Trade-Related Investments Measures (TRIMS)
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Introduction

- The TRIMs Agreement establishes disciplines on certain types of investment measures applied to enterprises

- Prohibits the use of TRIMs that are inconsistent with:
  - Article III of GATT 1994 (National Treatment), or
  - Article XI of GATT 1994 (General Elimination of Quantitative Restrictions).
Performance Requirements

- Applied by governments in order to influence the behaviour of firms (e.g., to substitute imports with local production, to increase exports, etc.).
- FDI policy: as conditions for entry and operation; often accompanied by investment incentives.
- Also applied to domestic firms.
- Instruments to promote industrialization; import-substitution; exports; transfer of technology, etc.
- TRIMs Agreement covers only a subset of PRs (i.e. local content, trade-balancing requirements and import/export restrictions).
Legal background:
United States - Canada dispute (1982)

- Canada – Administration of the Foreign Investment Review Act (“FIRA” panel)
- The panel found:
  - Obligations to purchase goods of Canadian origin were inconsistent with the national treatment obligation of Article III:4 of GATT.
  - Requirements to export specified quantities of production were not covered by GATT obligations.
  - Right to regulate foreign investment not an issue
Punta del Este Ministerial Declaration (1986)

Mandate: elaborate, as appropriate, further provisions to avoid the trade-restrictive and distorting effects of investment measures.

Negotiations not intended to deal with the regulation of investment *per se*.

Developed-developing countries divide:
- Developed: prohibition of a wide range of measures.
- Developing: GATT not competent to regulate investment; focus only on trade-effects.
TRIMs Agreement: main features

- Applies only to investment measures related to trade in goods (not trade in services).
- Focuses on the discriminatory treatment of products (imported/exported).
- Does not regulate the entry of foreign investment or investors.
- Concerns measures applied to both foreign and local firms.
TRIMs Agreement: core provisions

- **Coverage (Article 1)**
  - Investment measures related to trade in goods
  - No generic definition of the term “TRIM”

- **National Treatment and Quantitative Restrictions (Article 2)**
  - Prohibition on the use of TRIMs inconsistent with the GATT 1994 provisions:
    - Article III (National treatment), or
    - Article XI (General elimination of quantitative restrictions)
The annex contains an Illustrative List of measures that are inconsistent with Articles III.4 and XI.1 of GATT 1994.

- Mandatory measures and measures compliance with which is necessary to obtain an “advantage”.
- The term “advantage” not defined, but it is understood to encompass a wide range of benefits, including subsidies
- Non-exhaustive list
Illustrative List: paras. 1(a) and 1(b)

- TRIMs inconsistent with Article III.4 of GATT
  - 1(a): measures that require the purchase or use of goods of domestic origin of from any domestic source
    - Local content requirements
  - 1(b): measures that limit the purchase or use of imported products to an amount related to the volume or value of products exported by an enterprise
    - Trade-balancing requirements
Illustrative List: paras. 2(a) and 2(b) §

- TRIMs inconsistent with Article XI.1 of GATT
  - 2(a): measures that restrict the importation of products used in or related to local production, generally or to an amount related to the volume or value of the local production exported by the enterprise.
    - Trade-balancing requirements
  - 2(b): restrict the importation of products used in or related to local production, by restricting access to foreign exchange to an amount related to the foreign exchange inflows to the enterprise
    - Exchange-balancing requirements
Illustrative List para. 2(c)

• TRIMs inconsistent with Article XI.1 of GATT
  2(c): measures that restrict the exportation or sale for export of products, whether in terms of particular products, volume or value of products, or proportion of the volume or value of the local production of the enterprise.

• Export restrictions

Note: export performance requirements are not affected, given that they are not covered by Article XI.1 of the GATT
Notification and transitional arrangements (Article 5)

- Notification of inconsistent TRIMs **within 90 days of the entry into force of the WTO**
- **Transition period for elimination of notified TRIMs**
  - 2 years (developed countries)
  - 5 years (developing countries)
  - 7 years (least-developed countries)
- **Possible extension of the transition period for developing countries demonstrating particular difficulties in implementing the Agreement.**
  - Extensions until end-2003 were granted to 8 countries.
List of countries that have notified TRIMS under Article 5.1 and that have obtained an extension:

<table>
<thead>
<tr>
<th>Country</th>
<th>Extension until</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>31 December 2003</td>
</tr>
<tr>
<td>Colombia</td>
<td>31 December 2003</td>
</tr>
<tr>
<td>Malaysia</td>
<td>31 December 2003</td>
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<tr>
<td>Mexico</td>
<td>31 December 2003</td>
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<tr>
<td>Pakistan</td>
<td>31 December 2003</td>
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<tr>
<td>Philippines</td>
<td>30 June 2003</td>
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<tr>
<td>Romania</td>
<td>31 May 2003</td>
</tr>
<tr>
<td>Thailand</td>
<td>31 December 2003</td>
</tr>
</tbody>
</table>
Exceptions and S&D

● Exceptions (Article 3)
  - All exceptions under GATT 1994 apply to the TRIMs Agreement

● Developing Country Members (Article 4)
  - Temporary exceptions may be allowed for developing countries pursuant to Article XVIII of the GATT 1994 and other WTO balance-of-payments safeguards.
### Other provisions

- **Transparency (Article 6)**
  - Notification of the publications in which TRIMs may be found.

- **TRIMs Committee (Article 7)**
  - Monitor the implementation and operation of the Agreement and provide a forum for consultation
  - Other responsibilities assigned to it by the CTG

- **Consultation and Dispute Settlement (Article 8)**
  - The provision of the GATT and the WTO Dispute Settlement Understanding are applicable.
Review of the TRIMs Agreement (Article 9)

- Review of the operation of the Agreement by the CTG within 5 years of entry into force.
- Possibility of introducing amendments and provisions on investment and competition policies.
- Review began in 1999 and is still on-going: no consensus on the need to amend the Agreement.
- Developing countries: seek greater flexibility to apply TRIMs for development purposes.
- Developed countries: maintain the status quo
Implementation issues

- Proposal by Brazil and India: amend Article 4 to allow more flexibility for developing countries to apply TRIMs on developmental grounds.
- U.S. and other developed countries: opposed to any fundamental change to existing GATT rules.
- Discussions are at a stand-still.
- DG shall report regularly to TNC and General Council. The Council shall take any appropriate action no latter than 31 July 2006.
S&D proposals by the African Group

- **Article 4:** The possibility for developing countries and LDCs to “deviate temporarily” from the prohibition on TRIMs shall be understood to refer, in the case of African countries, to a period of not less than **six years**.

- **Article 5.3:** the CTG shall grant extensions or new transition periods for LDCs and other low-income developing countries.

- Committee to report periodically to GC and to ensure that clear recommendations for a decision are made no later than December **2006**.
Hong Kong Ministerial Declaration: Annex F (WT/MIN(05)/DEC)

- **Annex F:** S&D Treatment for LDCs
- **Decision on TRIMs Agreement**
- **LDCs allowed to maintain existing TRIMs until the end of a new transition period lasting 7 years:**
  - Notify the CTG within 2 years, starting on 17 January 2006
  - Transition period may be extended by CTG, taking into account the individual financial, trade and development needs of Member in question
LDCs also allowed to introduce **new TRIMs**:  
- Notify to the CTG such measures within 6 months of their adoption  
- CTG to give positive consideration to such notifications  
- Duration of new measures not to exceed 5 years, renewable subject to review and decision by CTG

**All measures adopted under this decision shall be phased out by 2020.**
Summary

- TRIMs Agreement applies to trade in goods.
- Prohibits measures that are inconsistent with Articles III and XI of GATT 1994: local content; trade balancing, export restrictions.
- Extensions of transition periods expired end-2003.
- Review under Article 9: no consensus reached.
- Consultations on implementation and S&D issues still on-going
- HK Declaration: Decision in favour of LDCs.
Example 1

Automotive industry: investors undertaking to incorporate a minimum of 25% of domestic goods in their production of vehicles will obtain a reduction in import duties on engines used in their manufacture.

• Is this a TRIM?
• If so, what type of TRIM is it?
• What are is possible effects on trade?
Example 2

Computer industry: enterprises in this sector will be able to import parts and components for computer production up to the equivalent of 70% of the value of their exports.

• Is this a TRIM?
• If so, what type of TRIM is it?
• What are its possible effects on trade?
Example 3

- TV industry: all TV manufacturers will obtain a reduction in import duties on components and spare parts according to the percentage of products they export relative to their total production (the more they export, the greater the reduction in import duties).

- Is this a TRIM?
- If so what kind of TRIM is it?
- What are its possible effects on trade?