

a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this Code of Good Practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this Code presented by standardizing bodies that have accepted this Code of Good Practice. It shall make an objective effort to solve any complaints.

140.(f) AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Done at Marrakesh on 15 April 1994

Entry into force: 1 January 1995

United Nations, *Treaty Series*, vol. 1868, p. 185; Reg. No. 31874

Members,

Considering that Ministers agreed in the Punta del Este Declaration that “Following an examination of the operation of GATT Articles related to the trade-restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade”;

Desiring to promote the expansion and progressive liberalisation of world trade and to facilitate investment across international frontiers so as to increase the economic growth of all trading partners, particularly developing country Members, while ensuring free competition;

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

Recognizing that certain investment measures can cause trade-restrictive and distorting effects;

Hereby *agree* as follows:

Article 1. Coverage

This Agreement applies to investment measures related to trade in goods only (referred to in this Agreement as “TRIMs”).

Article 2. National treatment and quantitative restrictions

1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.

2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

Article 3. Exceptions

All exceptions under GATT 1994 shall apply, as appropriate, to the provisions of this Agreement.

Article 4. Developing country Members

A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.

Article 5. Notification and transitional arrangements

1. Members, within 90 days of the date of entry into force of the WTO Agreement, shall notify the Council for Trade in Goods of all TRIMs they are applying that are not in conformity with the provisions of this Agreement. Such TRIMs of general or specific application shall be notified, along with their principal features.¹

2. Each Member shall eliminate all TRIMs which are notified under paragraph 1 within two years of the date of entry into force of the WTO Agreement in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.

3. On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under paragraph 1 for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.

4. During the transition period, a Member shall not modify the terms of any TRIM which it notifies under paragraph 1 from those prevailing at the date of entry into force of the WTO Agreement so as to increase the degree of inconsistency with the provisions of Article 2. TRIMs introduced less than 180 days before the date of entry into force of the WTO Agreement shall not benefit from the transitional arrangements provided in paragraph 2.

5. Notwithstanding the provisions of Article 2, a Member, in order not to disadvantage established enterprises which are subject to a TRIM notified under paragraph 1, may apply during the transition period the same TRIM to a new investment (i) where the products of such investment are like products to those of the established enterprises, and (ii) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Any TRIM so applied to a new investment shall be notified to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

¹ In the case of TRIMs applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

Article 6. Transparency

1. Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of GATT 1994, in the undertaking on “Notification” contained in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 and in the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

2. Each Member shall notify the Secretariat of the publications in which TRIMs may be found, including those applied by regional and local governments and authorities within their territories.

3. Each Member shall accord sympathetic consideration to requests for information, and afford adequate opportunity for consultation, on any matter arising from this Agreement raised by another Member. In conformity with Article X of GATT 1994 no Member is required to disclose information the disclosure of 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.

Article 7. Committee on Trade-Related Investment Measures

1. A Committee on Trade-Related Investment Measures (referred to in this Agreement as the “Committee”) is hereby established, and shall be open to all Members. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any Member.

2. The Committee shall carry out responsibilities assigned to it by the Council for Trade in Goods and shall afford Members the opportunity to consult on any matters relating to the operation and implementation of this Agreement.

3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the Council for Trade in Goods.

Article 8. Consultation and dispute settlement

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

Article 9. Review by the Council for Trade in Goods

Not later than five years after the date of entry into force of the WTO Agreement, the Council for Trade in Goods shall review the operation of this Agreement and, as appropriate, propose to the Ministerial Conference amendments to its text. In the course of this review, the Council for Trade in Goods shall consider whether the Agreement should be complemented with provisions on investment policy and competition policy.

ANNEX

Illustrative List

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(b) that an enterprise’s purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

140.(g) AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Done at Marrakesh on 15 April 1994

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United Nations, *Treaty Series*, vol. 1868, p. 200; Reg. No. 31874

Members hereby agree as follows:

PART I

Article 1. Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated¹ and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2. Determination of dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country,² such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is

¹ The term “initiated” as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.

² Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.