

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

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

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The following communication, dated 11 September 1989, has been received from the delegation of Mexico with the request that it be circulated to members of the Group.

TESTING

Introduction

Since the start of the Uruguay Round, progress in the Negotiating Group on Trade-Related Investment Measures (TRIMS) has been minimal. This is largely due to the failure to reach agreement on the identification of the trade-restrictive and distorting effects of investment measures, as well as on the scope of the measures having such effects and therefore to be covered by the negotiations.

So far, a number of investment measures which some participants consider to have trade-restrictive and distorting effects have been suggested for discussion. The inadequacy of the existing rules of the General Agreement to deal with such effects has also been highlighted, and the creation of new disciplines to cover these shortcomings has been proposed.

Nevertheless, the Group has not collectively conducted a systematic examination to identify the effects of the proposed measures. Nor has it reached any conclusion as to the relationship between such effects and existing GATT rules, as provided for in the Punta del Este mandate and the agreements reached at the Montreal meeting. In these circumstances, it does not seem appropriate to proceed to establish categories of TRIMS, in order to determine their legal consequences, without first having clearly defined their trade effects.

In view of the wide range of measures suggested for examination, it would not be very feasible, either operationally or bearing in mind the time available, to try to carry out an exhaustive review of the trade

effects of each of the investment measures proposed. It would be more constructive and efficient to focus the discussion on a smaller number of measures. In any event, to assess the viability of negotiating on a group of TRIMS comprising measures of different kinds, it seems advisable to begin by considering a more manageable sub-group.

Accordingly, and with a view to streamlining the Group's work, the delegation of Mexico considers that a suitable way to proceed would be for the Group to engage in testing along the lines of what is being done in the services group. This exercise would consist in singling out two "pilot" TRIMS and systematically analysing their effects and their relationship with existing GATT articles, in accordance with the guidelines laid down in the Montreal Decision (MTN.TNC/11/Rev.1).

Obviously, this exercise would not prejudice the results of the negotiations nor the positions of participants. It is merely an experimental exercise aimed at providing a clearer idea of the criteria with which to examine and assess the trade effects of TRIMS and the means of countering them.

Testing procedure

(1) Choice of two pilot TRIMS: The first step would be to select two TRIMS, by consensus, which could be called "pilot TRIMS". In order to ensure that they are representative of the range of measures suggested so far, one of them could be a measure whose trade effects are clearly apparent, in the view of some delegations. The second could be a measure whose trade effects may seem less clear and direct. The delegation of Mexico believes these two measures could be export requirements and local equity requirements, respectively. These two measures are suggested because they are considered representative of the spectrum of proposed measures. Nevertheless, Mexico is prepared to consider other options and to join in any other consensus which might emerge in this respect. It should be pointed out that the choice of any particular measure would not prejudice the position of delegations with regard to such measures.

(2) Identification of the trade-restrictive and distorting effects of the pilot TRIMS: Once the pilot TRIMS had been chosen, the Group would examine the possible effect of these measures on trade. It would determine whether they are trade restrictive or trade distorting or both; whether there is a direct causal relationship between the measure and its effects; and whether that relationship always exists or only arises in specific circumstances, such as for example, given macro-economic conditions. The analysis would be carried out on the basis of factual data and empirical evidence, and as far as possible criteria for quantifying the effects identified would be explored.

(3) Means of avoiding the adverse effects: A third step would be to identify legal means for dealing with the identified adverse effects of the selected measures. The Group would study whether or not the present GATT rules are sufficient to avoid such adverse effects. If not, the Group would study the options available for revising or modifying them. Likewise, where such effects are not covered by the existing rules of the General Agreement, the Group would examine the possibility of drafting additional rules.

(4) Development aspects. In accordance with the Montreal Decision, the Group would study the selected TRIMS and their effects in the light of considerations relating to economic and social development; in particular, the effects of the possible adoption of such measures in relation to the objective of ensuring technology transfer and guiding investment to priority economic sectors. This analysis would take account of the principles laid down in Part IV as well as in Article XVIII of the General Agreement, and also of the provisions of other GATT instruments providing for special and differential treatment for developing countries.

(5) Implementation procedures: The modalities would be determined at a later stage, once agreement had been reached on the means required to deal with the adverse effects of TRIMS. The delegation of Mexico believes that, with the experience gained through the testing exercise, the Group would be in a better position to resolve the practical problems raised by the implementation of any improvement to the existing rules on which agreement might be reached.

(6) Deadline: The deadline for the proposed exercise would be not more than three months. The Group could allocate a specific number of meetings to the exercise.

The delegation of Mexico wishes to stress that the purpose of the proposed exercise is to streamline the work of this Group by cutting it down to manageable dimensions. We consider that if the Group agrees to carry out this testing exercise, it would be useful to have recourse to the technical assistance of the GATT secretariat in connection with the practical organization of the exercise.