

2 December 2021

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Committee on Trade-Related Investment Measures**MINUTES OF THE MEETING HELD ON 12 OCTOBER 2021**

CHAIR: MS VILMA PELTONEN (FINLAND)

1. The Chair started the meeting of the Committee by referring to the proposed agenda circulated in WTO/AIR/TRIMS/13 dated 1 October 2021. No additional item was raised under "Other Business" and the Committee adopted the following agenda:

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2. The Chair recalled that this meeting was being conducted both in-person and online via Interprefy, and some participants were joining remotely. She reminded the remote participants of the technical arrangements, before moving on to the substantive part of the meeting.

1 INDIA – IMPORT RESTRICTION ON AIR CONDITIONERS

3. The Chair said that this item was on the agenda at the request of Japan.
4. Japan considered that India's import ban on air conditioners – including refrigerants – based on Notification No. 41/2015-2020 is a measure that unreasonably imposes a restructuring of corporate supply chains. Japan indicated that it continued to be strongly concerned that this measure is likely to be an import ban that is inconsistent with Article 11.1 of the GATT and Article 2.1 of the TRIMs Agreement.
5. According to Japan, India had responded at its Trade Policy Review and at the Council for Trade in Goods that the measure is consistent with India's obligations under the Montreal Protocol. However, Japan considered that this import ban is unnecessary and irrational in that it covers a wide range of air conditioners that use refrigerants which are neither subject to India's reduction and elimination obligation under the Montreal Protocol nor the regulation of the ozone-depleting substance, freon gas, under Indian domestic law.
6. Japan noted that it had submitted a written questionnaire in September regarding the points for which it sought a more detailed explanation in response to India's answers so far. Japan looked forward to a prompt response from the Indian side.

7. Regarding air conditioners, Japan stated that the IS standard certification system is scheduled to be implemented in January 2022, based on the Quality Control Orders for air conditioners and their parts. Japan stated that, since the Bureau of Indian Standards (BIS) is no longer conducting overseas factory inspections, and the certification procedure for imported products has not progressed, it was concerned that imports may be restricted if this situation continues. Japan requested India to consider (1) extending the enforcement date and (2) alternative procedures for certification other than overseas factory inspections.
8. India thanked Japan for the questions it had posed and acknowledged receipt of those questions. India noted that, at the previous TRIMs Committee meeting in March 2021, it had responded to Japan's concerns by stating that these concerns did not pertain to trade-related investment measures. In light of the questions that Japan had again tabled in the TRIMs Committee on this matter, India reiterated its response that these concerns should be raised elsewhere in the appropriate forum and not in the TRIMs Committee. India indicated that it had taken note that this matter had again been raised by Japan in the TRIMs Committee and had transmitted this back to capital. India's main comment, however, was that the TRIMs Committee is not the appropriate forum to discuss this matter.
9. The Committee took note of the statements made.

2 INDONESIA – COMPREHENSIVE REVIEW OF LOCALIZATION MEASURES

10. The Chair recalled that this item, which was first considered by the Committee in May 2019, was on the agenda at the request of the United States, the European Union and Japan.
11. The United States stated that the Committee was well aware of the longstanding concerns with Indonesia's broad and expanding use of local content requirements across the telecommunications, mobile technology, energy, textiles, retail, and franchising sectors. The United States stated that it and other Members had been raising these concerns for over a decade now and regretted having to again raise them at the present Committee meeting. The United States indicated that it would focus its remarks on:
 - recent reports from the WTO Secretariat and World Bank that again underscore the damaging nature of Indonesia's local content requirements; and
 - recent statements by Indonesian ministers indicating that, in spite of these reports, Indonesia intends to expand its use of local content requirements.
12. The United States stated that, in the past year, it had seen several reports highlighting the damaging nature of Indonesia's local content policies. The United States indicated that the findings in these reports were not new, but it urged the Indonesian delegation to consider them carefully. The United States considered the following to be notable:
 - The WTO Secretariat Report for Indonesia's 2020 Trade Policy Review summarized Indonesia's continued use of local content requirements and noted "the long-standing and predominantly negative evidence of the impact of LCRs on economic development and trade."
 - The World Bank, in a 2020 report on Indonesia, stated that Indonesia's local content requirements in the solar energy sector increase costs and reduce quality.
 - And the World Bank, in a separate 2018 report, found that Indonesia's local content requirements for electronics "have been associated with stagnating exports, in contrast to the high and growing level of exports and imports of regional peers that have maintained more open trade and investment regimes" and "negatively affect both foreign and domestic investments."
13. The United States stated that, in the face of the chorus of concerns expressed in these reports and by Members in the present Committee, it was unfortunate that Indonesia continued to expand its use of local content requirements. The United States noted the following alarming updates from just the past few months:

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- In June, Indonesia's Ministry of Industry announced that it is drafting regulations to tighten and further expand local content requirements for laptops.
 - In August, the Indonesian government announced plans to suppress imports, including through the use of local content requirements, with the goal of "substitut[ing] 35 percent of imported products" by 2022.
 - And in September, Indonesia's ICT Minister hailed existing local content requirements for 4G cell phones as a success for reducing imports, and announced plans to apply a 30 percent local content requirement to 5G devices.
14. As a practical matter, the United States asked that Indonesia provide the Committee with further information on these planned policies. The United States also strongly urged Indonesia to reconsider moving forward with them, and to reconsider its use of local content requirements generally. According to the United States, such requirements run counter to Indonesia's own interests. Though they may help the government achieve certain short-term objectives, the United States considered that they seriously undermine Indonesia's own long-term competitiveness. The United States indicated that this is a sentiment it hears frequently from U.S. companies interested in entering the Indonesian market, but discouraged by such policies.
 15. The United States indicated that it stood ready to work with Indonesia to discuss and develop alternate policies that encourage rather than mandate investment, and it thanked the Indonesian delegation in advance for its careful consideration of the United States' remarks.
 16. The European Union noted that concerns on the wide-ranging localisation requirements applied by Indonesia have long been on the agenda of this Committee. The European Union welcomed the improvement that had taken place, since the last discussion in the Committee, with regard to the conditions in the retail sector, with the adoption of Regulation 23/2021 by the Minister of Trade which removes the mandatory 80% requirement for domestic products. However, the European Union expressed regret that no progress had taken place with regard to similar measures applied in the other sectors discussed in the previous meetings of this Committee, and reiterated its serious concerns on this issue.
 17. Regarding the pharmaceutical sector, the European Union stated that it was interested in the adoption of new Minister of Industry Regulation No 16 of 2020 on the calculation of local content levels for pharmaceutical products. The European Union continued to be interested to understand how the regulations would apply "to government procurement only". The European Union noted that the regulation had not yet been notified to the WTO.
 18. The European Union stated that it was concerned that the imposition of arbitrary local content percentages, to be met under limited time-frames, will create an impossible condition and will bar most of the players from the market in a situation where, to its knowledge, Indonesia was still importing over 95% of Active Pharmaceutical Ingredients. The European Union stated that it stands ready to support Indonesia's objective on improving healthcare and promoting the development of the local pharma industry. However, the European Union stated its belief that, rather than imposing local content requirements, the Government should focus on policies that will incentivise more domestic and foreign investment in local pharma industry.
 19. Regarding certain local content provisions in the energy sector (mining, oil and gas), the European Union stated that it continued to be concerned with the local content requirements for goods and services in the energy sector, including mining, oil and gas, electricity and renewables, as stipulated in Decree No 1953/2018. The European Union stated that it was also concerned that – according to the Regulation 34/2017 – the license holders are required to "prioritise the utilisation of domestic goods and services according to the prevailing laws and regulations" (Art.31). Given that foreign companies are not regarded as providing "domestic services" in this regulation even if they are locally incorporated, the European Union considered that this measure de facto creates discrimination.
 20. The European Union also indicated that it would appreciate being updated on the revision of the Mining Law. According to the European Union's understanding, the revised law had been adopted in May 2020, and includes obligations for mining license holder to prioritise the use of domestic

goods and services. The European Union welcomed further information from the authorities in this respect.

21. With respect to local content requirements and the new Omnibus Law on Job Creation, the European Union indicated that it would appreciate any update on how the Omnibus Law and its implementing regulations would impact the current legislations on local content requirements, and if so, in which sectors.
22. Japan concurred with the concerns expressed by other Members on the fact that local content measures have been introduced and maintained in various areas in Indonesia. Japan indicated that it was particularly interested in local content measures for (i) 4G LTE mobile devices, (ii) TVs, (iii) retailers, and (iv) franchise businesses.
23. According to Japan, Indonesia had repeatedly explained, citing its response to Indonesia's recent Trade Policy Review, that local content measures in general are being implemented in relation to 1) government procurement, 2) policies which involve fulfilling the needs to maintain all of the Indonesian people's welfare and their life necessities or 3) policies which involve state-managed strategic resources. In this respect, Japan reiterated that, among the local content measures, those that fall under 1) "government procurement" appeared to be limited. In addition, Japan considered that it should be pointed out that 2) "fulfilling the needs to maintain their life necessities etc." and 3) "securing strategic resources" cannot be grounds to immediately justify local content measures under the WTO Agreement. Japan understood the importance of these objectives, but considered that taking local content measures as an easy means to achieve them should not be permitted.
24. Japan noted that, although Indonesia had stated at previous TRIMs Committee meetings that Indonesia would always ensure that its investment regulations contribute to the ease of investment procedures and an increase in inbound investment, local content measures have an adverse effect on investment companies by limiting procurement routes for items such as products, parts, and raw materials.
25. Japan found it regrettable that Indonesia mentioned at the previous meeting of the TRIMs Committee that Indonesia did not have any plan to revise the localization measures in the near future, in spite of the fact that these local content measures are likely to be inconsistent with Article III.4 of the GATT and Article 2.1 of the TRIMs Agreement. Japan asked Indonesia to respond appropriately to the specific concerns of Members, and to rectify these measures in a manner that is consistent with the WTO Agreement.
26. Australia supported the statements by the United States, the European Union and Japan on Indonesia's localisation requirements. In particular, Australia shared the concerns expressed by other Members on localisation measures in Indonesia on minimum local product requirement for the retail sector as well as local content provisions in the energy sector (Mining, Oil and Gas). In relation to the 2020 revisions to the Mining Law, Australia reiterated its concerns regarding local processing requirements. Australia noted that Article 106 of the revised Mining Law requires licence holders to prioritise the utilisation of local labour, goods, and services in the country in accordance with the provisions of the legislation. According to Australia, the measure adversely impacts the ability of Australian companies to obtain inputs of sufficient quality. Australia indicated that it would again welcome an update on the implications of implementing the new Mining Law in terms of consistency with Indonesia's obligations under the TRIMs Agreement.
27. Indonesia thanked the United States, European Union, Japan, as well as Australia, for their continued interest in Indonesia as an investment destination for their businesses. Indonesia acknowledged Members' concerns on Indonesia's measures on the level of domestic content. In this regard, Indonesia reiterated its views that its measures had been put in place:
 - first, in relation to government procurement,
 - second, in relation to policies which involve fulfilling the needs to maintain Indonesian people's welfare and their life necessities, or
 - third, in relation to policies which involve state-managed strategic resources.

28. In relation to the comprehensive review, Indonesia wished to inform Members that it had initiated several reviews on its measures regarding the level of domestic content, the process of which remained ongoing.
29. Indonesia also indicated that import data related to the concerned products from 2016-20, in general, did not show any decline. Instead, according to Indonesia, it had only shown a positive trend. Hence, for Indonesia, it seemed that the concerned measures had no impact on the flow of imported goods into Indonesia. As an export and investment destination country, Indonesia indicated that it is committed to improve its business climate through the simplification of regulations and procedures. For Indonesia, this aims to facilitate investors and improve its economy in harmony with Indonesia's commitment in TRIMs Agreement and its goals.
30. The Committee took note of the statements made.

3 INDONESIA – IMPORT RESTRICTION ON CARPETS AND OTHER TEXTILES

31. The Chair recalled that this item, which was first considered by the Committee in March 2021, was on the agenda at the request of Japan and the European Union.
32. Japan stated that, in October 2019, the Ministry of Trade Regulation 77/2019 introduced an import registration/approval system for textile products, substantially banning imports for sales to consumers. Japan stated that, as a result, the export volume of textile products from the world to Indonesia in 2020 had decreased significantly to about one tenth of the volume in 2019. Japan expressed doubts that this system is consistent with the national treatment stipulated in Article III of the GATT, the general elimination of quantitative restrictions stipulated in Article XI of the GATT, and the national treatment and quantitative restrictions stipulated in Article 2 of the TRIMs Agreement.
33. Japan also noted that, in February 2021, the safeguard measure for carpets (and other textile floor coverings) had been imposed. According to Japan, however, the period of investigation (POI) under this measure had been set to 2017-19, which was immediately prior to the above-mentioned import decrease. Japan considered that, as a result, 'increased imports' were found by the Indonesian investigating authority without considering the drastic decrease in import volumes due to the import registration/approval system. Furthermore, according to Japan, this measure involved imposing about 150 to 200% tariffs in *ad valorem* conversion. Japan considered that this measure did not meet the requirements for imposing safeguard measures such as those "to the extent necessary to prevent or remedy serious injury".
34. Japan expressed serious concerns about these measures and recalled that it had expressed its concerns on various occasions, including meetings of the TRIMs Committee. Japan requested once again that Indonesia abolish them as soon as possible.
35. The European Union stressed its serious concerns on Indonesia's import restrictions on carpets and other textiles. According to the European Union, following the entry into force of Regulation 77/2019, only raw materials or supporting unfinished products and materials imported for further processing can obtain licences. The European Union stated that this results in a de facto prohibition to import finished carpets and other textile products, and, as several other import regimes recently adopted by Indonesia for a variety of products, the measure appeared to be inconsistent with WTO rules.
36. In light of this, and of its severe restrictive impact on trade in carpets and other textile products, the European Union urged Indonesia to re-evaluate the measure at stake and bring it in conformity with WTO rules.
37. In addition, the European Union shared Japan's concerns about the continuous proliferation of safeguard investigations initiated by Indonesia, which often do not fully comply with WTO criteria. According to the European Union, the safeguard instrument should be used in truly exceptional circumstances, due to its highly restrictive nature and Article 5.1 of the WTO Safeguards Agreement, which provides that a Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury.

38. The United States shared the concerns of Japan and the European Union about the local content requirements in this sector that were introduced in 2019. According to the United States, in the past couple of years Indonesia had established local content requirements that effectively banned imports of finished textile products classified in 430 HS codes. United States stakeholders had reported that the sudden implementation of these requirements resulted in disrupted contracts with customers in Indonesia and had hindered their ability to bid on relevant new tenders. The United States looked forward to hearing Indonesia's response to the concerns expressed by Japan and the European Union, and urged Indonesia to rethink this disruptive policy.
39. Indonesia thanked Japan, the European Union, and the United States for their interest with regard to Indonesia's import regulation on the concerned products. With regard to certain textiles products, Indonesia stated that it continued to coordinate among related government agencies, and undertook to give further information on this aforementioned provision after the review by the Government of Indonesia.
40. In the meantime, Indonesia sought Japan's clarification on how its concern regarding the safeguard and import licensing requirements would be viewed as falling under the TRIMs Agreement. Indonesia also sought to ascertain Japan's view as to whether this Committee would be the most suitable forum to address this issue.
41. The Committee took note of the statements made.

4 INDONESIA – IMPORT RESTRICTION ON AIR CONDITIONERS

42. The Chair recalled that this item, which was first considered by the Committee in March 2021, was on the agenda at the request of Japan.
43. Japan stated that, with regard to the import restrictions on air conditioners based on the Ministry of Trade Regulation 68/2020, it appreciated the improvement on approved quantities. However, Japan considered that there are cases where the approved quantity is considerably limited compared with the time when this measure was first introduced. Moreover, Japan stated that it was still faced with the problem that the reason for limiting the quantity and the judgment criteria are unclear. Therefore, Japan expressed its concern that this measure was still an import restriction and may violate both Article XI.1 of the GATT and Article 2.1 of the TRIMs Agreement. Japan expected this measure to be operated in a manner that ensures it does not effectively equate to a form of import restriction. In this connection, Japan also expected permit standards and procedures to be stipulated more transparently.
44. According to Japan, Indonesia claimed that this measure was not an issue to be dealt with at the TRIMs Committee. Japan noted, however, that in the past it had received an oral explanation from Indonesia declaring that it could consider preferential import approval for companies that state they are ready to invest in Indonesia. According to Japan, therefore, this measure may be subject to the TRIMs Agreement. Japan further stated that, if Indonesia claims that it has never requested domestic investment as a condition of import approval and does not intend to do so in the future, Japan would like Indonesia to clearly express that point.
45. Japan welcomed Indonesia's expression of its willingness to respond to a written questionnaire at the previous meeting of the TRIMs Committee. Japan noted that, in response to this, it had submitted a written questionnaire in September regarding the operational status of this measure, and it expected a prompt response from the Indonesian side.
46. The European Union stated that it supports Japan regarding Indonesia import restrictions on air conditioners and the import licensing regime under Reg. 68/2020 in general. The European Union indicated that it had already made interventions in this context in other WTO Committees and had questioned the compatibility of the licensing regime with the WTO legal framework.
47. Indonesia thanked Japan and the European Union for their interest in Indonesia's import regulation on the concerned products. Indonesia reiterated its response delivered in the previous meeting, i.e. that this matter should be referred to the meeting of the Committee on Import

Licensing, since Indonesia believed that this would be the most suitable forum to discuss the matter.

48. The Committee took note of the statements made.

5 RUSSIAN FEDERATION – MEASURES IMPLEMENTING RUSSIA'S IMPORT SUBSTITUTION POLICY

49. The Chair recalled that this item, which was first considered by the Committee in June 2016, was on the agenda at the request of the United States.

50. The United States expressed concern over the trajectory of Russia's regime and its consistency with the TRIMs Agreement. According to the United States, at the last meeting the delegate from Russia reported that their government was preparing written responses to its questions contained in documents G/TRIMS/Q/RUS/6, G/TRIMS/Q/RUS/8 and G/TRIMS/Q/RUS/10. The United States requested Russia to give an update on its responses to those questions.

51. The United States recalled that it (and others) had raised concerns about a variety of measures adopted by Russia that close its market to global trade and implement an ever-broadening import substitution regime, including:

- Decree No. 925, requiring that SOEs give a 15% price preference to domestic competitors for many products;
- Decree No. 878, requiring that SOEs provide a 30% preference to Russian-made radio-electronic products;
- Federal Law No. 250 and Resolution No. 2013, establishing a minimum quota (sometimes as high as 90 percent) of over 150 domestically-produced products;
- Federal Law No. 425, mandating the pre-installation of locally developed Russian software on certain consumer electronic products.
- Resolution No. 550, clarifying that "Russian solutions in the field of information technology" includes "import substitution of foreign software and (or) hardware systems."
- Strategy of Digital Transformation, setting forth an agenda to support the domestic digital industry, in part through import substitution.

52. The United States added two new items to this list: Resolution No. 2013 mandating minimum share of purchases of goods of Russian origin, with quotas ranging from 40% to 90%; and Resolution No. 1619 offering subsidies for the purchase of Russian radio-electronic product with a 70% local content requirement for the project.

53. According to the United States, when it raised these concerns at the meeting of the TRIMs Committee in March, the delegate from Russia asserted that these policies were not meant to substitute imports but only to increase competitiveness. However, the United States reiterated its point in March that many of the Russian measures explicitly identify, in their titles, import substitution as the goal of measure. According to the United States, the Deputy Prime Minister of the Russian Federation, Dmitry Chernyshenko, in talking about directives concerning digitalization of state-owned enterprises, was quite direct that "The task of the directives is to scale and structure digitalization and import substitution activities ...". The United States requested Russia to explain how these measures, which senior Russian Government officials recognize as import substitution, comport with Russia's obligations under the TRIMs Agreement.

54. Russia stated that, first of all, it should be recalled that this item had remained on the agenda of the TRIMs Committee since 2015. According to Russia, the WTO Members that had requested it have raised concerns about certain measures/legal acts, to which they had referred as "import substitution policy". Russia stated that, in their interventions, these Members had requested clarifications about the parameters of operation of the measures, as well as their consistency

with the WTO obligations of the Russian Federation. Russia considered that, given this issue had already been discussed on numerous occasions, it wished to refer the Members to its earlier clarifications within the TRIMs Committee and during bilateral contacts.

55. Second, regarding the written questions, Russia thanked the delegation of the United States for the ones in document G/TRIMS/Q/RUS/10. Although Russia had not yet submitted written replies, it wished to refer back to oral clarifications made during the previous the previous TRIMs Committee meetings. As for the written replies, Russia planned to submit them as soon as they are finished.

56. The Committee took note of the statements made.

6 NOTIFICATIONS UNDER ARTICLE 6.2 OF THE TRIMS AGREEMENT OF PUBLICATIONS IN WHICH TRIMS MAY BE FOUND

57. The Chair recalled that the WTO Secretariat had circulated a reminder regarding Article 6.2 notifications on 31 August 2021 in document G/TRIMS/W/170, noting that the full list of notifications received to date is contained in document G/TRIMS/N/2/Rev.31, circulated on 11 October 2021. The Chair urged Members that had not yet notified to do so promptly.

58. The Committee took note of the information provided.

7 OTHER BUSINESS

59. The Chair took note that no Member had requested any item under "other business".

8 ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS (ARTICLE 7.3)

60. The Chair recalled that the draft Annual report for 2021 had been placed for Members' consideration as a room document on "Documents for Meetings" on the WTO website on 1 October 2021 as RD/TRIMS/29. The Chair noted that the only change made to this draft concerned the reference number of the document containing the list of notifications under Article 6.2: since the most recent version of this document had been circulated on 11 October 2021, the reference number now read G/TRIMS/N/2/Rev.31 instead of G/TRIMS/N/2/Rev.30. The Chair noted that the Secretariat had not received any written comments from any Member on the draft report, and the Chair opened the floor for comments on the report and its annexes. In the absence of any comments in this regard, the Chair moved to adopt the Annual Report of the Committee for the year 2021 and noted that the report would be circulated in usual the "G/L/..." document series.

9 DATE OF THE NEXT MEETING

61. In accordance with past practice, the Chair suggested scheduling the next meeting in the Spring of 2022, in order to enable participants to plan their work. The Chair proposed a meeting on 23 March 2022.

62. In order to provide Members with ample opportunity to prepare for this meeting, the Secretariat would issue the annotated draft agenda three weeks in advance of the meeting, namely on 1 March 2022. Members' requests to place items on the annotated draft agenda should be communicated in writing to the Secretariat at the latest by COB on 25 February 2022. The annotated draft agenda would be open to Members' comments until close of business on 9 March 2022. The airgram convening the meeting would be issued on 11 March 2022.

63. The Committee took note of the information provided.

64. The meeting was adjourned.
