

Trade Related Investment Management Measures and Fisheries: The Indian perspective

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The WTO Agreements aim to expand, promote and liberalize trade. One of the underlying objectives is to “increase economic growth among trading partners, while ensuring free competition” (<http://www.wto.org>). In the process of ensuring fairness in competition various agreements were put in place. This includes agreements to reduce tariffs, providing increased market access etc. Most of the Agreements came into force on January 1, 1995 with the establishment of the WTO after the Uruguay Round of discussions, with special concessions provided with extended time lines for developing and least developed nations.

However it has been recognised that trade distortion can take place due to a various provisions. It could be in the form of Non-Tariff Measures or Sanitary and Phyto Sanitary Standards or in the form of regulation of investments in the domestic sector that could be trade restrictive and trade distorting. The regulation of investment measures of member countries that can result in trade distortions and prevent free and fair trade was the premise for the Trade Related Investment Measures or TRIMs Agreement. It does not directly deal with the right of a country to have regulations for investments in place but only to the possible impacts.

About TRIMs

TRIMs relate to only trade in goods and does not cover trade in services. The TRIMs Agreement is detailed in nine Articles, including Committee on TRIMs and Dispute Settlement and constitution of the Committee. The number and title of the articles are given in Table 36.1

Table 36.1: Articles under TRIMs Agreement

Article	Title
1	Coverage
2	National Treatment and Quantitative Restrictions
3	Exceptions
4	Developing Country Members
5	Notification and Transitional Arrangements
6	Transparency
7	Committee on Trade-Related Investment Measures
8	Consultation and Dispute Settlement
9	Review by the Council for Trade in Goods

In Article 2 of the TRIMs Agreement 'National Treatment and Quantitative Restrictions' relates in particular to provisions that violate Article III and XI of the General Agreement on Tariffs and Trade (GATT), 1994.

Article III of GATT refers to 'National Treatment on Internal Taxation and Regulation'. Under this Article there should not be any domestic taxes, charges, laws, regulations and requirements that would be protectionist to the domestic production and the imported product will not be subject to any additional taxes, charges etc.

Article XI of GATT refers to 'General Elimination of Quantitative Restrictions', which was the basis for reduction and elimination of restrictions, other than duties, taxes or other charges. Specifically it ensures elimination of quotas, import or export licenses and any such measures. All exceptions allowed under GATT are applicable for TRIMs as well. For example prohibition of certain exports due to reasons of food security, for the implementation of SPS measures etc. Import restrictions may be also enforced for agricultural or fisheries product for restrict the production and marketing of the product, to remove a temporary surplus.

In effect the TRIMs Agreement draws very heavily on the GATT Articles, as it is the main focus of the Agreement. As can be seen later, most of the disputes under TRIMs comes under the Article 2, that directly draws from GATT.

Members were given two years from January 1, 1995 to eliminate all notified TRIMs. In the case of developing countries the period was five years and for least developed countries seven years. In effect all members are now covered under the TRIMs Agreement. However, a further transition period extension was applicable to developing and least developed countries, if they were able to show the difficulties in implementation of the provisions under this Agreement. Disputes under this Agreement will also follow the Dispute Settlement Mechanism of the WTO as under Article XXII and XXIII of GATT 1994.

The trade-related investments that are likely to be trade restrictive are difficult to define (Moran, 1992) and only an illustrative list (Table 2) that could be TRIMs, was provided in the Agreement that was arrived at by the member countries. Broadly incentives given for investments, licensing, forex restrictions, limits to manufacturing, transfer-of-technology, domestic sales requirements, trade-balancing requirements, local content requirements, export requirements and import substitution requirements are some of the areas where the provisions can come under TRIMs. For instance, if there is an obligation for use of products of domestic origin or if there is a restriction on the volume or value in relation to a domestic product it is seen to be a violation of the Article III of the GATT as in giving 'National Treatment' and may become a quantitative restriction. According to Moran (1992) four broad categories of TRIMs could be incentives, performance requirements, corporate measures and home country measures. An UNCTAD (2007) report underlines the fact that TRIMs can be for promoting exports from the host country (export performance requirements and trade balancing requirements); reducing imports by the foreign investor (local content requirements); advancing economic and social policy goals, including job creation; and technology transfer.

Table 36.2: Prohibited TRIMs in the Agreement (illustrative list)

Para 1 (a)	Local content requirements	The purchase or use by an enterprise of products of domestic origin or from any domestic source	Internal measure in violation of GATT art. III (national treatment)
Para 1 (b)	Trade balancing requirements	An enterprise's purchase or use of imported products is limited to an amount related to the volume or value of local products that it exports	Internal measure in violation of GATT art. III (national treatment)
Para 2 (a)	Import restrictions generally;	General import restrictions related to product used in local production;	Border measure in violation of GATT art. IX (quantitative restriction)
	Trade balancing requirements	Import restrictions related to the enterprise's volume or value of local production that it exports	
Para 2 (b)	Foreign exchange balancing requirements	Measures that restrict an enterprise's access to foreign exchange for imports to an amount related to the foreign exchange inflows attributable to the enterprise	Border measure in violation of GATT art. IX (quantitative restriction)
Para 2 (c)	Domestic sales requirements	The exportation of product is restricted in terms of particular products, volume or value of products, or volume or value of local production	Border measure in violation of GATT art. IX (quantitative restriction)

Source: UNCTAD

Disputes under TRIMs

As on September 2012, 34 cases of disputes have been brought up at WTO under TRIMs. Most of the cases have been under Article 2, National Treatment and Quantitative Restrictions, indicating that investment measures that have some difference for domestic as well as outside investments exist in these cases.

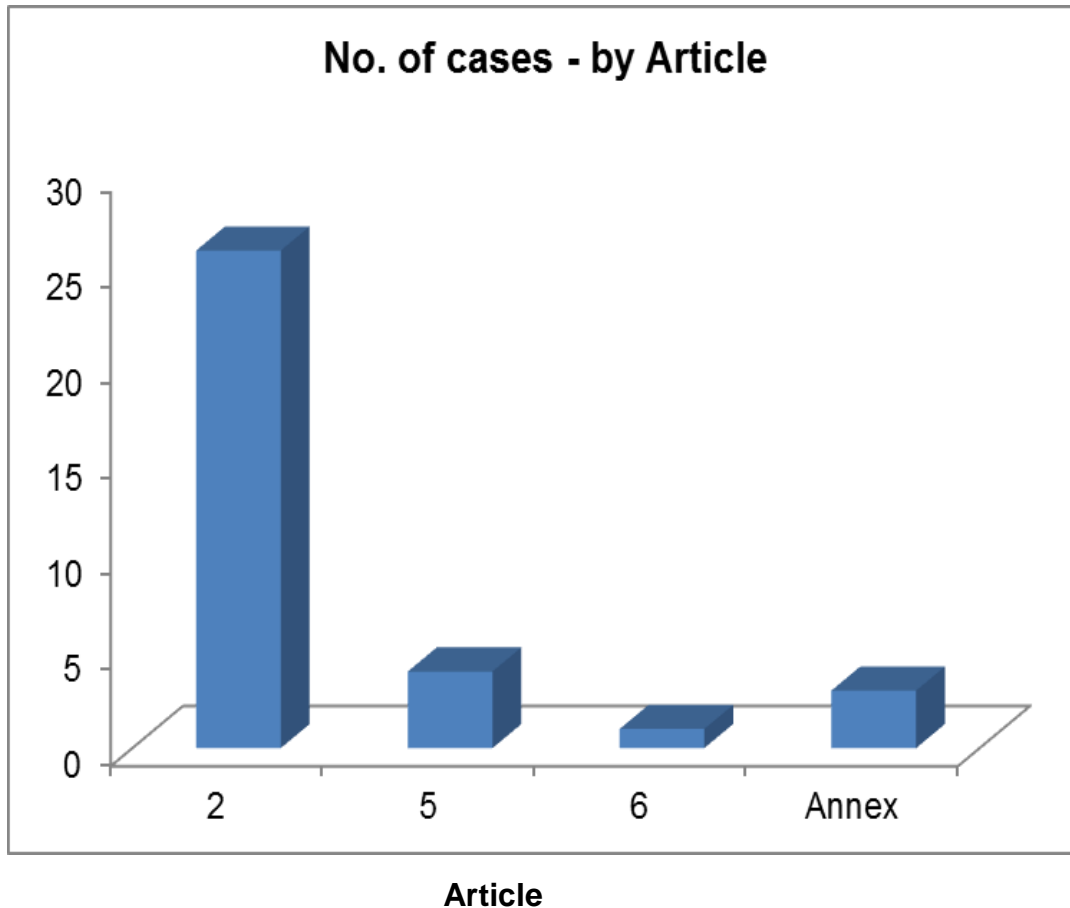


Fig 36.1 TRIPS and No of cases by articles

TRIM disputes tends to be concentrated in specific industries, and are mainly seen in the automotive, chemical and petrochemical and computer/ informatics sectors.

India and TRIMs

India has been part of the disputes arising regarding TRIMs as a respondent in two cases and as a third party in several others. The list of disputes in which India is involved is given in Table 1. It is clear that most of the cases relate to motor vehicles.

Table 36.3 List of disputes

S.No.	Countries and cases	Year
1.	European Communities — Regime for the Importation, Sale and Distribution of Bananas(Complainants: Ecuador; Guatemala; Honduras; Mexico; United States)	1996
2.	Indonesia — Certain Measures Affecting the Automobile Industry (Complainant: European Communities)	1996
3.	Indonesia — Certain Measures Affecting the Automobile Industry (Complainant: Japan)	1996
4.	Indonesia — Certain Measures Affecting the Automobile Industry (Complainant: United States)	1996
5.	Indonesia — Certain Measures Affecting the Automobile Industry (Complainant: Japan)	1996
6.	Canada — Certain Measures Affecting the Automotive Industry (Complainant: Japan)	1998
7.	Canada — Certain Measures Affecting the Automotive Industry (Complainant: European Communities)	1998
8.	India — Measures Affecting the Automotive Sector (Complainant: European Communities)	1998
9.	India — Measures Affecting Trade and Investment in the Motor Vehicle Sector (Complainant: United States)	1999
10.	Philippines — Measures Affecting Trade and Investment in the Motor Vehicle Sector (Complainant: United States)	2000
11.	Canada — Certain Measures Affecting the Renewable Energy Generation Sector (Complainant: Japan)	2010
12.	Canada — Measures Relating to the Feed-in Tariff Program (Complainant: European Union)	2011

The two cases that India is a respondent, also relate to the automotive sector with United States and European Union being the complainants. In both the cases, Article 2 of the TRIMs Agreement was invoked - National Treatment and Quantitative Restrictions. In this case there was a local content requirement (indigenization) as well as a trade balancing requirement (import value to be equal to the export value, ie, import to be restricted to an export commitment) for cars and other components. The Panel set up found that it was a violation under both the articles and the report was adopted in March 2002.

TRIMs and Fisheries

The proposals of a Multiple Agreement on Investment (MAI) spell concern for fisheries sector. The provisions of MAI would fundamentally alter the climate for international investment by preventing governments from providing more favourable conditions for their citizens and domestic companies than for other investors. Under new regime, countries would be required to treat foreign investors no less favorably than domestic ones. It allows foreign fishing fleets the same access to domestic waters that local enjoys.

One of the most contentious aspects of fisheries management is the allocation of the total allowable catch (TAC). Most countries give preferential access to their domestic fishermen, only allowing others in for those species which are not fully utilized. If all foreign investors are to be treated at least as favourably as domestic companies it may not be

possible to give continuous support to our poor fisher folk. Further, governments and regional management organizations usually set the TAC based upon some variant of Maximum Sustainable Yield as a target. There are many other possible targets, though, based upon other biological or even economic criteria. If, as a conservation measure, a country wishes to maintain fish stocks at somewhat greater abundance, it may not be possible to do so under the provisions of MAI. Thus, WTO has great impact on the global fishing industry, the conservation of fisheries resources and the communities who depend upon them.

Fish and fish products come under NAMA and are considered 'goods' for trade purposes. Therefore production of fish and fishery products will be covered under the TRIMs Agreement. Till date no issue has arisen in fisheries under this Agreement. Since the Indian seafood industry is largely export oriented and the policies so far have been oriented towards exports, most of the provisions will not have much impact, especially from the domestic requirements aspect, where most of the disputes seem to arise. There is also no competition between export oriented and the domestic industry (Cuyvers et.al., 1996) as far as the sector is concerned. There are no apparent issues with regard to the other regulations like local content or trade balancing requirements etc.
