

**MULTILATERAL TRADE  
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Group of Negotiations on Goods (GATT)

Negotiating Group on Trade-Related  
Investment Measures

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The attached communication, dated 12 September 1989, has been received from the delegation of Japan with the request that it be circulated to members of the Group.

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## AN APPROACH TO ESTABLISH DISCIPLINES ON TRIMs

### 1. INTRODUCTION

1. In order to further expand international trade and achieve economic development, it is extremely important to establish appropriate disciplines within the framework of the GATT to avoid trade restrictive and distorting effects caused by investment measures. While this Negotiating Group had thus far conducted analytical discussions, based on submissions by the participants, to identify trade restrictive and distorting effects of trade-related investment measures ( TRIMs ), and to analyze whether the existing GATT Articles adequately cover such effects, the Group began, at the last meeting in July, vigorous discussions on a framework on disciplines. The Japanese government submits this document to facilitate substantive discussions on disciplines on investment measures which have trade restrictive and distorting effects, taking into consideration, in particular, the point (d) of the agreement made in Montreal by participating Ministers -- means of avoiding the identified adverse trade effects of TRIMs, including , as appropriate, new provisions to be elaborated where the existing GATT Articles may not cover them adequately.

2. In order to provide disciplines on TRIMs in the GATT, Japan has taken into account of the following points:

- Countries implement various investment measures, which cause direct or indirect effects on trade. Recently, as overseas investments have increased in volume and number, the degree of effects of investment measures on trade have increased. Furthermore, since it is true that some investment measures cause trade restrictive and distorting effects, and thus raise problems under the GATT, it is necessary to provide appropriate disciplines for such measures.
- In so doing, we will reconfirm the spirit as embodied in the objective and means of GATT preamble " entering into reciprocal and

mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce. "

- For developing countries, foreign investment inflows play a significant role in achieving domestic economic development. Therefore, the management of investment policies in developing countries is one of the important pillars of its economic policy. This aspect should be fully recognized from the point of view of achieving economic development of developing countries.

## I. DISCIPLINES

### 1.A FRAMEWORK OF DISCIPLINES

Japan considers the following framework as a basis for the establishment of disciplines on measures agreed upon by the Group as TRIMs.

#### (1) TRIMs which should be prohibited

Introduction of TRIMs should be prohibited if they cause trade restrictive and distorting effects and are either inconsistent with the existing GATT provisions or are not clearly inconsistent with but have relevance to the existing GATT provisions. It is also necessary to provide concrete procedures to reduce and eliminate these types of TRIMs which currently exist. Though immediate elimination is basically desirable, it may be difficult, in some cases, to simply and immediately eliminate such TRIMs across-the-board because each country applies TRIMs in different manners. Therefore, further discussion is needed on such matters as the time-span of such elimination, and on concrete procedures for the elimination.

In addition, to facilitate reduction and elimination, Japan proposes the following scheme, which includes establishment of a "TRIMs Committee" (provisional name) which has the following functions.

Further discussions will be necessary as to its structure and function:

- Each country registers with the TRIMs Committee prohibited TRIMs it currently applies. A country can notify prohibited TRIMs implemented

by other countries.

- The Committee can make necessary examination in case TRIMs registered or notified cause problems among the Contracting Parties and where one or more countries concerned request such investigation. The Committee can express its views on the issues to the countries concerned, on the basis of its examination. The countries concerned must take these opinions into consideration.
- The Committee surveys the reduction or elimination of TRIMs through, for instance, periodic reports.

(2) The TRIMs other than those above should observe the following general disciplines.

- Non-discriminatory principle should be ensured.
- In view of frequent lack of transparency on TRIMs, it is necessary to improve transparency as much as possible. Thus the Contracting Parties are obliged to publish (cf. Article X of the GATT) and notify to the TRIMs Committee (cf. Article XVI of the GATT, article 7 of the subsidies Code) matters related to TRIMs. A country can also notify TRIMs implemented by other countries.
- The TRIMs Committee can make necessary examination in case TRIMs notified cause problems among the Contracting Parties and where one or more countries concerned request such investigation. The Committee can express its views on the issues to the countries concerned, on the basis of its examination. The countries concerned must take these views into consideration.
- The Committee surveys the situation on implementation of TRIMs through, for instance, periodic reports.

2. RELATIONSHIP BETWEEN SPECIFIC TRIMs AND DISCIPLINES

Japan has examined the effects of TRIMs on trade in the light of its relationship with the existing GATT provisions, and proposed to provide appropriate disciplines on TRIMs. The participants have so far expressed their views on 14 measures, including TRIMs pointed out by the Japanese delegation. Moreover, views were expressed that discussions have not been exhausted as to the question whether TRIMs

that cause trade restrictive and distorting effects should be immediately judged as prohibited. Taking into account these previous discussions, Japan considers that TRIMs to be prohibited and TRIMs to observe other general disciplines should be classified as follows:

(1) TRIMs that should be prohibited

(i) Local content requirements

- measures which require that local content ratio of products be no less than certain specified percentage.
- measures which require that certain components of final products must be procured from domestic producers.
- measures which require investors to manufacture locally some components of products in order to fulfill local content requirements.

(ii) Export performance requirements

- measures which require that a specified share of products must be exported.

(iii) Trade balancing requirements

- measures which, by requiring investors to cover a part or all of their imports by the export of their own products, restrict amount of imports of components and other related items to a certain amount corresponding to the amount of exports of finished products, or in effect oblige investors to procure materials domestically to the extent import is not permitted.

(iv) Domestic sales requirements

- measures which, by requiring investors to sell certain amount or proportion of products domestically, restrict exports.

(v) Technology transfer requirements

- measures which, by requiring investors to produce some of the components used by themselves locally in order to bring about technology transfer, restrict imports of the like components, or accord imported products less favorable treatment than products of national origin.

(vi) Manufacturing requirements

- measures which, by requiring investors to locally manufacture certain components they use, restrict imports of the like components, or accord imported products less favorable treatment than products of national origin.

(vii) Product Mandating requirements

- measures which require investors to export certain amount or percentage of its production to designated countries or regions.

(2) TRIMs that should observe other general disciplines

(i) Export performance measures

- measures which are not required but intended to be achieved, through incentives(\*) to be given when they are accomplished.

(ii) Product Mandating measures

- measures which are not required but intended to be achieved, through incentives(\*) to be given when they are accomplished.

(\*) Treatment of incentive itself should be consistent with the provisions on subsidies in the General Agreement, the Agreement concerned, and the result of the Negotiating Group on Subsidies and Countervailing Measures which is taking place now.

(3) In addition to TRIMs classified in (1) and (2) above, there may be measures that, under certain circumstances, cause adverse trade effects and are or may be inconsistent with the existing GATT provisions. Though Japan does not propose specific measures other than those in paragraphs (1) and (2), it is necessary for this Negotiating Group in that regard to examine whether any TRIMs may cause such adverse trade effects under certain circumstances.

### 3. SCOPE OF DISCIPLINES

(1) TRIMs should be subject to the disciplines of prohibition even if resulting from an undertaking between the government of the host

country and investors if they are legally enforceable and can be regarded as required by the government.

(2) Consideration should be given to disciplines on TRIMs so that measures by local governments can be effectively subjected. Further discussions are needed as to how this can be achieved.

### III. DEVELOPMENT ASPECTS

On the recognition that foreign investment plays a significant role in achieving economic development in developing countries, and plays a major role as part of economic policy in these countries, we should take full account of the situations in each developing country, such as diversity of the stage of economic development in respective countries. Therefore, although disciplines shall in principle be applied to all the Contracting Parties, it would be appropriate to provide the developing countries with some exceptions for certain limited period in regard to the procedures to reduce and eliminate existing TRIMs which are part of disciplines related to the prohibited TRIMs.