

Committee on Trade-Related Investment Measures

MINUTES OF THE MEETING HELD ON 18 MARCH 1996

Chairman: Mr. Vassili Notis (Greece)

1. The Committee on Trade-Related Investment Measures held its fourth meeting on 18 March 1996.
2. The Committee adopted the following agenda:
 - A. Notifications under Article 5.1 of the Agreement on Trade-Related Investment Measures
 - B. Procedures for Notifications under Article 6.2 of the Agreement
 - C. Other Business:
 - (i) Notifications under Article 5.5
 - (ii) Derestriction of Committee Documents
 - (iii) Preparation of Annual Report 1996
 - D. Election of Officers

A. NOTIFICATIONS UNDER ARTICLE 5.1 OF THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

3. The Chairman recalled that, at the previous meeting of the Committee, comments had been made on the consequences of the late submission of some notifications made under Article 5.1, questions of a factual nature had been raised regarding certain notifications, and it had been noted that in some cases the notifications were not in conformity with the agreed standard format in document G/TRIMS/1. Since that meeting, the Committee had received supplementary notifications from India¹ and Malaysia² and new notifications from Chile³ and Saint Lucia.⁴

4. The representative of India informed the Committee that in item (i) on page 3 of document G/TRIMS/N/1/IND/1/Add.1 "Annexure III" should read "Annexure II".

¹G/TRIMS/N/1/IND/1/Add.1 and Corr.1

²G/TRIMS/N/1/MYS/1/Rev.1

³G/TRIMS/N/1/CHL/1

⁴G/TRIMS/N/1/LCA/1

5. The representative of Japan drew the Committee's attention to measures taken by Argentina in the automotive sector under Presidential Decree no. 396 adopted on 18 January 1996. This Decree changed the formula for the calculation of local content and raised the required local content ratio to 67.5 per cent in 1999. This increase was in conflict with the requirements of Article 5.4 of the TRIMs Agreement. He asked whether the delegation of Argentina could confirm his delegation's understanding that the incentive linked to the local content measure - the importation of parts at reduced tariff rates - would be eliminated by the year 1999. His delegation was also interested in knowing what types of measure Argentina intended to apply in the automotive sector after the year 2000. He added that barriers to non-members should not be enhanced because of regional integration.

6. The representative of the European Communities expressed his delegation's concerns on two points. First, while the recent notifications by India and Malaysia supplemented previous submissions, there were also new notifications which had been submitted well after the expiry of the deadline. These latter notifications, including the notification by Colombia in document G/TRIMS/N/1/COL/2, were without legal validity. Secondly, Argentina and Indonesia had recently introduced certain changes to measures previously notified under Article 5.1 which were contrary to the requirements of Article 5.4 of the Agreement.

7. The representative of Canada agreed with the representative of the European Communities that the deadline for submission of notifications under Article 5.1 had passed. He noted in particular the lateness of the notification submitted by Colombia. In regard to the supplementary notifications submitted by India and Malaysia, he requested that the delegations in question explain the substantive changes in these notifications compared with the previous notifications. He also requested the delegation of Argentina to explain the recent changes in the Argentine automotive regime.

8. The representative of Chile said that the delay in the notification by his country was the result of technical problems. However, the relevant legislation pertaining to measures in the automotive sector had already been notified under the Agreement on Subsidies and Countervailing Measures at the beginning of 1995, well within the time limit prescribed by that Agreement, which showed that his authorities had acted in good faith and had ensured transparency in this matter. He noted that the debate at previous Committee meetings on the legal implications of late submission of notifications under Article 5.1 had revealed that there was no consensus on this question.

9. The representative of New Zealand shared the concerns expressed by the representatives of the European Communities and Canada on the lateness of some notifications. In addition, in some cases the information provided in the notifications was incomplete. With respect to the supplementary notification submitted by India, she asked whether there were plans for the phase-out and elimination of the notified measure. In regard to the notification submitted by Colombia of its measures in the agricultural sector, she asked for a clarification on the timing of the adoption of the measures and on plans for their phase-out and elimination. She also reiterated her delegation's interest in receiving information on points raised at the previous meeting in regard to the notifications by Peru and Indonesia.

10. The representative of the United States agreed with the point made by other delegations that notifications submitted after the deadline were without legal effect. His delegation had concerns as to the compatibility with Article 5.4 of the measures recently adopted by Argentina in regard to automobiles and was seeking further information on these measures on a bilateral basis.

11. The representative of the United States raised concerns in regard to the notification by Colombia in document G/TRIMS/N/1/COL/2. The measure notified by Colombia required the producers of processed agricultural products to use certain (unidentified) percentages of local content in order to obtain import licences for those products. During the Uruguay Round, as outlined in Article 4.2 of the Agreement on Agriculture, all participants, including Colombia, had agreed to tariffify their non-tariff barriers, such as import licensing regimes. Thus, in the case of Colombia, the United States and other

WTO Members had agreed to allow Colombia to increase its tariffs on a number of agricultural items. Indeed, as a direct result, Colombia had among the highest tariffs of any country on many agricultural products. The quid pro quo for allowing Colombia to increase these agricultural tariffs was the elimination and removal of all non-tariff barriers, including the onerous type of local content licensing regime reflected in G/TRIMS/N/1/COL/2. When it increased its tariffs, Colombia had not indicated at the time that it intended to maintain the TRIMs. One could suppose that under the footnote to Article 4.2 of the Agreement on Agriculture Colombia could perhaps argue that it could maintain the import licensing TRIM, assuming that it had timely notified the measure, which it had not. However, in light of Colombia's increase in agricultural tariffs as a result of tariffication, Colombia legally had a choice. It could either agree to roll back the high agricultural tariffs to pre-Uruguay Round levels or eliminate the import licensing TRIM for agricultural products. Not to do either was clearly against the spirit, if not the letter, of the Agreement on Agriculture. However, Colombia had no cover for these TRIMs because it had missed the 90-day deadline for notifying its measures. The period of 90 days for the submission of a notification under Article 5.1 had started on 30 March 1995, when Colombia had deposited its instruments of ratification. Thus, Colombia was obliged to notify its TRIM by 30 June 1995. However, Colombia had not notified this TRIM until 31 July 1995. Thus, Colombia did not benefit from the transition periods of Article 5 of the TRIMs Agreement. He reserved his delegation's rights in this matters.

12. The representative of Colombia stated that she had taken note of the concerns raised by a number of delegations but that it was the position of her delegation that the measures notified in G/TRIMS/N/1/COL/2 were covered by the Agreement. The notification had been submitted in time in so far as it had been made within a period of 90 days following the entry into force of the WTO Agreement for Colombia. In any event, some flexibility had to be shown regarding late notifications, especially from developing countries.

13. The representative of Argentina said that he would convey to his authorities the points raised by a number of delegations on the recent measures taken by his country in the automotive sector. In respect of the notification by Colombia in G/TRIMS/N/1/COL/2, a matter also discussed in the Committee on Agriculture, he stated that it was inconsistent with the Agreement on Agriculture to apply a TRIM in addition to tariffication. His delegation would further examine the issue of the timing of this notification. Referring to a comment made on the absence of information in a notification on plans to phase out notified measures, he observed that the Agreement did not require Members to present such plans to the Committee.

14. The representative of Canada requested that, at its next meeting, the Committee provide an opportunity for a thorough review of Colombia's notification of its agricultural measures.

15. The representative of Japan stated that in December 1995 Brazil had introduced Provisional Measure 1235 and Ordinance 1761 providing for trade-balancing and local content requirements as preconditions for the importation of automobile parts and finished vehicles at reduced import duty rates. These measures constituted a violation of the WTO Agreements, particularly the TRIMs Agreement. As a result of a drastic increase in tariff rates introduced in March 1995, imports of finished vehicles had virtually ceased. In May 1995, Brazil had submitted a document (WT/L/66) to explain that this increase was just a temporary measure which would be reduced within a maximum period of one year. So far, however, the increased tariff rates remained in force. Japan was seriously concerned about the adverse impact which these measures, taken by as important a Member as Brazil, would have on the TRIMs Agreement. He reserved his delegation's rights under all WTO Agreements.

16. The representative of Korea shared the concerns expressed by the representative of Japan in regard to the measures introduced in December 1995. Brazil's new regulations favoured domestically-established producers by providing them with tariff reductions on capital goods and inputs if they complied with requirements relating to the value of exports and domestic purchases. These measures

were covered by Annex to the TRIMs Agreement and were therefore in clear violation of Article 2 of the Agreement. Although Korea understood Brazil's situation vis-à-vis its Mercosur partners, it did not agree with the argument that these measures were justifiable under Article 5.5 of the TRIMs Agreement or under Article XXIV of GATT 1994. It was the concern of his delegation that, if the Brazilian measure were left unchallenged, many other countries would follow suit. He reserved his delegation's rights to pursue this matter in other venues as appropriate.

17. The representative of Canada said that the measures adopted by Brazil were inconsistent with various provisions of the TRIMs Agreement and did not qualify for notification under Article 5.1 or for treatment under Article 4. He reserved his delegation's rights on this issue.

18. The representative of the United States said that there appeared to be no dispute that Brazil's measures were in violation of the TRIMs Agreement. His authorities had not yet had an opportunity to study the waiver request recently submitted by Brazil in respect of these measures, nor had they received and/or analysed answers to detailed questions which they had posed to Brazil as well as to Argentina concerning a number of facts relating to this request. His delegation looked forward to discussing this issue directly with Brazil and other WTO Members after examining in more detail the Brazilian waiver request.

19. The representative of the European Communities stated that the measures taken by Brazil were clearly not covered by the TRIMs Agreement. His delegation would carefully consider the waiver request recently submitted by Brazil in relation to these measures.

20. The representative of Brazil informed the Committee that his delegation had very recently submitted a waiver request under Article IX:3 (b) of the WTO Agreement concerning the measures in the automotive sector. This matter would be discussed at the appropriate time in the Council for Trade in Goods.

21. The representative of the European Communities asked the delegation of Indonesia to provide information on changes introduced on 28 February to its measures in the automotive sector and to explain how Indonesia intended to justify these measures.

22. The representative of Indonesia replied that his delegation had not yet received information on the decree adopted at the end of February. He would convey the request by the representative of the European Communities to his authorities and provide information as soon as possible.

23. The representative of the United States stated that new regulations recently enacted by Indonesia with respect to its auto investment regime raised concerns. Among the new measures was the creation of so-called "pioneer automobile companies". Companies would be granted "pioneer company status" if they: (1) were 100 per cent Indonesian owned; (2) manufactured and marketed cars with unique Indonesian names; (3) used at least 60 per cent local content within three years; (4) moved towards use of Indonesian-owned and based design and technical firms; and (5) received presidential approval. Under the new measures, automobiles sold by pioneer companies for the first three years would not be subject to a luxury tax of between 20-35 per cent. Automobiles sold by non-pioneer companies would not receive a complete waiver of the luxury tax unless they contained at least 60 per cent local content. In addition, auto parts imported by pioneer companies for input into autos manufactured in Indonesia would be exempt from duties for three years. Non-pioneer companies manufacturing in Indonesia would not be exempt from paying duties for imported automobile parts. His authorities would shortly complete a detailed legal analysis of the extent to which the new regulations were inconsistent with the TRIMs Agreement, among other WTO rules. The results would be communicated directly to the Indonesian Government as soon as this analysis was completed. He concluded by emphasizing the concern of his authorities about the consistency of these measures with WTO rules, including the TRIMs Agreement.

24. The representative of Japan expressed his delegation's concerns regarding the measures recently adopted by Indonesia in regard to automobiles, which measures might be inconsistent with the WTO Agreement, particularly Article 3 of GATT 1994.

25. The Committee took note of the statements made and agreed to revert at its next meeting to notifications under Article 5.1. It was also agreed that the Secretariat would draw the attention of the delegation of Malaysia, which was not present at the meeting, to the request by the representative of Canada for an explanation of the differences between Malaysia's recent notification and its earlier notification under Article 5.1

B. PROCEDURES FOR NOTIFICATIONS UNDER ARTICLE 6.2 OF THE AGREEMENT

26. The Chairman recalled that the Committee had, at its three previous meetings, discussed the issue of how best to implement the notification requirement of Article 6.2. As agreed at the last meeting, the Secretariat had recently submitted an informal proposal on this matter which appeared in a non-paper dated 26 February 1996. By way of introducing the non-paper, the Chairman drew the Committee's attention to the points made in paragraph 3 which highlighted the distinction between notifications under Article 6.2 and notifications under other provisions of the TRIMs Agreement. Article 6.2 envisaged the notification of publications, rather than of laws, regulations or measures; it applied to all Members and it referred to any TRIM, whether or not in conformity with Articles III and XI of the GATT 1994. The key operative part of the proposal was the suggestion in paragraph 4 that each Member provide the Secretariat with the names of publications in which TRIMs might be found, and the addresses from which copies of such publications could be obtained. Thus, it was not proposed that Members actually submit copies of publications. This proposed manner of implementing Article 6.2 would hopefully dispel concerns raised at previous meetings about the administrative burden of complying with Article 6.2. Paragraph 4 also made it clear that notifications of publications under Article 6.2 would be without prejudice to the legal consistency of any TRIMs which might be found in these publications. Paragraph 5 of the non-paper contained some suggestions as to what kind of publications might be relevant for the purposes of Article 6.2. The proposal did not attempt to resolve the problem posed by the lack of a generic definition in the Agreement of what constituted a "trade-related investment measure".

27. A number of delegations made comments on the Secretariat's proposal. It was agreed to insert in the second line of paragraph 4 "where such publications exist" after "found" and to delete in the fourth line of paragraph 5 "any" before "specific obligations".⁵ In view of the inability of the representative of India to agree to the formal adoption of the proposal without further instructions, the Committee agreed that the proposal was acceptable to all delegations, except India which needed further time to study it, and that it would be considered adopted by the Committee as soon as India had informed the Secretariat that it agreed to the proposal. In that case, the date in paragraph 6 would be the date four months after the date of circulation of the decision. If India did not indicate its acceptance of the proposal, the Committee would revert to the matter at its next meeting.

⁵The revised version of the Secretariat non-paper is reproduced in the Annex to these minutes.

C. OTHER BUSINESS

(i) *Notifications under Article 5.5 of the Agreement*

28. The Chairman recalled that, at its previous meeting, the Committee had adopted a standard format for notifications under Article 5.5, subsequently circulated in document G/TRIMS/3. So far the Committee had not received any notifications under this provision.

29. The Committee took note of this information.

(ii) *Derestriction of documents*

30. The Chairman noted that no agreement had as yet emerged on the question of circulation and derestriction of WTO documents. At the meeting of the General Council held on 13 and 15 December 1995, the Chairman of the Council had stated that it would be reasonable for the Secretariat to continue to apply GATT 1947 document derestriction procedures to WTO documents, pending agreement on new procedures.⁶ Pursuant to this statement, the Secretariat would shortly circulate a proposal for derestriction of WTO documents, based on GATT 1947 procedures. Delegations would be given a period of 60 days to request that any document, or part thereof, proposed for derestriction remain restricted. He emphasized that this was essentially an interim procedure, pending final agreement on WTO derestriction procedures.

31. The Committee took note of this statement.

(iii) *Annual Report to the Council for Trade in Goods for 1996*

32. The Chairman recalled that, at its previous meeting, the Committee had adopted its annual report under Article 7.3 to the Council for Trade in Goods, based on a draft prepared by the Secretariat. This year's annual report had to be seen in the light of the preparation of the Ministerial meeting in Singapore. The Council for Trade in Goods was expected to adopt its report to the General Council on 29 October, which would meet on 7 November to adopt its report to the Ministerial meeting. Against this background, the Chairman proposed that the Committee authorize the Secretariat to prepare a draft annual report to be circulated prior to the next meeting, scheduled for 30 September 1996. In preparing the draft report, the Secretariat would take into account any guidance which might be provided by the Council for Trade in Goods or the General Council on the preparation of such reports.

33. It was so decided.

D. ELECTION OF OFFICERS

34. The Committee elected Mr. Vassili Notis (Greece) as Chairman and Mr. Javier Paulinich (Peru) as Vice-Chairman.

DATE OF NEXT MEETING

35. The Committee decided to hold its next meeting on 30 September 1996.

⁶WT/GC/M/9

ANNEXPROCEDURES FOR NOTIFICATIONS UNDER ARTICLE 6.2
OF THE TRIMS AGREEMENTNon-paper by the SecretariatRevision

1. At its meeting of 19 October 1995, the Committee on Trade-Related Investment Measures requested the Secretariat to prepare a specific proposal on the implementation of Article 6.2 of the TRIMs Agreement (G/TRIMS/M/3, paragraph 29).
2. Article 6.2 of the TRIMs Agreement provides:

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. It will be noted that this provision does not envisage notification of particular laws, regulations or measures but of publications, that it applies to all WTO Members, and that it covers all levels of government. It will also be noted that Article 6.2 refers to any TRIM, whether or not in conformity with Articles III and XI of the GATT 1994.
4. It is suggested that the Committee decide that each Member implement Article 6.2 by providing the Secretariat with the name(s) of publication(s) in which TRIMs may be found, where such publications exist, including those applied by regional and local governments and authorities within their territories, and the addresses from which copies can be obtained. Under this proposal, Members would not be expected to submit copies of such publications to the TRIMs Committee. The notification would be without prejudice to the legal consistency of any TRIMs which may be found in these publications notified.
5. It is submitted that the "publications", notification of which is envisaged under Article 6.2, are official sources which would contain relevant laws, regulations or measures of more specific character. Such sources may include official gazettes, but it might be more helpful if Members included references to specific publications of relevant agencies (e.g. bulletins or periodicals of a relevant ministry or foreign investment board).
6. If this suggested procedure is acceptable to Members, the Secretariat would issue an invitation to Members to submit their lists of publications by a certain date, say 1 July 1996, and to update these lists as appropriate. The Secretariat would consolidate notifications under Article 6.2 in a single document which would be updated as the need arises.