SECTION RECOMMENDATIONS AND REPORTS

American Bar Association
Section of International Law and Practice
Reports to the House of Delegates

I. Report on the GATT and Trade Related Investment Measures

BE IT RESOLVED that the American Bar Association supports the efforts by the Government of the United States of America at the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) to urge member countries to adopt appropriate measures to discourage the use of trade related investment measures (TRIMs) that significantly distort international trade and investment flows.

REPORT

1. The past decade has seen a proliferation in many countries of trade related investment measures (TRIMs) designed to increase local procurement, minimize imports, and/or increase the level of exports by foreign-owned or joint venture investments. In some instances these TRIMs, which may include such measures as domestic content regulations, import maximums, or minimum export requirements, can result in serious distortions of international trade and investment flows.

Local content requirements and import maximums displace imports from home or third countries. Such requirements may seriously impede a company's sales or manufacturing efforts.
Where the company cannot obtain adequate supplies locally, or must rely on supplies of lesser quality, it may be unable to meet its production or export targets.

Many countries, especially developing countries, require that foreign investors export a certain percentage, even all, of their annual production. Like export subsidies, such export requirements may artificially increase the supply of affected products in the world market and displace more efficient home or third country production or exports. Moreover, where a company's ability to import is conditioned upon achieving a certain volume of exports, such restrictions can also result in import restrictions.

2. The U.S. Government agencies concerned with rules pertaining to direct foreign investment and their effect on international trade and investment flows—including the Departments of Treasury, State and Commerce, the Office of the United States Trade Representative, the Overseas Private Investment Corporation, and the Export-Import Bank of the United States—have been increasingly concerned that the frequency with which U.S. investors overseas encounter TRIMs seems to be increasing. Thus, for example, in April 1982, then United States Trade Representative William E. Brock requested a study by the United States International Trade Commission pursuant to section 332 of the Tariff Act of 1930 on the impact of such restrictions on U.S. trade, production, employment, and investment. The ITC study, which concentrated on those sectors that appeared to be most affected by such requirements, found that more than 80 percent of U.S. motor vehicle and motor vehicle equipment manufacturers having direct investment abroad reported having one or more foreign affiliates operating under TRIM requirements. Study by the U.S. International Trade Commission on the Import of Foreign Trade-Related Performance Requirements on U.S. Industry and Foreign Investment Abroad (Investigation No. 332-142, 1982). Similarly, in the chemical industry (including pharmaceuticals) 40 percent of those U.S. chemical producers having direct investment abroad reported having one or more affiliates operating under TRIM requirements. Id. See also 1982 Survey of U.S. Direct Investment Abroad, U.S. Department of Commerce, Bureau of Economic Analysis (Washington, D.C., 1982), summarized in Harvey E. Bale, Jr., and David A. Walters, "Investment Policy Aspects of U.S. and Global Trade Interests," Looking Ahead, National Planning Association (Washington, D.C., January 1986). In its 1986 survey of members, the Council of the Americas reported that a significant number of their member companies operating in Latin America felt that TRIMs had hurt their operations. "Coping with Crisis: U.S. Investment and Latin America's Continuing Economic Problems," Council of the Americas (Washington, D.C., January 1987). The United States Council for International Business has also recently complained that such measures adversely affect U.S.
investments overseas and the trade benefits that otherwise would flow from them. Letter to The Honorable Clayton Yeutter, United States Trade Representative, from Mr. Abraham Katz, President, United States Council for International Business (April 2, 1987).

3. Because of the concern about the trade-distorting impact of TRIMs and their apparent prevalence among developing countries, especially in certain industries, the U.S. Government sought and obtained a commitment at last September's GATT Ministerial Meeting, held at Punta del Este, Uruguay, to address the issue in the current round of multilateral trade negotiations. Specifically, the Ministerial Declaration provides:

Following an examination of the operation of GATT articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade.

Based on the Ministerial Declaration, the U.S. Government has raised the issue of the trade-distorting effect of TRIMs for discussion at the Uruguay Round, and a negotiating group on TRIMs has been formed. The United States will attempt to obtain agreement that existing GATT articles be used, and appropriate new provisions be adopted under the GATT framework, to avoid the adverse effects these investment measures have on trade and investment flows.

CONCLUSIONS

By means of this recommendation, the American Bar Association can express its support for the efforts by the United States Government to provide a means within the framework of the GATT to reduce or eliminate trade related investment measures (TRIMs) that result in significant distortions of international trade and investment flows.

Respectfully submitted,

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Chairman

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