

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG12/10

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Group of Negotiations on Goods (GATT)

Negotiating Group on Trade-Related
Investment Measures

MEETING OF 8-9 MAY 1989

Note by the Secretariat

1. The Group held its tenth meeting on 8-9 May 1989 under the Chairmanship of Ambassador T. Kobayashi (Japan). The agenda set out in GATT/AIR/2762 was adopted.

2. The Chairman introduced a communication he had received from the Chairman of the GNG calling the attention of the Group to proposals concerning the Uruguay Round and the least-developed countries contained in MTN.GNG/W/14/Rev.1, together with statements made in the GNG and the related communication contained in MTN.GNG/W/15, and requesting the Group to consider them in the light of its particular responsibilities. He suggested that the Group could give attention to the matter in the context of one of the elements that the TNC had agreed the Group should integrate into the negotiating process, namely "development aspects that would require consideration".

3. The Chairman invited participants when making their interventions to treat the agenda flexibly and, where they wished, to cover in the same intervention matters relating to both Agenda Items A and B. He noted that one new written submission had been received since the Group's last meeting (Submission by the United States contained in MTN.GNG/NG12/W/14).

I. Continuation of the identification and examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures

Discussions pursuant to the agreement reached by Ministers on elements that the Group shall integrate into the negotiating process

4. One participant welcomed the elements agreed on by the TNC in Montreal for integration into the negotiating process as helpful for identifying real trade problems that might be encountered in the area of trade-related investment measures and for providing the Group with a certain balance in its work. The Group was expected to look into restrictive and distorting effects on merchandise trade that might result from certain investment measures and to deal with those effects in order to solve the trade problems that lay in this area. Investment policies per se were not a subject for negotiations. There were a number of development aspects that

would require consideration, and the means of avoiding the identified, adverse trade effects of TRIMs would have to be determined at some stage. In his view investment measures were not exclusively the product of government policies and the trade restrictive and distorting effects of private investment measures and practices were particularly relevant to the Group's work.

5. Another participant said the Group's mandate required that TRIMs should be identified in terms of their direct and significant, negative effects on trade. Since such measures were generally applied by developing countries it was unclear how significant their impact on trade could be, and more detailed analysis was required on this matter. Also, a differentiation should be made between investment measures that led to development, which were part of each country's sovereign investment policy and should be looked at from the point of view of Part IV of the GATT, and other investment measures which, while sovereign, had to respect GATT rules and disciplines with regard to their trade effects. The Group should not try to negotiate the liberalisation of investment policies. Her country had a transparent policy towards direct foreign investment that involved no discrimination between local and foreign investors nor the use of TRIMs.

6. Another participant said the Group should be clear about the limited scope and nature of its work. The negotiations were not about investment per se, nor about establishing a multilateral investment régime. Negotiations should concentrate on those TRIMs with direct and significant trade restrictive and distorting effects. The priority task was to conduct a thorough examination of the operation of relevant GATT Articles. His government considered those to be Articles III, VI, XI, XII, XVIII:B and C, and Part IV of the GATT; Articles X and XXIII would have general application in so far as the trade effects of TRIMs were found to be related to other GATT Articles, but there was no specific need to consider them at present. Such an examination would ensure the Group focused on the trade effects of investment measures and not on investors or investment per se, to which the GATT did not apply. It would also provide a point of reference for defining trade restriction and distortion. He was concerned that the Group should concentrate on elaborating and clarifying existing GATT obligations in relation to the direct and significant adverse trade effects of investment measures and not try to create new obligations which went beyond the GATT. There was, for example, no mention in the GATT of the prohibition of measures other than trade measures. For the first time negotiations were reaching out to measures that might be trade-related, and the Group should not attempt to do anything in the area of investment that was inconsistent with or outside the realm of GATT rights and obligations.

7. He recalled, from the decision of the TNC, the need to integrate development aspects into the substantive negotiating process. Suggestions made in the past that the Group focus first on GATT disciplines of general applicability and then consider exceptions for development purposes was not an adequate approach in this regard. Developing countries did not have direct trade objectives in mind when introducing investment measures. Rather, the measures were intended primarily to build up domestic technological and industrial capability, and more specifically to achieve

the following objectives: to ensure technology transfer; to avoid or correct for certain distorting practices resorted to by foreign investors; to avoid or redress adverse balance-of-payments situations; to strengthen the bargaining position of domestic firms when collaborating with foreign entrepreneurs, particularly with respect to their ability to access foreign technology; and to ensure investment was regulated in such a way that it resulted in the optimum utilisation of national factor endowments. In addition, many investment measures were used by both developed and developing countries for such purposes as balanced regional development and the protection of the environment.

8. Performance requirements provided a mechanism for harmonising direct foreign investment and technology flows with the development objectives of national governments. In most cases they were intended to ensure the behaviour of investors and economic operators was fair, just and equitable; local content requirements, for example, were a direct counterpart to the practice of transfer pricing through tied sales. With regard specifically to technology transfer, this was a vital component of development strategy and he rejected any notion that technology transfer requirements placed on foreign investors were trade distorting. World markets for technology and investment were imperfect and considerably distorted, and investment measures were intended to offset or check those distortions. Developing countries needed foreign investment but not on terms dictated by foreign investors, and in this regard they were in a relatively weak bargaining position. More broadly, therefore, investment régimes were designed to deal with the potential disadvantages that could accrue from the maintenance of an open-door policy towards foreign investment. Countries had a sovereign right to screen investment proposals and ensure they served national objectives, and it was not this Group's purpose to promote the liberalisation of investment or investment régimes.

9. Several other participants also stated that the focus of the Group's work was the trade restrictive and distorting effects of investment measures and not the measures themselves nor the broader issue of investment per se. They underlined the importance of national investment policies for assisting development and economic growth and the need to give due consideration in the negotiations to development aspects. One of them added that preventing countries from using TRIMs would undermine and impede development and leave them vulnerable to the restrictive business practices of foreign investors. Another stressed the difficulties developing countries faced in dealing with restrictive business practices.

10. One participant said that the importance of public and private investment for development purposes had been recognized in the Havana Charter, along with the sovereignty of national policies. There were a large number of factors that influenced trade via their influence on investment, such as macroeconomic policies, countries' balance-of-payments and debt situations, and government support for capital investment. Full account should be taken of the complex factors affecting investment and causing, in some cases, trade distortion during the Group's negotiations, and of the importance of TRIMs for promoting development and the growth of domestic production.

11. Two other participants supported these comments. One of them added that strict and clear criteria were needed to establish which measures might be classified as TRIMs and which would not, so that the negotiations would not extend into the fields of investment policies and investment promotion. Another said that it was too early to go in detail into analysis such as that put forward in MTN.GNG/NG12/W/14 because the Group did not yet have a common understanding on the basic concept of trade restriction and distortion nor on the operation of various GATT Articles.

12. One participant expressed his delegation's willingness to participate fully in any effort to clarify or elaborate provisions to avoid the adverse trade effects of TRIMs, but stressed that such an effort should not create an imbalance of rights and obligations under the GATT.

13. At the invitation of the Chairman, the representative of the United States introduced MTN.GNG/NG12/W/14 and summarized it. The submission reviewed the adverse trade effects of TRIMs, the measures that cause such effects and the relevant GATT Articles, and showed as specifically as possible the relationships between them. The analysis suggested that existing GATT Articles were adequate to deal with the adverse trade effects of some, but not all, TRIMs. In the view of the United States, the GATT already provided disciplines which appeared to prohibit the use of certain TRIMs and combinations of TRIMs, mainly in Articles I, III and XI. However, existing GATT Articles were in many respects inadequate and the relationships between Articles, trade effects and certain TRIMs were unclear.

14. Many participants welcomed the submission contained in MTN.GNG/NG12/W/14 as a useful and comprehensive elaboration of the position of the United States. A number gave their general views on the contents of the submission, and in some cases also detailed comments.

15. One participant supported strongly the approach taken in the US submission. Establishing a categorization of trade effects rather than working one by one through a list of TRIMs allowed specific measures to be included under different headings of trade effects, and the list of TRIMs cited to be seen as illustrative rather than complete. The submission was useful also in pointing out that certain TRIMs and combinations of TRIMs could have more than one trade effect. The analysis in the submission allowed the conclusion to be drawn that Articles I, III, VI, XI and XVI, while perhaps not exhaustive, were the core Articles that were relevant for dealing with the adverse trade effects of TRIMs.

16. This representative considered that, in addition to giving US views on where the division lay between trade effects that were clearly inconsistent with GATT Articles and those that were not clearly or in all circumstances inconsistent, the submission provided the basis for a further broad division of TRIMs into those with trade effects that resulted in prima facie nullification and impairment of GATT benefits, which were candidates for prohibition or discipline over the measures themselves, and those that produced such a result in certain identifiable circumstances, which were candidates for trade remedies whenever those circumstances clearly existed.

It was clear that to a considerable extent disciplines and remedies were already available to contracting parties under the GATT, although the submission also revealed areas for further work, and it might be worthwhile pursuing a combination of approaches in dealing with the trade effects of TRIMs. There was scope both for clarifying or elaborating existing GATT Articles, which she agreed seemed clearly to cover some TRIMs already, and developing general understandings regarding the use of TRIMs with adverse trade effects in certain circumstances. Dealing with TRIMs that had adverse trade effects but for which there was no relevant GATT provision was more problematic, but this had nevertheless to be addressed by the Group. General understandings might be drawn up for this third category, although the question remained how to ensure that the disciplines or remedies available would be effective.

17. Another participant found useful the categorization of trade effects in the submission, and noted that the approach taken towards the coverage of adverse trade effects by GATT Articles was similar to that put forward in the past by his own delegation. With regard to the list of TRIMs covered in the US submission, he hoped that a detailed examination of the trade effects of each of them would be carried out in the Group and that priorities would become clear in the course of those discussions. It was important also to undertake a thorough discussion of the adequacy of existing disciplines contained in GATT Articles. With regard, for example, to the statement in the submission that measures causing an artificial reduction of imports were inconsistent with Articles III and XI, his delegation agreed but felt it important to examine the specific application of those Articles in order to ensure that their disciplines were adequate. Similarly, his delegation agreed that measures resulting in an artificial increase in exports were not adequately covered by existing provisions and felt that it would be necessary to elaborate further disciplines in this regard.

18. At a more detailed level, he made a number of comments on the US submission. He agreed that local content requirements were inconsistent with Article III:4 and 5, and believed them to be inconsistent also with Article XI:1 since they resulted in a restriction of imports; he also agreed that trade-balancing requirements were inconsistent with Articles III:4 and XI:1, and that manufacturing requirements were inconsistent with III:4 and 5 and XI:1. He noted the reference to licensing requirements undercutting tariff concessions, and enquired whether this was the only investment measure which produced this result in the view of the United States or whether others, such as local content requirements, might have the same effect. As regards technology transfer requirements, strictly defined, he considered that these were clearly inconsistent with Articles III:4 and XI:1 and not merely possibly inconsistent under certain conditions. He sought clarification on the relationship of Article III:4 to manufacturing limitations. Article XI was relevant to, although not clearly inconsistent with, export performance requirements and the further elaboration of provisions in this regard appeared necessary. Finally, he considered that domestic sales requirements were export restrictions and were therefore clearly inconsistent with Article XI.

19. One participant noted the submission acknowledged that not all TRIMs had significant trade restrictive and distorting effects, and that some could have but not necessarily all the time. The approach was ambitious since it concluded that, for measures that did not necessarily have adverse trade effects, existing GATT disciplines were insufficient and it implied that these measures should be brought under effective GATT control. His delegation agreed with much that was contained in the submission, for example the views that Articles III and XI should be interpreted comprehensively and that quite a number of TRIMs may be covered already by GATT disciplines. It disagreed with some points, for example the proposal that investment incentives per se should be the subject of these negotiations and with the concept of subsidy contained in the submission which related to the interpretation of Article XVI.

20. Another participant welcomed the emphasis placed on the adverse trade effects of TRIMs as the starting point for discussion, and the analysis of those effects when they were significant in the light of their consistency or inconsistency with GATT Articles. This approach was in line with the Group's mandate and would bring considerable progress to the negotiations. More detailed examination of trade restrictive and distorting effects was needed, measure by measure, before the kind of categorisation into three types of trade effects that was contained in the US submission could be confirmed. The operation of relevant GATT Articles should be examined article by article, including the exceptions to general rules and disciplines contained in Articles XII and XVIII:B and C as well as Part IV. He agreed that many TRIMs, while not clearly inconsistent with GATT Articles, could have significant adverse trade effects. However, he did not consider this to be so for technology transfer or local equity requirements. Investment incentives were, in his view, subsidy practices and they should be dropped from consideration in this Group since subsidies were under discussion elsewhere in the Uruguay Round.

21. One participant referred to the proposals in the submission for organising investment measures according to their trade impact. In her view, measures such as remittance restrictions, technology transfer requirements, licensing requirements and local equity requirements were not relevant to the Group's discussions because they related more to investment and development policies implemented in all countries, and especially developing countries, rather than to obligations entered into under the GATT. If these measures had a negative trade impact, it was indirect and difficult to gauge and therefore not clearly relevant to GATT. Exchange restrictions were generally used for balance-of-payments purposes and they did not fall within the purview of the TRIMs negotiations unless they were applied discriminately between investors or importers. Certain trade or development policies made legitimate use of investment incentives to attract investors, and this seemed perfectly appropriate as long as it did not result in trade restriction or distortion. Investment incentives should therefore be considered on a case-by-case basis within the overall development framework and bearing in mind the circumstances in which they were used.

22. Her delegation considered that certain TRIMs were associated with the reduction of imports, for example local content, trade-balancing and manufacturing requirements, and felt that Articles III:4 and 5 and XI provided sufficiently strong rules and disciplines to deal with any trade problems that might arise. Similarly, certain TRIMs could be associated with increased exports, such as export performance, trade-balancing and manufacturing requirements. These were related to Articles VI and XVI and to the Subsidies Code, but each should be analysed case-by-case since subsidy disciplines in GATT were not clear-cut. In this regard, it was important to relate discussions to the work of the Negotiating Group on Subsidies when considering whether a particular subsidy practice was permitted, prohibited, actionable or non-actionable. TRIMs that could cause a reduction of exports were domestic sales requirements and manufacturing limitations. Article XI generally prohibited such a trade effect and it seemed adequate to deal with these measures. Finally, she expressed concern that Article X had not been cited in the US submission. The transparency provisions it contained could be of considerable relevance to TRIMs and could lead to a better appreciation of their trade effects.

23. One participant supported the broad categorisation of TRIMs in the introduction to the submission. His delegation had focused on a few TRIMs that caused reduced imports or increased exports, and it considered local content and export performance requirements of paramount importance. Some others, such as trade-balancing and manufacturing requirements in respect of specific components, could be subsumed under these two. Manufacturing requirements could have the same import-reducing effects as local content requirements but it was hard to see how they could, other than indirectly, increase exports as was suggested in the submission. He agreed with the submission that local content and manufacturing requirements contravened Articles III and XI, and by and large with the relevance of Articles VI and XVI to export performance requirements. He agreed also with the conclusion that certain TRIMs were not clearly inconsistent with GATT Articles, but questioned then the relevance of local equity requirements and manufacturing limitations to the negotiations. Investment incentives figured prominently throughout the submission as causing or enhancing the adverse trade effects of TRIMs, but in his view incentives were not part of the TRIMs negotiations.

24. Another participant stated that he could subscribe to a considerable degree to the US submission. Negotiations would tell whether it was too ambitious, but it went in the right general direction and placed the emphasis correctly on the trade effects of TRIMs. It was indispensable to arrive at disciplines to regulate the adverse trade effects of TRIMs, while respecting national sovereignty over investment policies, and he preferred such an approach to one based on prohibiting the measures themselves. He noted that no specific operational conclusions had been drawn in the submission. In his view, the real difficulty that the Group would face in the operational phase of its work was how to determine precisely whether a particular measure conflicted with the GATT or not. He posed the following questions on the submission: how did the United States propose dealing, by way of disciplines, with TRIMs that did not necessarily, or in all circumstances, have trade restrictive and distorting effects; did the

United States consider that all investment measures had trade restrictive and distorting effects or that some, such as those establishing a country's investment policy, fell outside the scope of the negotiations; and did the United States, when it called for consideration of the investment policies of individual countries, consider its proposal to be consistent with the GATT?

25. One participant welcomed the emphasis placed on trade effects and found the categorisation suggested in the submission useful. He recalled an earlier suggestion made by his delegation to attempt a ranking of TRIMs according to their adverse trade effects and to focus initially on those holding the greatest potential for trade restriction and distortion. Without excluding any TRIMs at this stage, such an approach might facilitate discussions since the diversity of opinion in the Group seemed to suggest that the US proposal to subject all TRIMs to specific disciplines, notwithstanding whether a sufficient case had been made with regard to their trade effects, was too ambitious. With regard to the application of GATT Articles to the adverse trade effects of TRIMs, the Group should be very careful in assessing the degree of actual applicability and should undertake a thorough examination of their operation. Finally, the Group should be careful to distinguish the adverse trade effects per se of investment incentives from the rôle of incentives as a public policy instrument used to obtain commitments from investors. The precise mechanism used to enforce investment measures, whether it be a review agency, a public sector grant or a work permit for the investor, was irrelevant to the trade restrictive and distorting effects of investment measures.

26. Another participant considered the submission provided a useful methodology based on the trade effects of investment measures, but that a great deal of work was needed to clarify these trade effects before the applicability of various GATT Articles could be examined.

27. One participant, referring to the introduction to the submission, enquired whether the United States was indicating a preference for a Code approach to the negotiations. He stated that the focus of negotiations at this stage should be on specific GATT Articles and that references to the general objectives of the GATT lacked precision. The submission illustrated correctly the GATT approach towards addressing trade problems and applying different disciplines, but the discipline of prohibition in the GATT applied only to specific trade measures that directly affected merchandise trade flows and not to any other measures. He did not agree, therefore, with the statement contained in the submission that the GATT already prohibited certain TRIMs. Also, the logic of Article III was not one of prohibiting or permitting specific measures as was implied in the submission, but rather of ensuring equality of treatment for imported and domestically produced goods. The focus in the submission on trade effects was appropriate, and the identification of three categories of trade effects was useful. A fourth category covering the artificial inducement of imports could be added to take account of the trade effects of certain investment measures and practices of private operators. The term "artificial" used in the submission needed clarification, but he understood

it to refer to purchase and sales decisions that were not based on commercial considerations of price and quality competitiveness.

28. This participant considered that the analysis of the extent to which GATT Articles dealt with the trade effects of particular measures was too far-reaching where it referred to certain trade effects being clearly inconsistent with one or other of the GATT Articles. It had not yet been established that any of the TRIMs cited led to adverse trade effects in all circumstances, and there was not therefore sufficient basis for claiming that any TRIM caused a prima facie nullification or impairment of a GATT right. Even in the case of local content requirements, for example, which was one of the most relevant TRIMs discussed so far, it had not yet been established that in all cases they caused trade restrictive and distorting effects. In many cases, these measures were used to offset trade distortion caused by restrictive business practices. In discussing the adequacy of disciplines provided by relevant GATT Articles, the submission referred to discipline over investment measures per se; this was inconsistent with the approach mandated for the Group, which was to focus on trade effects and not on the measures themselves nor on investors, and he asked for clarification from the United States on this point. Finally, some of the TRIMs cited in the submission, such as technology transfer and local equity requirements and exchange and remittance restrictions, were linked more to macro-economic policies and it had not been demonstrated yet that they were imposed primarily for trade purposes.

29. One participant stated that the approach taken in the submission was too broad. It implied that a government could not intervene in any investment process without causing trade restriction and distortion and that there was no scope for permissible, sovereign investment policy. He enquired, for example, whether the United States considered that investment incentives had trade restrictive and distorting effects in and of themselves or only reinforced the adverse trade effects of other investment measures when used in combination with them. Incentives offered to encourage investment in depressed regions of a country might lead to a reduction in imports, but it would be too sweeping to regard such a result as trade restriction and distortion. Similarly, it was too sweeping to regard local equity requirements as having trade restrictive and distorting effects by causing investors to relocate and hence changing trade patterns. Manufacturing and technology transfer requirements were used by many countries for development and industrial promotion purposes, especially in high technology industries. They were also used by some countries to balance the effects of restrictions imposed on exports of high technology goods by certain contracting parties and justified under Article XXI of the GATT. This participant also asked whether the submission was intended to address TRIMs applied only to foreign direct investors or also to domestic investors, and noted that some of the TRIMs cited, such as remittance restrictions and local equity requirements, appeared relevant only when applied to foreign investors. If a remittance restriction was considered a TRIM for all investors, it could imply that any restriction on capital flows was considered to be a TRIM.

30. One participant stated that in considering the trade effects of export performance requirements, it was necessary to remember that foreign investments were often made to take advantage of the availability of natural resources or lower labour costs but that sometimes it proved necessary to resort to exporting because of the limited size of the domestic market. Investment incentives should be considered only to the extent that they resulted directly in trade restriction or distortion, and it should be borne in mind that they could assist foreign investors to become more competitive in a host country which clearly was not a trade distorting practice. Technology transfer and licensing requirements aimed to prevent the dumping of obsolete technology on host countries and they were not necessarily trade restrictive or distorting. Another participant supported this comment on technology dumping.

31. Another participant stated that the approach adopted was too expansive. If the Group was to move towards a common understanding in these negotiations, it had to be recognized that it was not credible to keep putting forward the whole range of investment measures cited in the US submission. Many fell outside the purview of the Group since they were not applied for trade purposes but for building up domestic technological and industrial capability. He questioned the use of the term "artificial" in the submission in connection with the trade effects of investment measures. It was imprecise and could not be equated with the concept of trade restriction and distortion. Investment policies were intended to stimulate industrialisation and economic growth and development, and would inevitably affect import and export flows, yet it could not be claimed that they were trade restrictive or distorting simply because they resulted in an augmentation of domestic production or export capacity. The development aspect of TRIMs was also important in this respect, and a certain degree of trade restriction and distortion caused by government policies was tolerated in the GATT so that developing countries could enhance their industrial and economic capabilities. Also, the submission failed to address the trade restrictive and distorting practices of private operators which many government mandated investment measures were designed to deal with. In addition, there was excessive reference in the submission to the provisions of Article III. It was not acceptable to attempt to apply national treatment to an investment régime as such, and the Group would benefit from a detailed examination of the operation of Articles III and XI to establish a precise understanding of their scope.

32. A number of other participants agreed that the US submission was over-ambitious and considered many of the TRIMs cited fell outside the scope of the negotiations since they served development and other economic purposes and were not directly trade-related. They stressed that the Group's mandate covered only the adverse trade effects of investment measures and not the measures themselves. They noted that the submission failed to address entirely development aspects of the subject, and recalled the TNC agreement that this element should be integrated into the negotiations. They also objected to the use of the term "artificial" and insisted that a more precise understanding of the concept of trade restriction and distortion was needed in the Group. In the view of several of them it should include the practices of private operators.

33. One participant stated that in his view trade restriction and distortion occurred when the market mechanism was disrupted. Only government measures could disrupt markets, since whatever was done by a private operator was part of the market mechanism. Another considered that the concept of trade restriction and distortion was more complex than that. It could not be concluded, for example, that all central planning was trade restrictive and distorting, and on the other hand the GATT recognized that private operators could cause trade distortion when it sanctioned dumping.

34. Another participant expressed the view that the US submission was neither over-expansive nor too ambitious. It left participants to draw their own conclusions on the adequacy of existing GATT disciplines and remedies and on the need for further provisions. The scope of the Group's work should be determined by the conclusions drawn from an examination of the adverse trade effects of investment measures and not by seeking agreement on a specific list of TRIMs. The only approach was to leave open the list of TRIMs, treat it as illustrative, and deal with the adverse trade effects identified whether these occurred in all cases or only in certain circumstances. The question of how to deal with these trade effects should be approached in the same way that the GATT approached the trade effects of trade measures such as quantitative restrictions.

35. Another participant referred to suggestions that the Group needed to conduct an in-depth examination of GATT Articles before it could proceed further in its work. In his view, this had already been done, inter alia in a previous submission by his delegation. Some TRIMs had been found clearly inconsistent with GATT Articles, others not so clearly inconsistent but nevertheless relevant since they had trade restrictive and distorting effects, and for these further provisions needed now to be elaborated by the Group. Some other participants considered that the Group was still at the identification stage of its work.

36. Replying to some of the questions posed and comments made, the representative of the United States stated that the submission was intended to carry forward the analytical phase of the Group's work. He did not have at this stage proposals for particular solutions to the trade problems identified, but whatever the Group agreed on by way of solutions might involve new international obligations. With respect to the question of the nationality of investors, the mandate did not restrict the negotiations to investment measures applied to foreign investors. In many cases, trade restrictive and distorting effects would arise from the measures irrespective of the nationality of the investor, although it might not be necessary to look at each of the measures cited as applicable to domestic investors. The comments made on the implications of disciplining remittance restrictions when applied to domestic investors called for further reflection. Comments on the use of the term "artificial" also called for further reflection, although the United States had tried to make clear in previous submissions what it understood by the concept of trade restriction and distortion. The United States did believe that investment incentives could have trade restrictive and distorting effects and it did not see them therefore as an implementing measure but as a TRIM. When they

were used in conjunction with other measures, the adverse trade effects that resulted could be more than the sum of the individual parts. The comment made that the undercutting of tariff concessions might result from more than one TRIM was interesting and needed further examination, and the comment that, even if TRIMs did not have adverse trade effects in all circumstances, they could regularly have adverse effects in specific circumstances was important and he agreed with it. The United States had no clear idea on how disciplines on TRIMs could be reconciled with economic development, but it accepted that development aspects would have to be looked at. He agreed that the task was not to deal with investment promotion measures generically, nor to deal with all investment measures, but only TRIMs.

37. With regard to comments that the Group should undertake a thorough examination of the operation of GATT Articles, he stated that, to the extent that had not taken place, it was not for want of trying on the part of the United States. It had been disappointing that, while many participants had been willing to take issue with the US interpretation of the operation of certain Articles, very few had been prepared to put forward their own ideas. He agreed that all participants should respect the Group's mandate, and considered that the United States had shown self-discipline in this respect. Participants should not be over-ambitious if by that was meant they should not go outside the Group's mandate, but the Group would be derelict in its duties if it limited its work to less than was called for in the mandate. In the view of the United States, there were a number of TRIMs that caused trade effects which prima facie nullified and impaired GATT rights. It was within the mainstream approach of the GATT to deal with those trade effects both by proscribing what could happen when they occurred and, when they were inextricably linked to the use of the investment measure, by disciplining the measure itself.

II Other Business

38. The Group agreed to hold its next meeting on 10-11 July 1989. It agreed also to set aside 14-15 September, 26-27 October and 11-13 December 1989 as tentative dates for further meetings. The Chairman announced that the agenda for the next meeting would comprise the five elements agreed on by the TNC for integration into the negotiating process, and urged participants to make written submissions on these elements as well as on the trade restrictive and distorting effects of investment measures and the operation and coverage of related GATT Articles.