

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)

Negotiating Group on Trade-Related
Investment Measures

CHAIRMAN'S REPORT ON THE STATUS OF WORK IN THE NEGOTIATING GROUP

My Report on the Status of Work in the Negotiating Group on Trade-Related Investment Measures has been structured around the Punta del Este mandate and the elements of the negotiations that were contained in the TNC decision on TRIMs which followed the Mid-Term Review of the Uruguay Round in December 1988. That is the structure which many participants have indicated to me they favour at this stage of the negotiations.

The Report contains three separate texts: the "A", "B" and "C" texts.

The "A" text is the result of consultations that I have held on an informal Chairman's paper which I placed before the Group in May. Those consultations have permitted me to refine the concepts which were contained in that paper. I have received support from many participants for using the "A" text as a basis for further negotiations. Differences of views among those participants on individual issues are indicated by square-bracketed language in the text, and certain complete paragraphs have been placed in square brackets where there is a need to deepen understanding of the issues further. The text as a whole remains in square brackets, and further opportunities will be given to participants to clarify and elaborate their positions with respect to the elements that it contains.

In order to reflect the scope of the negotiations, and to take account of the fact that certain participants are not able to accept the "A" text as a basis for further negotiations, I have felt it necessary to include in this Report on the status of work the texts of two other proposals the Group has received: one from the United States in NG12/W/24, which is reproduced as the "B" text; and the other from Bangladesh, Brazil, Colombia, Cuba, Egypt, India, Kenya, Nigeria, Pakistan, Peru, Tanzania and Zimbabwe, supported by China and Sri Lanka, in NG12/W/26, which is reproduced as the "C" text.

One participant, in commenting on my report, has stated that attention will need to be paid in the Group's negotiations to paragraph B(iii) of the Punta del Este mandate.

TRADE-RELATED INVESTMENT MEASURES

I. Elements concerning scope and coverage

A1. Considering that Ministers agreed in the Punta del Este Declaration of 20 September 1986 that following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, Multilateral Trade Negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade;

[To be drafted]

A2. For the purposes of this Agreement¹:

(a) An investment measure is "trade-related" when it [imposes conditions on the trade pattern of a firm] [is directed at trade flows and it] [can cause] [is intended to cause] [causes] trade restrictive or distorting effects [that are direct and significant] [that are adverse to the interests of other contracting parties] [that are contrary to the provisions of the General Agreement] [as defined in this Agreement].

(b) An "investment measure" is a measure applied by a contracting party to domestic or foreign [investors] [companies] in the territory of that contracting party in connection with:

(i) an investment in a [production] [manufacturing] facility [or the establishment of a company] [or the acquisition of control of an established company];

(ii) the expansion of an investment;

[(iii) the continued operation of a company.]

(c) An investment measure is "applied" when:

(i) it must be complied with under law, regulation, judicial decision or administrative practice, policy or rulings, of general or specific application;

[(ii) it is accepted by a contracting party in connection with issuing an investment or a production authorisation;]

¹Use of the term Agreement does not prejudice in any way whatever particular legal form may eventually prove to be most suitable.

[(iii) it is a condition for, or a factor, in determining eligibility for, receipt of an advantage^{2,3} from a contracting party or avoiding withdrawal of an advantage.]

B1. Noting that the Ministerial Declaration on the Uruguay Round directed that negotiators examine the operation of the Articles of the General Agreement on Tariffs and Trade (hereinafter referred to as the "General Agreement") related to the trade restrictive and distorting effects of investment measures, and elaborate further provisions that may be necessary to avoid such adverse effects on trade;

Desiring to promote the expansion and progressive liberalization of world trade to increase the economic growth of all trading partners;

Recognizing the right of contracting parties to regulate foreign investment in a manner that is consistent with the General Agreement and other international obligations;

Recognizing the importance of direct investment in the promotion of economic development;

Taking into account the particular economic circumstances of developing and least-developed countries;

Desiring to clarify relevant provisions of the General Agreement and to elaborate appropriate new provisions necessary to avoid the trade restrictive and distorting effects of trade-related investment measures (hereinafter referred to as "TRIMs");

B2. An "investment measure" is any measure maintained (i.e., provided for by laws, regulations, judicial decisions, administrative rulings or policy statements) or applied by a contracting party

(a) as a term or condition of permitting an investment in its territory;

(b) in connection with the establishment of a company, or the making or expanding of any investment;

²An advantage can include the provision of a subsidy, and attention will be paid to the negotiations in the Negotiating Group on Subsidies to ensure no conflict.

³It is understood that this Agreement does not establish disciplines on investment incentives or other advantages per se.

(c) as a condition for the receipt of an incentive⁴ or services necessary for the conduct of business;

(d) as a condition for the continued operation of a company.

B3. A "trade-related investment measure" or "TRIM", is any investment measure which restricts or distorts trade by, for example, restricting or displacing imports; restricting, displacing or requirement exports; or otherwise nullifying or impairing any benefits accruing directly or indirectly to a contracting party under the General Agreement or this Agreement, taking into account imports or exports which would have occurred had the measure not been imposed.

B4. A measure is "required" when

(a) it must be complied with under law, regulation, administrative practice or policy;

(b) it is a condition for the receipt of an incentive or a factor in determining eligibility for an incentive;

(c) it is sought or accepted by a contracting party in connection with issuing an investment authorization or granting an incentive; or

(d) it is enforceable or enforced against a company under law, regulation, administrative practice or policy, or by withdrawal of an incentive.

B5. An "incentive" is any benefit or the lessening of any burden.

B6. A "company" means any kind of corporation, company, association, sole proprietorship, branch or other organization legally constituted under the laws and regulations of a contracting party or a political subdivision thereof, whether or not organized for pecuniary gain, or privately or governmentally owned. W/24

C1. 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;

⁴It is understood that this Agreement does not establish disciplines on investment incentives per se.

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 W/26;

C2. The final outcome of the negotiations in the area of trade-related investment measures would apply only to the direct and significant adverse trade effects of those investment measures which are directed at affecting trade flows.

II. Elements concerning the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures

A3. Contracting parties agree not to apply [trade-related] investment measures in a manner [which conflicts] [inconsistent] with the provisions of the General Agreement.

A4. Contracting parties recognize that certain [trade-related] investment measures [can] cause trade restrictive and distorting effects [equivalent to effects caused by measures] that are subject to the provisions of Article III of the General Agreement. Contracting Parties also recognize that those [trade-related] investment measures should not be applied to imported or domestic products so as to afford protection to domestic production.

A5. Therefore, having regard to the provisions of Article III of the General Agreement, and subject to paragraphs A10 and A17 below, no contracting party shall apply any [trade-related] investment measure:

(a) [in a manner] which accords less favourable treatment to imported products than to like products of national origin;

(b) relating to the mixture, processing or use of products in specified amounts or proportions [in a manner] which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the [trade-related] investment measure must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply [trade-related] investment measures in a manner contrary to the principles set forth in Article III:1 of the General Agreement;

A6. Contracting parties agree, in particular, not [to apply] [to apply in a manner which accords less favourable treatment to imported products than to like products of national origin] [to cause the effects described in paragraph A11 when applying] any [trade-related] investment measure which:

(a) requires the purchase or use [or manufacture] of specific products or of a specified quantity, value or proportion of products of domestic origin or from domestic sources, or the substitution otherwise of products of domestic origin for like imported products;

[(b) requires the manufacture by a company of materials, parts or components [for use in its production activities] in the territory of that contracting party in place of like imported products;]

[(c) restricts the importation by a company of materials, parts or components used in its local production, or of other products related to its local production, to an amount corresponding in any way to the quantity, value or proportion of local production that the company exports.]

A7. Contracting parties recognize that certain [trade-related] investment measures [can] cause trade restrictive and distorting effects [equivalent to the effects caused by measures] that are subject to the provisions of Article XI of the General Agreement.

A8. Therefore, having regard to the provisions of Article XI of the General Agreement and subject to paragraphs A10 and A18 below, no contracting party shall apply any [trade-related] investment measure [in a manner] which acts as a prohibition or quantitative restriction on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

A9. Contracting parties agree, in particular, not [to apply] [to apply in a manner which acts as a prohibition or quantitative restriction on importation or on exportation or sale for export] [to cause the effects described in paragraph A11 when applying] any [trade-related] investment measure which:

(a) restricts the importation by a company of materials, parts or components used in its local production, or of other products related to its local production, to an amount corresponding in any way to the quantity, value or proportion of local production that the company exports;

[(b) restricts the quantity, value or proportion of a company's local production that may be exported;]

(c) restricts the importation by a company of materials, parts or components used in its local production, or of other products related to its local production, by restricting the company's access to foreign exchange or by linking that access in any way to the foreign exchange the company earns from exporting, in a manner contrary to the provisions of Article XV of the General Agreement.

[(d) requires the purchase or use [or manufacture] of specific products or of a specified quantity, value or proportion of products of domestic origin or from domestic sources, or the substitution otherwise of products of domestic origin for like imported products.]

[(e) limits the manufacture by a company of materials, parts or components for use in its production activities in the territory of that contracting party if the measure is applied in combination with a restriction on the importation of those materials, parts or components.]

[(f) requires the assignation to a company in their territory of the exclusive rights to supply some or all overseas markets with any of that company's products.]

[A10. Contracting parties agree that GATT [exceptions] [provisions related] to the prohibition on the use of measures that are applied in a manner [which conflicts] [inconsistent] with the provisions of Article III or XI of the General Agreement may apply equally to the use of [trade-related] investment measures that are applied in a manner which conflicts with the provisions of Articles III or XI of the General Agreement.]

A11. A contracting party shall have recourse to the appropriate provisions of the General Agreement if it considers that its trade interests are adversely affected by the application of a [trade-related] investment measure by another contracting party in a manner which is creating or causing:

(a) nullification or impairment of the benefits accruing directly or indirectly to it under the General Agreement;⁵

(b) material injury or threat of material injury to an established industry in its territory, or material retardation of the establishment of a domestic industry;

(c) serious prejudice to its interests.^{6,7}

A12. Contracting parties agree [to take such reasonable measures as may be available to them] to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within their territories.

B7. The CONTRACTING PARTIES recognize that certain investment measures inherently restrict or distort trade by, for example, restricting or displacing imports, or restricting, displacing or requiring exports.

⁵Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.

⁶Serious prejudice to the interests of another contracting party is used here in the same sense that it is used in Article XVI:1 of the General Agreement and includes threat of serious prejudice. Serious prejudice may arise where an investment measure has the effect of displacing exports of like products of another contracting party from a third country market, or of displacing or impeding imports of like products into the market of the contracting party applying the investment measure.

⁷The descriptions in A11(a), (b) and (c) may need revision, in particular in the light of the results of negotiations in other Negotiating Groups.

B8. Therefore, and having regard to the objectives of Articles III and XI of the General Agreement, no contracting party shall maintain or apply investment measures which accord a preference to domestic goods over imports, or act as quantitative restrictions on imports or exports. Accordingly, no contracting party shall maintain or apply measures which:

- (a) require a given level or percentage of domestic content, the purchase or supply of goods from domestic sources in preference to imports, or the substitution of domestic goods for imported goods;
- (b) require the mixing, processing or use of products in ways which require, directly or indirectly, that a specified amount or proportion of any product be supplied by domestic sources;
- (c) require the manufacture of particular goods in the territory of that party;
- (d) restrict the production of particular goods or the use of particular technology;
- (e) require the transfer, use or licensing of a particular technology or process for local production;
- (f) require the sale of a given level or percentage or production in the territory of that party; or
- (g) require exports or foreign exchange earnings as a condition for importing. W/24

C3. 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.

C4. Nothing in this Declaration shall be construed as derogating from the rights and obligations enjoyed by contracting parties under the General Agreement. W/26

III. Elements concerning the elaboration of further provisions that are necessary to avoid the adverse trade effects of investment measures

A13. Contracting parties agree that they shall [not apply] [seek to avoid applying] [trade-related] investment measures [in a manner] which may cause:

[(a) nullification or impairment of the benefits accruing directly or indirectly to another⁸ contracting party under the General Agreement or under this Agreement;

(b) material injury or threat of material injury to an established industry in the territory of a contracting party or material retardation of the establishment of a domestic industry; or

(c) serious prejudice to the interests of another contracting party⁹.]¹⁰

[Where a contracting party considers that a [trade-related] investment measure applied by another contracting party is creating or causing such effects, it may, without prejudice to the recourse available to it under the General Agreement, request that contracting party to enter into consultations under the provisions of this Agreement.]

[When it is established through consultations and, as necessary, the dispute settlement procedures available under the General Agreement that a [trade-related] investment measure is causing [directly] any of the adverse trade effects described above, the specific measure in question shall be modified or, if necessary, removed by the contracting party applying it [to eliminate those adverse trade effects].]

⁸ Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.

⁹ Serious prejudice to the interests of another contracting party is used here in the same sense that it is used in Article XVI:1 of the General Agreement and includes threat of serious prejudice. Serious prejudice may arise where an investment measure has the effect of displacing exports of like products of another contracting party from a third country market, or of displacing or impeding imports of like products into the market of the contracting party applying the investment measure.

¹⁰ The descriptions in A13(a), (b) and (c) may need revision, in particular in the light of the results of negotiations in other Negotiating Groups. New criteria, tailored specifically to the adverse trade effects of investment measures, may need to be elaborated.

A14. Contracting parties agree [not to apply] [to [seek to] avoid causing such effects, in particular, when applying] any [trade-related] investment measure which:

(a) requires the export of a specified minimum quantity, value or proportion of local production; or

(b) requires the export to a designated market or region of a specified product or of a minimum quantity, value or proportion of local production, or the assignation to a company in their territory of the exclusive rights to supply some or all overseas markets with any of that company's products.

[A15. Exceptions to the provisions of paragraphs A13 and A14 - to be drafted.]

[A16. Contracting parties agree that they shall [seek to] avoid discriminating in the application of trade-related investment measures between domestic investors and investors of foreign origin and, in like circumstances, between foreign investors of different national origin.]

B9. Having regard to the objectives of the General Agreement, no contracting party shall maintain or apply investment measures which require the export of goods, either generally or to a particular country or area of the world market.

B10. No contracting party shall maintain or apply any other investment measures which inherently restrict or distort trade, for example, measures which:

(a) condition a company's access to foreign exchange or ability to make remittances on export performance or foreign exchange earnings;

(b) require local equity participation in a company in circumstances such that the local equity participant or related party will be a preferred supplier of domestically produced goods to that company or must be in the same line of business as that company.

B11. The contracting parties recognize that certain investment measures other than those set out in paragraphs B7-B10 may restrict or distort trade in some circumstances, particularly when applied in a discriminatory manner.

B12. Examples of such measures include:

(a) the requirement that some equity be held by nationals of the host country;

(b) restrictions on remittances or access to foreign exchange, other than those prohibited by paragraphs B8(g) and B10(a) which, having regard to Article XV:4 of the General Agreement, frustrate the intent of the provisions of this Agreement or the General Agreement.

B13. Accordingly, no contracting party shall apply such a measure to the company of another contracting party in a manner which, in like situations, accords treatment less favourable than the better of the treatment accorded to its companies or to companies of any other contracting parties.

B14. Furthermore, no contracting party shall apply an investment measure coming under paragraphs B11-B13 in a manner which adversely affects the trade of another contracting party.

B15. In determining whether such a measure adversely affects the trade of another contracting party, parties shall consider whether it:

- (a) restricts or displaces imports;
- (b) restricts, displaces or requires exports; or
- (c) nullifies or impairs any benefits accruing directly or indirectly to a contracting party under the General Agreement or this Agreement, taking into account imports or exports which would have occurred had the measure not been imposed.

B16. If a contracting party believes that such a measure has adverse effects on its trade, it shall advise the contracting party applying the measure and describe its effects. The contracting party applying the measure shall promptly consult with the complaining party with a view to reaching a mutually satisfactory solution to eliminate adverse trade effects. W/24

C5. 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. W/26

IV. Elements concerning development considerations

A17. A contracting party coming within the scope of paragraph 4(a) of Article XVIII of the General Agreement may have recourse to the provisions and procedures set out in Section C of Article XVIII of the General Agreement with regard to trade-related investment measures that are applied in a manner which conflicts with the provisions of Article III of the General Agreement.

A18. A contracting party coming within the scope of paragraph 4(a) of Article XVIII of the General Agreement may have recourse to the provisions and procedures set out in [Sections B and C] [Section C] of Article XVIII of the General Agreement with regard to trade-related investment measures that are applied in a manner which conflicts with the provisions of Article XI of the General Agreement.

[A19. On request, the CONTRACTING PARTIES may permit a developing contracting party to apply on a temporary basis the export requirements referred to in paragraph A14 to assist its industrial development provided the CONTRACTING PARTIES are satisfied that:

(a) no other, less trade-distorting, measure is available to serve the same purpose;

(b) the measure is not likely to lead to material injury or threat of material injury to an established industry in the territory of a contracting party, or material retardation of the establishment of a domestic industry, or serious prejudice to the interests of another contracting party;

(c) a timetable for removing the measure has been agreed to.]

A20. See also transitional arrangements under V below.

B17. With regard to a measure coming under paragraphs B7-B16, contracting parties may continue to apply such measure to a company after the entry into force of this Agreement for -- year(s) in the case of developed countries, -- year(s) in the case of developing countries and -- year(s) in the case of least-developed countries provided that:

(a) such measure was actually applied to that company prior to the date of the initiation of the Uruguay Round;

(b) the terms of such measure are not made more onerous;

(c) the contracting party notifies such measure to the GATT Secretariat and the Committee on Trade-Related Investment Measures; and

(d) the contracting party submits to the GATT Secretariat and the TRIMs Committee a transition plan for eliminating such measure within the time accorded to it under this paragraph.

B18. Each contracting party shall determine its own transition plan.

B19. The GATT Secretariat shall, upon request, provide technical assistance to least-developed and developing countries.

B20. Paragraph B17 shall not be construed to impair any rights or derogate from any obligations set forth in the General Agreement. W/24

C6. 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.

C7. 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.

C8. Subject to the general objectives stated in paragraph C5, and in pursuance of the provisions of paragraphs C6 and C7, 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. W/26

V. Elements concerning other relevant issues, such as the modalities of implementation

Transitional arrangements

A21. Contracting parties agree to notify [subject to contractual arrangements] to the Committee on Trade-Related Investment Measures within -- days of the entry into force of this Agreement all [trade-related] investment measures they apply which [conflict] [may be inconsistent] with the provisions of paragraphs A4-A9 [A13] or A14. Each such measure should be notified separately, along with its principal features.¹¹

A22. Contracting parties recognize that a gradual approach to the [modification and/or eventual] elimination of trade-related investment measures which are notified under paragraph A21 is needed.

A23. Contracting parties agree that they will not modify the terms of any trade-related investment measure which they notify under paragraph A21 from those prevailing at the end of the Uruguay Round such as to cause the intensification of the measure's trade restrictive or distorting effects. [However, in order to avoid distorting the conditions of competition between established investors already subject to a trade-related investment measure and new investors in the same industry, a contracting party may apply a trade-related investment measure which is subject to notification under paragraph A21, and which it was already applying at the end of the Uruguay Round on an industry-wide basis, to cases of new or expanded investment in that industry provided that such measure is not applied above the maximum level that the measure is applied on other enterprises in the same industry and that, accordingly, it is notified under the provisions of paragraph A21.]

A24. Contracting parties agree that, following the entry into force of this Agreement, all trade-related investment measures which have been notified under paragraph A21 shall be eliminated within -- years [in the case of developed contracting parties, [within -- years in the case of countries in a transitional state of economic development,] within -- years in the case of developing contracting parties, and within -- years in the case of least developed contracting parties]. [On request, the CONTRACTING PARTIES may extend the transition period by up to -- years for those developing countries which demonstrate particular difficulties in implementing the provisions of this Agreement in the light of their development needs, and by up to -- years in the case of the least-developed countries. In considering such a request from a developing or a least-developed

¹¹ The principal features notified should include, at a minimum, the date of introduction of the trade-related investment measure in the case of each investment subject to it, the specific requirement involved, and the legislative or administrative basis of the measure. They should not include business-sensitive information not directly related to the trade restrictive or distorting effects of the measure.

contracting party, the CONTRACTING PARTIES shall take into account its special development, financial and trade needs.]

A25. [Contracting Parties shall also be able to introduce new, or maintain existing, measure(s) provided it can be demonstrated to the TRIMs Committee that such measure(s) facilitate positive structural adjustment and that the overall effect of such measure(s) taken in combination with other related policy measures has the effect of contributing to a greater liberalization of the industry and/or lower overall industry assistance.]

B21. See Elements concerning development considerations under Section V. W/24

Transparency

A26. Contracting parties agree that the provisions of Article X of the General Agreement apply to all trade-related investment measures.

A27. Contracting parties shall publish promptly all [trade-related] investment measures of general application in such a manner as to enable governments and traders to become acquainted with them. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

A28. Contracting parties shall notify the GATT Secretariat and the Committee of the publications in which such measures may be found. Any contracting party may make a written request to another contracting party for information regarding such measures of general application. Responses to such requests shall be prompt and comprehensive, and in writing.

[A29. A contracting party applying a [trade-related] investment measure of specific application to a particular company shall, at the written request of another contracting party which is able to demonstrate a direct trade interest in the matter, provide to that party all relevant information about the trade-related terms and conditions of the measure. Such information would not include [business-sensitive information] not related directly [or indirectly] to the trade restrictive or distorting effects of the measure. Responses to such requests shall be prompt and comprehensive, and in writing.

A30. A contracting party which, pursuant to a formal written request made under the provisions of paragraph A29, has received information about measures of specific application shall not disclose such information without written authorisation from the contracting party providing the information unless the information is in the public domain on or after the date on which the information is provided. Such information may be used only in connection with GATT dispute settlement proceedings or for

consultation purposes related specifically to the implementation of this Agreement.]

A31. Each contracting party shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from interested parties in other contracting parties regarding the terms and conditions of any particular trade-related investment measure applied in the territory of that contracting party.

A32. Any interested contracting party which considers that any trade-related investment measure applied by another contracting party has not been notified in accordance with the provisions of this Agreement may bring the matter to the attention of such other contracting party. If the trade-related investment measure is not thereafter notified promptly, such contracting party may itself bring the trade-related investment measure in question to the notice of the Committee on Trade-Related Investment Measures.

[A33. Provisions to ensure the transparency of trade-related investment measures applied by regional and local governments and authorities - to be drafted.]

B22. Contracting parties shall make public all measures of general application (including laws, regulations, judicial decisions, administrative rulings and policy statements) which are TRIMs or authorize the use of TRIMs. Contracting parties shall notify the GATT Secretariat of the publications in which such measures may be found.

B23. Any contracting party may request from another contracting party information regarding such measures of general application. Responses to such requests shall be prompt and comprehensive.

B24. A contracting party applying a TRIM to a specific company shall, at the request of another contracting party, provide to the party making the request certain information about the terms or conditions of the TRIM. Such information would include, for example, the percentage of equity that must be owned by domestic investors pursuant to a local equity requirement, or the level of exports or domestic content that must be reached pursuant to export or local content requirements. Such information would not include business sensitive information not directly related to the TRIM such as information about profits or plans regarding expansion or reduction of business activities.

B25. A contracting party receiving such a request shall provide information promptly and in a comprehensive manner.

B26. A contracting party which, pursuant to a formal request, has received information about measures of specific application shall not disclose such information without formal authorization from the contracting party providing the information unless the information is in the public domain on

or after the date on which the information is provided. Such information may be used only in connection with GATT dispute settlement proceedings or other purposes related to the implementation of this Agreement. W/24

C9. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification of trade regulations.

C10. Contracting parties undertake to the maximum extent feasible to provide such relevant information as may be necessary for the effective implementation of this Declaration.

C11. 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. W/26

TRIMS Committee

[A34. A Committee on Trade-Related Investment Measures shall be established (referred to in this Agreement as "the Committee") open to representatives from each of the contracting parties to the General Agreement. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise as envisaged by relevant provisions of this Agreement or at the request of any contracting party. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the CONTRACTING PARTIES and it shall afford contracting parties the opportunity to consult on any matters relating to the operation of this Agreement or to the furtherance of its objectives.

A35. The Committee may set up subsidiary bodies, as appropriate, which shall carry out such functions as may be given to them by the Committee.

A36. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or any subsidiary body seeks such information from a source within the jurisdiction of a contracting party, it shall inform the contracting party involved.

A37. Special care shall be taken to protect the confidentiality of information given to the Committee on the specific application of trade-related investment measures to individual companies or investors.

A38. The Committee shall review annually the operation and effectiveness of this Agreement and the progress made in [modifying and/or] eliminating the measures referred to in paragraphs A21-24, and it shall report thereon annually to the CONTRACTING PARTIES. It shall carry out biennial reviews of the trade effects of trade-related investment measures notified by contracting parties with the purpose of furthering contracting parties'

understanding of the trade restrictive and distorting effects of trade-related investment measures.]

[A39. Consultation; conciliation - to be drafted.]

[A40. Further provisions relating to the functions of a TRIMs Committee - to be drafted.]

B27. There shall be established under this Agreement a Committee on Trade-Related Investment Measures (hereinafter "the Committee") composed of representatives of each of the contracting parties. The Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary, but not less than once a year. It may establish its own rules of procedure.

B28. The Committee shall oversee the implementation of this Agreement and make periodic reports to the CONTRACTING PARTIES on the degree to which the Agreement is accomplishing its objectives. The Committee shall afford contracting parties the opportunity to consult on any matter relating to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such other responsibilities as may be assigned to it by the CONTRACTING PARTIES. W/24

Consultation and Settlement of Disputes

A41. The provisions of Articles XXII and XXIII shall apply.¹²

B29. Contracting parties may have recourse at any time to Articles XXII and XXIII of the General Agreement for the purpose of addressing any matter related to this Agreement. W/24

Future Work

B30. Not later than -- years after the entry into force of this Agreement the contracting parties shall review its effectiveness and, as appropriate, clarify and improve its obligations. W/24

Competition Policies and additional considerations

C12. The CONTRACTING PARTIES also recognize that, in addition to the imperatives of economic growth and development as outlined in paragraphs C6-C8, there are considerations which create the need for governments to employ investment measures in order to offset the trade

¹²As resulting from the Uruguay Round negotiations on Dispute Settlement.

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.
- W/26]