

1 ARTICLE 5 OF THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES1

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1 ARTICLE 5 OF THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

1.1 Text of Article 5

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

(footnote original) 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.

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.

1.2 Article 5.1: Notification of Trade-Related Investment Measures (TRIMs)

1. At its meeting of 20 February 1995, the Council for Trade in Goods adopted a standard format for notifications required under Article 5.1 of the Agreement on Trade-Related Investment Measures

(TRIMs Agreement), which had been recommended by the Preparatory Committee for the World Trade Organization.¹

2. On 3 April 1995, the General Council adopted a decision on notifications under Article 5.1 by states and separate customs territories eligible to become original WTO Members that accepted the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) after its entry into force. The decision permits states and separate customs territories to submit these notifications within 90 days from the date of acceptance of the WTO Agreement, but does not change the phase-out periods in Article 5.2 or the requirements of Article 5.4, both of which run from the date of entry into force of the WTO Agreement.²

3. The list of all notifications of TRIMs under Article 5.1 is recorded in Annex 1 of the TRIMs Committee Annual Report.³ Some Members have notified that they do not apply any TRIM inconsistent with the Agreement.⁴

4. In view of certain flexibilities, the least-developed country Members (LDCs) have an additional notification process in the event that they make use of those flexibilities. In particular, LDCs were initially granted a transition period of seven years for the elimination of non-conforming TRIMs, which ended in 2002. With the adoption of the Hong Kong Ministerial Declaration in 2005 (Annex F)⁵, LDCs were granted a new transition period to maintain existing TRIMs for a period of seven years. They were also allowed to introduce new measures for a possible duration of five years. LDCs were given until the end of 2020 to phase out any measure inconsistent with the TRIMs Agreement. Annex F to the Hong Kong Decision requires LDCs to notify any measure that deviates from the obligations under the TRIMs Agreement. Annex F to the Hong Kong Ministerial Declaration provides:

"LDCs shall be allowed to maintain on a temporary basis existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the Council for Trade in Goods (CTG) of such measures within two years, starting 30 days after the date of this declaration. LDCs will be allowed to maintain these existing measures until the end of a new transition period, lasting seven years. This transition period may be extended by the CTG under the existing procedures set out in the TRIMs Agreement, taking into account the individual financial, trade, and development needs of the Member in question.

LDCs shall also be allowed to introduce new measures that deviate from their obligations under the TRIMs Agreement. These new TRIMs shall be notified to the CTG no later than six months after their adoption. The CTG shall give positive consideration to such notifications, taking into account the individual financial, trade, and development needs of the Member in question. The duration of these measures will not exceed five years, renewable subject to review and decision by the CTG.

Any measures incompatible with the TRIMs Agreement and adopted under this decision shall be phased out by year 2020."⁶

¹ [G/C/M/1](#), section 2(A). The text of the format for notifications can be found in [PC/IPL/8](#).

² [WT/GC/M/3](#), section 5. The text of the decision can be found in [WT/L/64](#).

³ Annex 1 of [G/L/1337](#) for 2019.

⁴ Annex 2 of [G/L/1337](#) for 2019. More detailed information about notifications under the TRIMs Agreement can be found in the Handbook on Notification Requirements at: https://www.wto.org/english/tratop_e/invest_e/trims_notification_handbook_e.pdf.

⁵ Hong Kong Ministerial Declaration, 22 December 2005, [WT/MIN\(05\)/DEC](#).

⁶ [WT/MIN\(05\)/DEC](#), p. F-2.

5. As of 17 July 2020, no notifications had been received under this Declaration.⁷ Unless another transition period is negotiated, LDCs will not be allowed to introduce new measures that are inconsistent with the TRIMs Agreement after 2020.⁸

1.3 Article 5.2: Elimination of TRIMs

6. With one exception⁹, acceding developed and developing country Members, to date, have committed during accession negotiations to eliminate any WTO-inconsistent TRIMs and to apply the TRIMs Agreement from the date of accession without recourse to any transitional period. Some Members have committed to eliminate identified WTO-inconsistent TRIMs upon accession.¹⁰ See also the General Council Decision of 3 April 1995 referenced in paragraph 2 above.

7. As explained in paragraph 4 above, LDCs enjoy certain flexibilities with respect to existing TRIMs and the adoption of new TRIMs up until the end of 2020.¹¹

1.4 Article 5.3: Extension of transition periods

8. At its meeting of 3 and 8 May 2000, the General Council agreed to "direct the Council for Trade in Goods to give positive consideration to individual requests presented in accordance with Article 5.3 by developing country Members for extension of transition periods for implementation of the TRIMs Agreement".¹²

9. The 18 December 2005 Ministerial Declaration cited in paragraph 4 above authorizes the Council for Trade in Goods to extend the transition period for existing or new inconsistent TRIMs notified by least-developed country Members, under the existing procedures in the TRIMs Agreement, taking into account the individual financial, trade, and development needs of the Member in question. As explained in paragraph 3 above, any measures incompatible with the TRIMs Agreement and adopted under that Declaration are to be phased out by 2020.¹³

10. At its meeting of 31 July 2001, the Council for Trade in Goods adopted an extension of the transitional period for the elimination of inconsistent TRIMs for seven developing country Members, at their request.¹⁴ The extension lasted until the end of 2001. At its meeting of 5 November 2001, the Council for Trade in Goods adopted an additional extension of the transition period for six of these Members¹⁵ and for Thailand.¹⁶ The length of the extension varied depending on the Member concerned.¹⁷ On 20 December 2001, the General Council granted the remaining developing country

⁷ [G/L/223/Rev.26](#), p. 9.

⁸ In 2017, the G90 submitted ten Agreement-specific S&D proposals, including on TRIMs ([WT/MIN\(17\)/23/Rev.1](#)). The proposal suggests for LDCs to be exempt from complying with the TRIMs Agreement, allowing them to introduce and maintain measures that deviate from the obligations under the TRIMs Agreement. The proposal also suggests that developing countries can deviate temporarily from Article 2 and introduce new investment measures for up to 15 years, provided that these measures contribute to one of the following development objectives, ranging from industrialization and manufacturing upgrade, to increasing export capacity, or to closing digital divide. Since the G90 proposal has not been adopted, there is no implication for graduating LDCs.

⁹ [WT/L/68](#), Report of the Working Party on the Accession of Ecuador, para. 76. See also [G/TRIMs/N/1/ECU/1](#), notification under Article 5.1 for Ecuador.

¹⁰ [WT/L/433](#), Report of the Working Party on the Accession of Chinese Taipei, para. 140; [WT/MIN\(01\)/3](#), Report of the Working Party on the Accession of China, paras. 203-207.

¹¹ For more information, see WTO, "Trade Impacts of LDC Graduation", p. 20, available at: https://www.wto.org/english/news_e/news20_e/rese_08may20_e.pdf.

¹² [WT/GC/M/55](#), Annex II, third bullet point.

¹³ [WT/MIN\(05\)/DEC](#), p. F-2.

¹⁴ These seven developing country Members are: Argentina ([G/L/460](#)); Colombia ([G/L/461](#)); Malaysia ([G/L/462](#)); Mexico ([G/L/463](#)); Philippines ([G/L/464](#)); Romania ([G/L/465](#)); and Pakistan ([G/L/466](#)).

¹⁵ These six developing country Members are: Argentina ([G/L/497](#)); Malaysia ([G/L/499](#)); Mexico ([G/L/500](#)); Pakistan ([G/L/501](#)); Philippines ([G/L/502](#)); and Romania ([G/L/503](#)).

¹⁶ The first extension to Thailand was granted in a waiver, adopted by the General Council at its meeting of 31 July 2001 ([WT/L/410](#)). The waiver expired on 31 December 2002. The waiver stated that after this period, if another extension proved necessary, it would be granted by a decision of the Council of Trade in Goods. This new extension was adopted by the Council for Trade in Goods at its meeting of 5 November 2001 ([G/L/504](#)).

¹⁷ Argentina – [G/L/497](#) (31 December 2003); Malaysia – [G/L/499](#) (31 December 2003); Mexico – [G/L/500](#) (31 December 2003); Pakistan – [G/L/501](#) (31 December 2003); Philippines – [G/L/502](#) (30 June 2003); Romania – [G/L/503](#) (31 May 2003); and Thailand – [G/L/504](#) (31 December 2003).

Member of the original seven, Colombia, a waiver of its TRIMs obligations under Article 5.2 for one remaining TRIM in respect of beans, until 31 December 2003.¹⁸

11. On 19 December 2003, Pakistan made a request to the Council for Trade in Goods for a three-year extension of the transition period in which to eliminate its remaining inconsistent TRIMs.¹⁹ At its meeting of 10 March 2006, the Council for Trade in Goods took note of Pakistan's statement that it wished to formally withdraw its request.²⁰

1.5 Article 5.5: Notification of TRIMs applied to a new investment

12. A standard format has been adopted for notifications made pursuant to Article 5.5.²¹ To date, no such notifications have been made to the Council for Trade in Goods.²²

Current as of: June 2024

¹⁸ [G/L/441](#). The waiver confirmed the decision to extend the transitional period for the elimination of TRIMs for Colombia that the Council of Trade in Goods had adopted at its meeting of 5 November 2001 ([G/L/498](#)).

¹⁹ [G/C/W/478](#).

²⁰ [G/C/M/83](#).

²¹ [G/TRIMS/3](#).

²² More detailed information about notifications under the TRIMs Agreement can be found in the Handbook on Notification Requirements at https://www.wto.org/english/tratop_e/invest_e/trims_notification_handbook_e.pdf.