

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

**RESTRICTED**

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Negotiating Group on Trade-Related  
Investment Measures

**COMMUNICATION FROM BANGLADESH, BRAZIL, COLOMBIA, CUBA, EGYPT,  
INDIA, KENYA, NIGERIA, PAKISTAN, PERU, TANZANIA, ZIMBABWE**

The following communication dated 12 June 1990 has been received by the Secretariat with the request that it be circulated to the Group.

**DRAFT DECLARATION ON TRADE-RELATED INVESTMENT MEASURES**

THE CONTRACTING PARTIES,

**Having regard** to the objectives of the negotiations on trade-related investment measures in the Punta del Este Declaration and the Mid-Term Review Decision;

**Desiring** to co-operate in facilitating the avoidance of the trade restrictive and distorting effects of trade-related investment measures;

**Recognizing** the crucial contribution of foreign direct investment to the promotion of economic growth and development;

**Recognizing** the inalienable right of any country to determine whether, to what extent and upon what terms it will allow foreign investment;

**Taking into account** the particular trade, development and financial needs of the developing countries, particularly those of least-developed countries;

**Desiring** to facilitate the movement of investment across international frontiers, with a view to furthering the developmental objectives of developing countries, while ensuring free and fair competition;

Agree as follows:

**A. The avoidance of adverse trade effects of investment measures:**

Contracting parties shall seek to avoid applying trade-related investment measures in a manner which directly and significantly distorts trade and causes serious injury to the trade interests of another contracting party, or which may hinder the attainment of the objectives of the General Agreement.

**B. Promotion of development objectives:**

1. The CONTRACTING PARTIES recognize that investment measures are legitimate instruments when employed by governments in the broader context of economic growth and development policy for balance-of-payments reasons as well as for the attainment of social and economic policy objectives consistent with the provisions of the General Agreement, particularly as elaborated in Part IV of the General Agreement, in which the CONTRACTING PARTIES, inter alia,

(i) recalled that the basic objectives of the Agreement include the raising of the standards of living and the progressive development of the economies of all contracting parties; and

(ii) considered that the attainment of these objectives is particularly urgent for less-developed contracting parties.

2. It is further recognized in the General Agreement that economic development is consistent with the objectives of the General Agreement, and that the raising of the general standard of living of the less-developed contracting parties which should be the result of economic development will facilitate the attainment of the objectives of the Agreement.

3. Subject to the general objectives stated in (A) above, and in pursuance of the provisions of B(1 and 2) above, contracting parties may continue to employ investment measures in the context of their programmes and policies to promote socio-economic growth and development which will, inter alia, have the effect of:

- (a) ensuring the most efficient and fullest contribution of investments to the national economy;
- (b) enhancing and maximizing employment opportunities;
- (c) facilitating restructuring under socially acceptable conditions;
- (d) inducing balanced industrial, economic and social development of specific regions;
- (e) diversifying and expanding economic activities;

- (f) alleviating pressures on available foreign exchange and making the fullest and most efficient use of it in the context of the conditions of their external sectors;
- (g) ensuring the most effective use of natural resources and value-added contributions to the economy;
- (h) ensuring the promotion of domestic manufacturing capabilities as against mere assembly operations;
- (i) expanding export markets;
- (j) ensuring adequate supply of certain products for the needs of local markets;
- (k) enhancing the contribution of investments to building and upgrading domestic technological capability;
- (l) encouraging research and development programmes; and
- (m) promoting the transfer of technology.

**C. Competition Policies and additional considerations:**

1. The CONTRACTING PARTIES also recognize that, in addition to the imperatives of economic growth and development as outlined in Part B above, there are considerations which create the need for governments to employ investment measures in order to offset the trade restrictive and distorting effects of corporate practices and behaviour, to secure developmental objectives, and in some cases simultaneously to address the adverse impact of certain forms of corporate behaviour which would otherwise undermine the attainment of development objectives and detract from free and fair competition. Such measures may, inter alia, be required:

- (a) as a response to practices of vertically integrated corporate enterprises holding a dominant position of market power, to source components and parts from parent companies or foreign sources, even if comparable products are locally available;
- (b) to meet requirements of rules of origin;
- (c) to counter international market allocation by ensuring corresponding market power for local producers and manufacturers who might otherwise be eliminated by unfair foreign competition;
- (d) to avoid abusive pricing practices by corporate enterprises;
- (e) to protect local firms from predatory practices;
- (f) to ensure that certain products are available in the host country in sufficient quantities and at appropriate prices for the needs of the local market;

- (g) to counteract the corporate entities' refusal to deal or unfair (cartel) pricing;
- (h) to limit the net outflow of foreign exchange and to reduce pressures on the balance of payments;
- (i) to combat international market allocation arrangements within and among foreign firms, long-term exclusivity contracts or tied-selling arrangements;
- (j) to ensure a degree of control for local management;
- (k) to encourage local savings;
- (l) to promote the international flows of technology;
- (m) to protect national security and cultural sovereignty;
- (n) to counter enterprise-to-enterprise market allocation or exclusivity contracts;
- (o) to counter international market allocation by foreign enterprises, and restrictions on exports;
- (p) to ensure access to the international distribution channels.

**D. Transparency of trade-related investment measures:**

1. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification of trade regulations.
2. Contracting parties undertake to the maximum extent feasible to provide such relevant information as may be necessary for the effective implementation of this Declaration.
3. Nothing in this Declaration shall compel contracting parties to notify information, the disclosure of which is contrary to its national security interests, or to divulge information in breach of requirements of commercial confidentiality or which is inimical to public interest.

**E. Recourse by contracting parties adversely affected by trade-related investment measures:**

1. The existing framework of GATT rights and obligations, providing as it does for remedies in the event of nullification and/or impairment of benefits, would be sufficient to deal with alleged adverse effects of trade-related investment measures.
2. Nothing in this Declaration shall be construed as derogating from the rights and obligations enjoyed by contracting parties under the General Agreement.