taken of the special provisions of the General Agreement relating to these countries (such as Article XVIII:C)" unquote.

4. Article XXXVI:3 states and I quote: "There is a need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the need of their economic development" unquote.

Article XXXVI:5 states and I quote: "The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under

favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties" unquote.

Article XXXVI:9 states and I quote: "The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly" unquote.

5. TRIMs as cited in the Group such as those for example dealing with export performance or local contents as used by developing countries in my view certainly are measures that are directly relevant to the trade and economic development of less-developed contracting parties and will be consonant and permissible within the principles and objectives that I have just quoted from Part IV of the General Agreement even when these measures may be inconsistent with other GATT obligations. Measures such as local contents or export performance requirements to mention two TRIMs are expected to bring forth immediate effects on the economy of the developing countries concerned. If not, they will not ^{be} applied. In the light of Part IV of the General Agreement, and the development objectives of developing contracting parties TRIMs must be considered as falling within the meaning of special measures allowed to these countries.

6. Should TRIMs or some of them as cited be considered to be inconsistent with GATT obligations despite the provisions of Part IV of the General Agreement and in view of their importance and relevance to investment policies and development of less-developed contracting parties, a number of questions would arise with regard to some of the obligations undertaken in Part IV of the General Agreement that contracting parties have undertaken. For example I have quoted Article XXXVI:9 wherein contracting parties undertake that the adoption of measures to give effect to the principles and objectives of Part IV of the General Agreement shall be a matter of conscious and purposeful effort of contracting parties both individually and jointly. These principles and objectives as I have quoted earlier relate to the agreement by contracting parties that less-developed contracting

parties may be allowed special measures to promote trade and development. In the light of this undertaking to adopt measures to give effect to these principles and objectives and the special provisions relating to special measures permissible to developing countries what alternatives do the Group have. This is one question that my delegation wish the Group to consider at the same time that it considers what further provisions may be necessary to avoid the adverse effects arising from TRIMs.

7. In addition, I would want to remind the Group that in Article XXXVI:1(e) contracting parties recognise that international trade as a means of achieving economic and social advancement for less-developed contracting parties should be governed by such rules and procedures - and measures in conformity with such rules and procedures - as are consistent with the objectives of this Article. Thus whatever measures or rules that may be proposed to take care of TRIMs, these measures or rules must be consistent with Article XXXVI as these measures or rules affect less-developed contracting parties. This principle is further reinforced by the commitment made by contracting parties in Article XXXVII:3(c) which states and I quote: "The developed contracting parties shall have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they affect essential interests of those contracting parties" unquote.

8. I may add here that at this stage of the work of the Group there is yet no consensus as to what is a trade-related investment measure, what exactly is its adverse effect on trade, let alone any possible consensus with regard to any possible elaboration of further provisions of the General Agreement to take care of any adverse effects that are supposed to arise from TRIMs.