

Effects of Agreement on Trims on Indian Foreign Trade

Archana K.

Assistant Professor, Karnataka State Law University, Hubli.

ABSTRACT:

In the late 1980s, there was a significant increase in foreign direct investment throughout the world. However, some of the countries receiving foreign investment imposed numerous restrictions on that investment designed to protect and foster domestic industries, and to prevent the outflow of foreign exchange reserves. Examples of these restrictions include local content requirements, manufacturing requirements, trade balancing requirements, domestic sales requirements, technology transfer requirements, export performance requirements, local equity restrictions, foreign exchange restrictions, remittance restrictions, licensing requirements, and employment restrictions. These measures can also be used in connection with fiscal incentives as opposed to requirement. Some of these investment measures distort trade in violation of GATT Article III and XI, and are therefore prohibited. Until the completion of the Uruguay Round negotiations, which produced a well-rounded Agreement on Trade-Related Investment Measures, the few international agreements providing disciplines for measures restricting foreign investment provided only limited guidance in terms of content and country coverage. The Agreement contains transitional arrangements allowing Members to maintain notified TRIMs for a limited time following the entry into force of the WTO (two years in the case of developed country Members, five years for developing country Members, and seven years for least-developed country Members). The Agreement also establishes a Committee on TRIMs to monitor the operation and implementation of these commitments.

Key Words: TRIMs, WTO, GATT, Foreign trade, DSB, Multilateral trade, and AALA

I. INTRODUCTION:

Foreign trade is an engine of growth and innovation. It tends to optimize the use of world resources with every country specializing in the production of the commodity for which it is best suited according to natural and human resource endowment. It promotes more efficient employment of productive forces leading to extension of market, division of labour and specialization and promotes capital formation through import of technology. International trade thus leads to an increase in productivity and competitiveness and reduction of costs and thereby growth of nations.

From time immemorial, India had trade relations with several countries. But with the conquest of India by British the characteristics of India's traditional trade completely changed. The destruction of Indian industries and trade by the British coupled with destruction of agriculture converted Indian economy into a mere market for the goods manufactured by the factories of Britain. The same situation continued till independence. With the impressive industrial development since independence, India's foreign trade has undergone a radical change and is no longer confined to a few countries trading with few commodities.

In order to improve the trade links further, India became a founder member of the WTO. The WTO aims at the liberalization of world trade. In 1991, Indian government replaced the system of controls with liberalization, which alongside; globalization has become the buzzword. The new economic policy was devised to accelerate economic development, which is the consequence of the international developments resulted through the coming into force of the WTO and other agreements under its umbrella such as TRIMs, Antidumping etc.

Trade Related Investment Measures (TRIMs) refers to certain conditions or restrictions imposed by a government in respect of foreign investment in the country. Most developing countries impose such conditions on foreign investors. These impose obligations like use of specified percentage of locally produced raw material or components, local equity requirements, export performance and control on imports requiring foreign

investors to use domestic supplies. They are nothing but protective tariffs as they deny market access to a service industry wanting to invest in another country. To remove these restrictions the Agreement on Trade Related Investment Measures was negotiated in the Uruguay Round. The central objective is to promote expansion and progressive liberalization of world trade and to facilitate investment across international frontiers so as to ensure free competition and increasing economic growth of trading partners, particularly developing country members, while ensuring free competition.

II. WHAT IS THE AGREEMENT ON TRIMS?

The Agreement did not define TRIMs, but provided an illustrative list in the Annex.1. These illustrations of TRIMs are;

- i) Local content requirements, where governments require enterprises to use or purchase domestic products;
- ii) Trade balancing measures where governments impose restrictions on imports by an enterprise or link the amount of imports to the level of its exports.
- iii) Foreign exchange balancing requirements where an enterprise has the level of imports linked to the value of its exports in order to maintain a net foreign exchange earning.

The Agreement also recognizes that certain investment measures restrict and distort trade. Hence it provides that no contracting party shall apply any TRIMs inconsistent with Article III (National Treatment) and XI (Prohibition of Quantitative Restrictions) of the GATT. The agreement requires the member countries, which have to observe the following;

- 1) The policy steps initiated by the member countries to regulate investments for the purpose of attainment of import substitution, export expansion and to control foreign exchange are considered to be against the very basic philosophy of GATT as these steps would act as major constraints in the promotion of free trade.
- 2) Investment regulatory steps are inconsistent with the aims of GATT 1994, hence are essentially required to be gradually removed by the signatories of the Agreement.
- 3) No need in the proposals to provide a preferential treatment to foreign investment and therefore, such investor will be subject to the same restrictions as other investors in regard to imports.
- 4) Government's ability to impose export obligations on foreign or domestic investors remains unimpaired as long as BOP crisis is there.

The Uruguay Round agreements do not affect any nations investment policies and this is an important aspect of TRIMs.

III. PROHIBITED MEASURES:

Along with that, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the Agreement. The list includes measures, which require particular levels of local procurement by an enterprise, or which restrict the volume or value of imports that such an enterprise can purchase or use to an amount related to the level of products it exports. For the measures to be covered by the prohibition the general condition is that,

- 1) These are mandatory or enforceable under a domestic law or under administrative rulings, or
- 2) Compliance with these is necessary to obtain an advantage.

Measures inconsistent with Article III.4 of GATT 1994:

Measures mentioned in the Agreement on TRIMs as violating Article III.4 of GATT 1994 are the following:

- i) Specifying that particular products of domestic origin must be purchased or used by an enterprise, or
- ii) Specifying that a particular volume or value of some products of domestic origin must be purchased or used by an enterprise, or
- iii) Specifying that an enterprise must purchase or use domestic products at least up to a particular proportion of the volume or value of the local production of the enterprise, or
- iv) Restricting the purchase or use of an imported product by an enterprise to an amount related to the exports of local production.

First three are local content requirements and the fourth is an indirect requirement of partial balancing of foreign exchange outflow and inflows.

Measures Inconsistent with Article XI.1 of GATT 1994:

Measures inconsistent with Article XI.1 of GATT 1994, are specified in the Agreement on TRIMs as the following:

- i) Imposing a general restriction on the import of inputs by an enterprise or restricting the import of inputs to an amount related to the export of its local production,
- ii) Restricting the foreign exchange for the import of inputs by an enterprise to an amount related to the foreign exchange inflow attributable to the enterprise.
- iii) Restricting exports by an enterprise by specifying the products so restricted the volume or value of products so restricted, or the proportion of its local production so restricted.

The first two are requirements of a partial balancing of foreign exchange, and the third is an export-restraint requirement for ensuring the domestic availability of the product.

IV. EXCEPTIONS:

Several allegations have been made against the TRIMs agreement. It prevents the imposition of any performance clauses on foreign investors in respect of earning foreign exchange, foreign equity participation and transfer of technology. It requires foreign companies to be treated on par with or even better than local companies; it prevents the imposition of restriction on areas of investment and it requires the free import of raw materials, components and intermediates. But under this agreement, even though the members are required to eliminate the use of TRIMs that are inconsistent with Article III or Article XI of GATT 1994, some exceptions are given.

A developing country member is allowed temporary deviation from these obligations under Article XVIII. This Article deals with balance of payment provisions, allow flexibility in respect of restraining the import of a product, but once a product is imported, it will have to be given national treatment. There can be no discrimination between the imported product and the like domestic product in respect of their use.

In exceptional circumstances the ministerial conference may decide to waive an obligation imposed on a member by this Agreement or any of the multilateral trade agreements provided that any such decision shall be taken by three fourths of the members unless provided for the below.

- a) A request for waiver concerning this agreement shall be submitted to the ministerial conference for consideration pursuant to the practice of the decision-making by consensus. The ministerial conference shall establish a time period, which shall not exceed 90 days, to consider a request. If consensus is not reached during the time period, any decision to grant a waiver shall be taken by three fourth of the members.
- b) A request for a waiver concerning multilateral trade agreements in annexes 1A, 1B or 1C and their annexes shall be submitted initially to the council for trade in goods during a time period which shall not exceed 90 days. At the end of the time period, the relevant council shall submit a report to the ministerial conference.

A decision by the ministerial conference granting a waiver shall state the exceptional circumstances justifying the decision.

Moreover, the TRIMs agreement specifically provides, however, that exceptions permitted under the GATT continue to apply. This could mean, for instance, that a TRIMs otherwise banned might be justifiable for reasons of national security.

V. ELIMINATION OF NOTIFIED TRIMs:

The agreement demands that all TRIMs inconsistent with its provision be notified and eliminated over a set period. The agreement requires the mandatory notification of all non-conforming TRIMs and their elimination within two years for developed countries, within five years for developing countries and within seven years for least developed countries. It establishes committees on TRIMs, which will, among other things, monitor the implementation of these commitments. The Agreement also provides for consideration, at a later date, of whether it should be complimented with provisions on investment and competition policy more broadly.

However, Article 5.3 of the Agreement provides that the council for Trade in Goods may extend the transition period at the request of an individual developing or least developed the council for Trade in Goods shall take into account the individual development, financial and trade needs of the member in question. It is further provided that during the transition period, a member shall not modify the terms of any TRIMs, which it notified 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.

Measures, which were introduced within 180 days prior to the coming into force of the WTO Agreement, will have to be eliminated immediately, as a member does not have the benefit of the time schedule provided in respect of these measures.

VI. EQUITABLE PROVISIONS:

To avoid damage to the competitiveness of companies, during the transitional period, some equitable provisions are also provided in the WTO agreement. A member may apply such measures during the time schedule to new enterprises, which would produce like products if it is necessary to avoid distortion to the condition of competition between the new enterprises and established enterprises. Any TRIMs so applied shall be notified to the council for Trade in Goods. The terms of such TRIMs shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

Theoretically the Uruguay Round of Agreement has strengthened the world economic reforms. It encourages the trade flows worldwide and strengthened rules relating to anti dumping, subsidies and countervailing measures which is likely to ensure greater security and predictability of international trading system. But from the view point of developing and under developed countries, this agreement has not yielded the projected benefits.

VII. THE WTO IN THE EYES OF INDIA- A BOON OR BANE!

It has been repeatedly claimed that the national interests were not protected in the WTO negotiations. The implementation of the results of this round would retard industrial growth, discriminate small-scale industries, ruin the lives of artisans and choke the development of the agricultural sector. It has also been urged that foreign imports and enterprises would come to dominate every aspect of economic life while domestic sectors would be left to face slow and lingering death. WTO has been depicted as a supranational institution that is eroding the sovereignty of the country and primarily of its parliament. Even there is a force on the Government of India to quit the membership of the WTO to protect the economic interest of the country. The more important and often cited reason is the unequal bargaining strength of trading nations, based on their share in world trade, with larger developed nations more able to influence terms of agreements than smaller LDCs.

Free multilateral trade based on non-discrimination has been a mantra that has been used to force developing countries to fall in line with the trade regimes built to meet the developed countries. History reveals with reference that developed countries have violated this principle as and when their general and sectoral interests get adversely affected. When the developing countries emerged as competitors in some products, the developed countries did not hesitate to abandon the principle of free non-discriminatory multilateral trade.

It is believed that there are number of advantages. First, it is the most progressive instrument for world economic reforms. It soothers trade flows worldwide, which in turn holds promise of enormous increase in trade opportunities and volume of world trade, much higher growth rate of world economy and increase in income and employment worldwide. Second, WTO would save weaker countries from bilateral excesses and arbitrariness that characterizes strong countries notably, USA in dealing with their weaker trading partners. Third, WTO is also going to act as a sort of international court of justice for settling trade disputes among member nations. It is possible that, the developing countries can get justice against the arbitrary acts of developed countries.

But in reality, the “opportunity for all” slogan of Uruguay Round of GATT is contrary to an ordinary business life. In business, there is no scope for opportunity for all because there should be some losers to assure gains to some body. Even the concepts like ‘free trade’ and ‘liberalization’ are only catchy slogan-traps flashed by North to attract the AALA (Asia, Africa, and Latin America) countries into a “global village trap”. Since the establishment of the WTO, national governments have become mere “Sepoys” to carry out the dictates of the MNCs routed through the WTO. The GATT Final Act was only a global document to legitimate this activity of the MNCs.

Further it has been observed that India has been opening up its markets to a much greater extent than others are opening up their markets. But the developed countries want to categorise India and some of other developing countries as advanced developing countries and to deny them some of the potential relief's that might have been originally designed under the S and D clause.

The Agreement on TRIMs is mainly concerned with provisions for elimination of TRIMs, which are designed to protect the interests of the foreign investors in the developing countries. No doubt the developing countries have been permitted to deviate from the provisions of TRIMs Agreement, on grounds of balance of payment, but several times the DSB of the WTO had ruled against our contention of balancing of payment in automotive sector policy and India being a developing country could not reap the benefits of these provisions. Even the ministerial conferences could not gain effective results in all these years. The very concept of national sovereignty had also turned sublime by the acceptance of the provisions of WTO Agreement by India.

VIII. CONCLUSION:

The Agreement on Trade Related Investment Measures (TRIMs) is a set of rules that apply to the domestic regulations a country applies to foreign investors, often as part of an industrial policy. The agreement was agreed upon by all members of the WTO. Normally all the countries impose some restrictions on the imports and exports to promote their foreign exchange. Such measures may hinder the growth of foreign trade to prevent such hindrance, all the member countries agreed to prohibit some measures under the agreement on Trade Related Investment Measures. Hence policies such as local content requirements and trade balancing rules that have traditionally been used to both promote the interests of domestic industries and combat restrictive business practices are now banned. Special provisions were made for the developing and least developed countries, and given some facilities under these Agreements. Any member country can deviate from the provisions of the WTO to meet out its BOP problems. Provision for revision of existing measures from time to time was also recognized. Through Ministerial Conferences, the member countries can complain, or suggest for the required changes in the provisions of World Trade Organization.

India being a founder member of the WTO, with an aim to get benefits, agreed to accept all agreements. To comply with the provisions of these agreements structural adjustments were made to the existing laws. Through amendments the provisions of customs laws has been modified. Indian government liberalized its trade sector to fulfill the requirements of these provisions. It has opened its doors to foreign investors and multinational companies, by accepting the proposal of globalization. The text of all the agreements makes the person to believe that, all the provisions are carefully framed and by obliging such provisions the country could attain economic prosperity. But in reality, there are several lacuna in the agreement and there is no proper implementation of the provisions. With a dream to have successful trade relations with other countries India has opened up its market for foreigners. However, India's gain will be much less than those of several other developing countries. India's exports in some areas are decreasing every year, on the other hand, quantity of imports are increasing.

Even the dispute settlement body has not given justice to India in many cases. Developing countries from the beginning were placed in a no win situation. Now it is believed that, it is a waste of time and money for India to invoke the WTO's dispute settlement procedure against industrial countries. Even if, India obtains a clear legal ruling that an industrial country has violated legal obligations, we have no effective way to enforce it. On the contrary, if India violates any of the obligations, the developed nations can effectively take retaliation actions against India. Further, we could not achieve much in the ministerial conferences held so far and the World Trade Organization failed to fulfill our aspirations. Finally we have to accept the truth that neither we can take actions against the MNCs under the agreements of WTO nor can invoke the dispute settlement procedure.

REFERENCES

- [1] B.K. Chaudhuri, "*Finance of Foreign Trade and Foreign Exchange*", 3rded., Mumbai; Himalaya Publishing House, 1997. p.101
- [2] Francis Cherunilam, "*International Business*", 3rded, New Delhi: Prentice Hall of India Pvt. Ltd, 2004, p. 201.
- [3] N.K. Chowdhury and J.C. Agarwal, "*Dunkel Proposals, Implications of India and the third world*", 1st ed., Delhi: Shipra Publications, 1994, p.189.
- [4] <http://www.bti.gov.uk/ewt/trims.pdf>
- [5] <http://www.bti.gov.uk/ewt/trims.pdf>
- [6] Dr. Badar Alam Iqbal, "*WTO and the Promotion of Global Trade*", Vol. 32, No. 1, Chartered Secretary 2002, p. 42.
- [7] Rohan Shah, "*WTO, India and you*" 1st ed., Economic Law Practice, 2003, p. 33.
- [8] Arun Goyal, "*WTO the new millenium*", 3rded., Delhi: Academy of business Studies, 2000, pp. 141-142.
- [9] Rajiv Anand, "*Uruguay Round Text in Perspective*", Vol. 27, No. 18, EPW, 1992, p. 967.
- [10] WTO, *Annual Report 2000*; WTO publication, Geneva.

- [11] <http://www.oecd.org/dataoecd/51/45/2392/306.pdf>
- [12] A decision to grant a waiver in respect of any obligation subject to a transition period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus.
- [13] <http://www.twinside.org.sg/title/goods-htm>
- [14] WTO, *Annual Report 2000*; WTO Publication, Geneva.
- [15] Jayantha Bagchi “*World Trade Organisation*”, 1st ed., Calcutta: P.M. Bagchi and Co. Pvt. Ltd, 2000, p. 36.
- [16] Report on GATT Agreement, pp. 151-152.
- [17] <http://www.wto.sice.oas.org/ctyindex/wto/tpreme64.asp>
- [18] Prakashchandra and Prem Arora, “*Bookhieve’s Comparative Politics and International relations*”, 21st ed, Gurgaon: Cosmos Bookhieve (P). Ltd, 2003, p. 279.
- [19] Sanjay Bagchi, “*India and the WTO: Secretarion Interests Versus Public Good*”, Vol. 36, No. 2, EPW, 2001, p. 90.
- [20] C.A. Ananth, “*India and the WTO-Flawed Rejectionist Approach*”, Vol. 36, No. 45, EPW, 2001, p. 4243.
- [21] Anonymous, “*WTO Framework Deal Removes Fear That Emerging Pattern would Harm India’s Farm Sector*”, Vol. 50, No. 1, Monthly Public Opinion Surveys, 2004, p.9.
- [22] Jagadish Bhagwathi, “*WTO and India: An Agenda for Action in Post Doha Scenario*”, CUTS, 2002, p.103.
- [23] S.R. Sen, “*From GATT to WTO*”, Vol. 29, No. 43, EPW, 1994, p. 2804.
- [24] Jagadish Bhagwathi, “*Trading for Development: How to assist Poor Countries*”, “*Doha and Beyond, the future of multitrading system*”, 1st ed, Cambridge: University Press, 2004, p. 116.
- [25] Ruddar Dutt, “*WTO and the Role India Should Play*”, Vol. 39, No. 11, Main Stream, 2001, p. 23.
- [26] Anonymus, “*Ghost of Cancun Still Haunts WTO*”, Vol. 40, No. 9, Monthly Public Opinion Surveys, 2005, p.13.
- [27] A.K. Roy, “*Quit WTO Agenda for Mid Term Election*”, Vol. 34, No. 26, EPW, 1999, p. 1661.
- [28] Vijaya Shrimali, “*Need to Revise Agreement on TRIMs*”, Vol. 44, No. 4, Southern Economist, 2005, p. 45.
- [29] Sachin Chaudhuri, “*Wrong on WTO*”, Vol. 36, No. 45, EPW, 2001, p. 4235.
- [30] Latheef Kizhisseri, “*WTO: Who Gained and Who Lost?*”, Vol.39, No.s47-49, Main Stream, 2001, p. 18.