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**An illustrative list of TRIMs*

CHAPTER 13

Trade-related investment measures

Summary

Governments often impose conditions on foreign investors to encourage investment in accordance with certain national priorities. Conditions that can affect trade are known as trade-related investment measures or TRIMs.

The Agreement on TRIMs, which was negotiated in the Uruguay Round, requires countries to phase out TRIMs that have been identified as being inconsistent with GATT rules. The phasing-out period for developed countries was two years from 1 January 1995. Developing countries have a transition period of five years, and least developed countries seven years.

When the Uruguay Round of negotiations was being launched, the United States proposed that there was a need to bring under discipline investment measures that distort trade. It also suggested that the negotiations should cover policy issues affecting the flow of foreign direct investment. In particular it suggested that it would be necessary to consider the feasibility of applying to foreign direct investment the GATT principles of national treatment (which would give foreign companies the same right as domestic companies to invest in, and to establish, local operations) and MFN treatment (which would prevent countries from discriminating amongst sources of investment).

While these proposals received some support from other developed countries, they were not looked on with favour by developing countries. Apart from holding that GATT's mandate did not permit it to negotiate on investment issues, these countries maintained that, if any such negotiations were to be held, they would have to include the problems posed to trade by transnational corporations resorting to transfer pricing, restrictive business methods and other practices. This reluctance of developing countries to allow discussions in GATT on investment issues ultimately resulted in negotiations taking place on a narrowly defined concept of trade-related investment measures.

What are TRIMs?

The measures adopted by governments to attract and regulate foreign investment include fiscal incentives, tax rebates and the provision of land and other services on preferential terms. In addition, governments impose conditions to encourage or compel the use of investment according to certain national priorities. Local content requirements, which require the investor to undertake to utilize a certain amount of local inputs in production, are an example of such conditions. Export performance requirements are another example; they compel the investor to undertake to export a certain proportion of its output. Such conditions, which can have adverse effects on trade, are known as trade-related investment measures or TRIMs. An illustrative list of TRIMs is presented in box 31.

Box 31
An illustrative list of TRIMs

Local content requirements (LCRs)*. Impose the use of a certain amount of local inputs in production.*

Trade-balancing requirements*. Oblige imports to be equivalent to a certain proportion of exports.*

Foreign exchange balancing requirements*. Stipulate that the foreign exchange made available for imports should be a certain proportion of the value of foreign exchange brought in by the firm from exports and other sources.*

Exchange restrictions*. Restrict access to foreign exchange and hence restrict imports.*

Domestic sales requirements*. Require a company to sell a certain proportion of its output locally, which amounts to a restriction on exportation.*

Manufacturing requirements*. Require certain products to be manufactured locally.*

Export performance requirements (EPRs)*. Stipulate that a certain proportion of production should be exported.*

Product mandating requirements*. Oblige an investor to supply certain markets with a designated product or products manufactured from a specified facility or operation.*

Manufacturing limitations*. Prevent companies from manufacturing certain products or product lines in the host country.*

Technology transfer requirements*. Require specified technologies to be transferred on non-commercial terms and/or specific levels and types of research and development (R & D) to be conducted locally.*

Licensing requirements*. Oblige the investor to license technologies similar or unrelated to those it uses in the home country to host country firms.*

Remittance restrictions*. Restrict the right of a foreign investor to repatriate returns from an investment.*

Local equity requirements*. Specify that a certain percentage of a firm's equity should be held by local investors.*

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Trade-related investment measures have been used mainly, if not exclusively, by developing countries to promote development objectives. For instance, the growth of domestic ancillary industries has been sought through the imposition of local content requirements and export expansion through export performance requirements. In many cases, TRIMs are designed to deal with the restrictive business practices of transnational corporations and their anti-competition behaviour.

A recent survey shows that TRIMs tend to be concentrated in specific industries – automotive, chemical and petrochemical, and computer/informatics. Local content requirements are more predominant than export performance requirements in the automotive industry and are less so in the computer/informatics industry. In the chemical and petrochemical industries both local content and export performance requirements are prominent.[18]

18 Patrick Low and Arvind Subramanian, "TRIMs in the Uruguay Round: An Unfinished Business" (paper presented at the World Bank Conference on the Uruguay Round and Developing Economies, 26-27 January 1995).

Agreement on Trade-Related Investment Measures

Agreement on Trade- Related Investment Measures (TRIMs), Article 2

The TRIMs Agreement, which was negotiated in the Uruguay Round, prohibits countries from using five TRIMs from the list in box 31. These are considered inconsistent with GATT rules on national treatment and the rules against the use of quantitative restrictions.

TRIMs prohibited on the grounds that they extend more favourable treatment to domestic products in comparison to imports and thus infringe the national treatment principle include those that require:

- Purchase or use by an enterprise of products of domestic origin or from any domestic source (local content requirements), or
- That an enterprise's purchase or use of imported products should be limited to an amount related to the volume or value of the local products it exports (trade-balancing requirements).

Agreement on TRIMs, Article 2; Annex

TRIMs considered inconsistent with the provisions of Article XI of GATT against the use of quantitative restrictions on imports and exports include those that:

- Restrict imports to an amount related to the quantity or value of the product exported (i.e. trade-balancing requirements constituting restrictions on imports);
- Restrict access to foreign exchange to an amount of foreign exchange attributable to the enterprise (i.e. exchange restrictions resulting in restrictions on imports);
- Specify exports in terms of the volume or value of local production (i.e. domestic sales requirements involving restrictions on exports).

The Agreement provides transition periods for the elimination of prohibited TRIMs. For developed countries, the period was two years from 1995 when the Agreement entered into force; this period has already expired. Developing countries have a transition period of up to five years (i.e. until 1 January 2000) and least developed countries up to seven years (until 1 January 2002). It should be noted, however, that these transition periods are available only for the prohibited TRIMs notified when the Agreement became operational.

Business implications

For the business person, it is important to note that the Agreement is limited in scope. It identifies only five TRIMs that are inconsistent with GATT and gives countries transition periods within which to remove them. It does not prevent countries from using at least some of the other TRIMs listed in box 31. For instance, countries are not prevented from imposing export performance requirements as a condition for investment. They are not prohibited from insisting that a certain percentage of equity should be held by local investors or that a foreign investor must bring in the most up-to-date technology or must conduct a specific level or type of R & D locally.

A number of developing countries today impose local content requirements. The abolition of these requirements may have an impact on ancillary industries that are benefiting from the protection they provide. However, most of these countries are reviewing the need for the continued maintenance of such measures in the light of the open trade policies they are now pursuing and the steps they are taking to attract foreign investment. For instance, Argentina, Brazil, India and Mexico had taken decisions to abolish local content requirements even before the conclusion of the Uruguay Round. The Agreement therefore only reinforces the trend towards the removal of TRIMs that are considered inconsistent with GATT.

The Agreement's limited coverage of TRIMs has led countries to provide that its operation should be reviewed within a period of five years of its coming into force (i.e. before 1 January 2000) and that the review should consider the desirability of complementing the Agreement with provisions on investment and competition policy.

In this context it is important to note that, in pursuance of decisions taken at the 1996 Singapore Ministerial Conference, analytical discussions are currently going on in WTO on the relationship of trade with investment on the one hand and with competition policy, particularly the anti-competition behaviour of business enterprises, on the other. (*See* chapters 22 and 23 for further details.) The results of these discussions will influence the positions countries may take in any discussions on the desirability of complementing the Agreement on TRIMs with provisions dealing with investment and competition policy.