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INVESTMENT RULES FOR DEVELOPING POLICIES

I. INTRODUCTION

1. It has been pointed out in the Working Group (WG) meetings to date that Foreign Direct Investment (FDI) has a positive effect on development.[1] The economic benefits that FDI can bring about for the host country can be specified, in particular, capital transfer, transfer of technology and management know-how, increased employment, the fostering of a skilled labour force, and the access to international production networks and access to foreign markets by the industries of host countries. These economic benefits play a very large and important role in modernisation of the national economy and in the acceleration of economic growth in the host countries.

2. In order that FDI can effectively contribute to the economic development of the host country, it is necessary to consider two separate aspects.

3. First is that FDI itself should be enhanced. The primary decision-making factors for FDI include market scale, market growth potential, a stable macroeconomic environment, political stability and labour quality and costs in a host country. (Refer to the Communication from UN Conference on Trade and Development.[2] Further important conditions in addition to the above-mentioned include the predictability of various rules such as legislation concerning investment, the tax system and conditions governing business activities. No matter to what degree there is an appealing market scale and latent growth potential, in cases where there is an unpredictable risk of change, it would be impossible for investors to predict stable management after investment, and therefore investors actively seek to avoid active investment activities in such cases.

4. Second is how to effectively link the recipient of investment to domestic economic growth. In other words, in this process, the positioning of direct inward investment in the domestic development policies of the host country is an important factor. In order that through investment activities, production, the expansion of employment, the expansion of procurement, a relative effect on related industries, and a ripple effect to the regional economy can all be ultimately linked to economic growth in host countries, balanced investment rules and development policies are required according to the developmental stage of each host country.

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[1] WT/WGTI/W/65, WT/WGTI/W/38.
[2] Communication from UNCTAD, WT/WGTI/W/77.

5. From this viewpoint the following modalities for investment rules and development policies should be considered. One of the main aims of International Investment Agreements is to establish an investment environment that basically protects and promotes FDI, and heightens stability, predictability and transparency. In order to maximise the promotional effect of FDI through International Investment Agreements, what is absolutely required to the greatest extent possible is discipline in agreements and investor predictability should be sought. Furthermore, International Investment Agreements that concern developing countries are concluded with the expectation that the resulting investment will contribute to economic growth in the investment host country. Accordingly, there are many cases in which the preambles of Agreements clearly state the promotion of economic and social development as their most important objectives.

6. However, in order for developing countries to achieve economic development, it is important for the country concerned to implement its own appropriate development policies. Accordingly, for the investment host country, in the conclusion of an International Investment Agreement it is of great interest to ensure that a structure is put in place to ensure sufficient flexibility in the adoption of necessary development policies. Of course, as the EU has pointed out[3], it is important to avoid the risk of pushing the notion of the extent to which "flexibility" is applicable too far, as this could cause confusion with the "right to discriminate."

7. From the above perspective, when we consider overall the current existing International Investment Agreements, investment-related agreements and the number of WTO Agreements, we can see evidence of efforts that have been made to achieve balance between discipline and flexibility, as evidenced by such agreements as the General Agreement on Trade in Services (GATS).

8. In the case of formulation of a comprehensive agreement on investment in the WTO system, the issue of balance between discipline and flexibility is also of great importance. In particular, there is a great diversity of developmental stages among WTO members, and many differences in a variety of aspects such as economic conditions, legal and administrative systems, infrastructure, regulations, and technical standards. Of course, there are also differences among countries concerning the priority that is placed on development policies. Accordingly, the modalities for ideal rules could, by ensuring that the circumstances in the host country are adequately reflected in an appropriate balance between the rights and obligations of both the investor and the investment host country through an agreement, would thereby maximising the benefits to investor and investment host country. From this perspective, appropriate "flexibility" should be pursued that allows each Party to consider the developmental stages and development policies of each country.

9. The issue of "flexibility" in International Investment Agreements is a very important one that has been taken up for discussion on many occasions in the Working Group meetings. In the process of building up some common understanding regarding investment rules, this issue should be deliberated adequately. In this regard, the submissions from India[4] and the EU[5] in 2000, and the UNCTAD documents pertaining to International Investment Agreements submitted in 1999[6], serve as great resource materials for reference in discussions.

10. With reference to the various discussions and papers that have been contributed to the Working Group meeting process thus far, the following is an attempt to list with examples, the various points into which study should be deepened, concerning "flexibility" in International Investment Agreements. This paper will also analyse what response should be made to existing investment and investment-related agreements and the various WTO Agreements. It is hoped that this paper will serve as a future reference for discussions.

[3] WT/WGTI/W/89.
[4] WT/WGTI/W/86.
[5] WT/WGTI/W/89.
[6] WT/WGTI/W/77.

11. This submission is intended not to bind the stance of Japan but to illustrate some issues for further discussions in this Working Group. There could be other important elements to be deliberated regarding flexibility than those raised in this paper, and we have no intention to exclude the discussion on these points.

12. From the standpoint that an International Investment Agreement should be designed in a compatible manner with development policies of developing countries concerned, we would like to show some options for consideration.

II. CONSIDERATION GIVEN TO DEVELOPMENT POLICIES IN EXISTING AGREEMENTS

13. There is much consideration being given to development policies in the existing agreements, or rather the methods of providing flexibility. The first method of consideration given to development policies is to reflect the overall spirit of an agreement. For example, in many agreements, reference of consideration to development policies is made in the preamble or in the objectives. A second method is to consider development policies in individual provisions. This method consists of two main concepts. These are to either a) through the establishment of exceptions or permission of reservations to alleviate or exempt entirely developing country obligations; or b) through the provision of grace periods for developing countries, provide ample time for implementation. A third method is to impose discipline, and at the same time to promote support to enhance capacities to realise this. It is of course self-evident that flexibility is not necessary provided by any of these means exclusively, but rather by a variety of combinations of their use.

1. Preamble and Objectives

14. As is stated in the UNCTAD paper[7], the Preamble or Objectives of an Agreement provide an interpretation of the Agreement, and encapsulate in a few paragraphs, the overall spirit of the Agreement. Accordingly, the concept for the development elements of an agreement as described in the preamble or objectives, can offer a certain orientation for the overall objectives and interpretation of the agreement.

15. In actual fact, examples of this kind can be found in the WTO Agreements, such as GATS and the Agreement of Trade-Related Investment Measures (TRIMs Agreement), that include the many developing countries that are signatories to such agreements. In such agreements due consideration is given to development in the preamble, and the objective of economic development is stated. In this way, the interpretations of the provisions in the main text of the agreement become the ones given due consideration in their developmental aspects.

16. There are two concrete types of description. One of these is the general description of recognizing and taking into account the difficulties and special needs that are directly facing developing countries or/especially least developed countries. Another type of description is that seen in the preamble to the TRIPS Agreements, which is in a style that refers to flexible domestic legal implementation. (ANNEX, (A)).

[7] WT/WGTI/W/77.

2. Definition

17. The definition of investment is an important element that stipulates the scope of factors covered under the discipline of investment rules. The paper prepared by the secretariat[8] summarises the discussions that have been held in the Working Group concerning the definition. In addition, Japan has also conducted its own analysis of the definition in the existing International Investment Agreements.[9]

18. The definition of investment in the existing agreements is of the type laid out below:

19. Firstly, there is the definition that can be found in many of the agreements concluded in recent years. This definition incorporates every kind of asset related to corporate activities, bringing into the broad scope of the definition portfolios and the acquisition of intellectual property rights.

20. Secondly, there is a pattern in which investment is broadly defined with specified areas excluded from the definition. Examples of this approach can be seen in the North American Free Trade Agreement (NAFTA), which form a source of reference when considering the scope of investment rules narrowed down into a specific framework.

21. There is a third, narrow definition that limited to FDI and excludes portfolio investment and real estate investment. Enterprise-based standards, taking into account the establishment of a permanent relationship and the effect to business management. Although the Balance of Payments Manual of the International Monetary Fund (IMF) and the benchmarks of the Organisation for Economic Co-operation and Development (OECD) (ANNEX (B)) are not agreements in themselves, they illustrate standards and definitions for such FDI.

22. In GATS, a stipulation is adopted concerning the provision of services through a commercial presence in the territory of any other Member (Article I.2(c)). This covers FDI in service areas. (ANNEX (C)).

23. When considering a “definition” in a possible multilateral investment rules, building on the existing agreements, a definition could be selected from three categories:

(i) The first category is the adoption of enterprise-based standards such as those definitions laid out by the IMF and the OECD Code of Liberalisation of Capital Movements, which limit the scope of investment from the outset.

(ii) The second category is to first define investment under a broad scope, after which by either broadly acknowledging short-term capital movements regulation, or by excluding short-term speculative capital flows, can basically give each county’s regulations some room for manoeuvre.

(iii) The third category offers a compromise between the first two categories, by responding to the elements of the agreement and changing the application scope of a definition and the method of application. For example, a broad definition is used concerning protection articles, which while on the one hand broadly protecting investments, narrowly define the scope of national treatment of pre-establishment, which provoke strong concern among developing countries.

[8] WT/WGTI/W/76.
[9] WT/WGTI/W/92.

24. It is of the greatest importance that all Parties adopt a common definition of investment, otherwise investors may lose their predictability. Accordingly, it is necessary to either ensure that each country does not use its own discretion interpretation of a definition, and to see to it that in discussions of a definition, there is an adequate balance with each country's development policies.

3. Transparency

25. As Japan has already pointed out in the previous paper[10], there is the need for internal systems to be revised in response to the policy needs of each country with globalisation of economy and development of Information Technology. From the standpoint of investment expansion, equal importance should be given to the need for transparency in these systems, and also for transparency in their formulation and the revision processes. Through such transparency, in addition to the predictability of such systems being enhanced, it would be possible to avoid discretionary or unnecessary systemic revisions.

26. The obligation to ensure transparency in the existing WTO Agreements appears on several levels, such as the publication of regulations (GATT Article X), the establishment of enquiry points (GATS Article III Paragraph 4), notification to the WTO (TRIMs Article 6), the ensuring of transparency of licensing procedures (GATS Article VI Paragraph 3), and prior public notification (TBTs Article 2.9). The level of obligations to ensure transparency are determined in response to the coverage of measures and the actual obligations imposed on Member countries by each agreement.

27. In addition, there is an example remaining in the transparency provision of an agreement the basis to allow developing countries a grace period with due consideration to their capacities in implementation (GATS Article III Paragraph 4). (ANNEX (4))

4. Non-discriminatory (National Treatment)

28. One of the most important principles of the WTO agreements is the principle of National Treatment, whereby investors are entitled to receive treatment in the host country equal and fair to the treatment received by companies of that country. It is important that this principle be adequately reflected in a possible investment agreement. However in a number of countries, in particular developing countries, due to a variety of developmental stages, and a variety of economic and social conditions, it is necessary to establish individual development policies that provide special treatment to domestic companies and industries. Therefore it is imperative for developing countries to ensure a balance between national treatment principles and their development policies.

29. As a means to ensure such flexibility, there are two main methods that can be employed. The top-down approach (the negative list method) and the bottom-up approach (positive list method).

30. The top-down approach is one that compiles a negative list with exceptions to liberalisation, while in principle it is stipulated that the Member country provides national treatment for investors of other Member. Examples such as this can be found in NAFTA.

31. On the other hand, the bottom-up approach adopts the compilation of a positive list of sectors to be liberalised. For example, this approach has been adopted in GATS.[11] For each country, especially the developing countries, lists are only made for those sectors in which liberalisation is possible, and those sectors which represent exceptions to liberalisation, or for which a grace period is necessary before liberalisation can be achieved, do not have to be included in a list. Therefore it could be said that this is an approach to give due consideration to the development policies of developing countries with regard to flexibility. (ANNEX (5)).

[10] WT/WGTI/W/87.
[11] WT/WGTI/W/96.

32. In whichever of the above-mentioned approaches are used, by adopting certain reservations to the principle of non-discrimination, it is possible to progressively implement various obligations in discipline, while maintaining a balance with development policies.

5. Performance Requirement

33. With the intention of heightening the economic effect of investment in host countries, there are cases where performance requirements are imposed on investors. There are currently various debates over the economic effect of performance requirements.[12],[13] Already through the TRIMs Agreement, performance requirements have been regulated as being in contravention of Articles III and XI of GATT, and one of the important issues for investment rules is how and in what way performance requirements should be treated. No matter how performance requirements are handled in a possible investment agreement, it is a fact that they have endowed a good deal of flexibility in the existing investment agreements.

34. There are three types of disciplines on performance requirements that can be observed in the existing rules. (a) An approach that does not make clear the stipulations regarding performance requirements; (b) An approach that regulates a certain scope of performance requirements; (c) An approach that partially accepts incentive-related performance requirements, but regulates a broad scope of performance requirements. The TRIMs Agreement itself aims for performance requirement regulation.

(a) An approach that does not make clear PRs-related stipulations

35. Early BITs and the ASEAN Agreement for the Promotion and Protection of Investments do not clearly stipulate performance requirements.

(b) An approach that regulates a certain scope of performance requirements

36. In the TRIMs Agreement, PRs that are subject to regulation are illustrated as local content requirements, trade-balancing requirements, foreign exchange restrictions, and export restrictions. (ANNEX (6)) In addition, the GATS has relations to PRs, for its provisions on the market access include some measures that correspond performance requirements in International Investment Agreements. (ANNEX (7)).

(c) An Approach that partially accepts incentive-related performance requirements, but regulates a broad scope of performance requirements

37. Although NAFTA prohibits a broad scope of performance requirements illustrating 7 PRs, 4 PRs out of them are allowed when they are incentive-related. (ANNEX (8)).

6. Dispute Settlement

38. It is vital that, in the International Investment Agreements, solution procedures are clearly stipulated in the case of dispute in relation to the implementation of obligations of the agreements among contracting Parties. In particular, if any dispute were to be dealt with by only the states/parties concerned, there is a risk that such a settlement could reflect the individual circumstances and political and economic situation of those states/parties. It is therefore important to have fair dispute settlement rules, with a high degree of transparency that can be seen by a large number of neutral states within the WTO framework.

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[12] WT/WGTI/W/82.

[13] "Foreign Direct Investment and Development", Theodore H. Moran, Institute for International Economics, December 1998.

39. Articles relating to dispute settlement in the existing International Investment Agreements can be divided into two categories, regarding the concept of their standing (eligibility of party). First is an approach that recognises conflict between investors and states, and places great importance on the protection of the rights of the investor. A second approach is a point of view that limits dispute settlement to that between states only. The general position adopted in the WTO Agreements is the latter case, and the GATS also only stipulates rules for inter-state dispute settlement. At the same time, NAFTA incorporates the former approach, covering both investor-state and inter-state disputes.

40. The administering bodies of WTO Agreements are state parties, and even if an investment agreement were to be set out, it would be inappropriate to recognise private individuals as having a standing in dispute settlement. Otherwise, there would be a high possibility of a sharp increase in lawsuits being filed by investors, creating a large burden for Member governments. From the point of view of flexibility, stipulations are made to pay special consideration to least developed countries in dispute settlement procedures in WTO Agreements. (ANNEX (9)).

41. This paper has thus far set out a case for flexibility aimed at reducing obligations in rules and others, in (1) the preamble and objectives, and in substantive provisions from (2) to (6). The following points (7) and (8) lay out a concept that provide flexibility in taking into account developing countries concerning the implementation of rules.

7. Flexible Treatment of Developing Countries Obligations in Implementation, etc.

42. From the point of view of finding a balance in disciplinary and developmental aspects, it is important to find a way to realise the implementation, etc., of the agreements. In the implementation of the existing WTO rules, flexibility is given to the developing countries' obligations, of which two concrete means can be seen. First is the establishment of a grace period, which allows developing countries to improve their capacity. Second are examples in which there is flexibility in the special initial treatment of states concluding agreements.

43. Examples of the former grace period measure, can be found in Article 5, Paragraph 2 of the TRIMs Agreement, and Article 65, Paragraph 2 and Article 66, Paragraph 1 of the TRIPS Agreements. (ANNEX (10)) In the TRIMs Agreement, developing countries are given grace periods of five years, and least developed countries a period of seven years, and the TRIPS Agreement does likewise, stipulating periods of five and 11 years respectively. Cases of the latter example include GATS (Article 4), and the TBT Agreement (Article 12.8). (ANNEX (11)) In addition, stipulations are made that take into account the economic and developmental situation of developing countries. Such flexibility in implementation, etc., in combination with flexibility in the rules themselves, are important elements when developing countries respond to international rules and rationalise them with their own development policies.

8. Technical Assistance

44. There are no doubts that FDI has a positive effect on economic growth and development in host countries. This kind of development can further be expected to invite further investment, in a positive growth cycle. It is for this reason that it is important to promote investment liberalisation, while bearing in mind the need to strike a balance with the development policies of host countries. However, in developing countries, resources such as human, systems, legislation, etc., are insufficient for implementation, and there are cases where the introduction of rules cannot be promptly dealt with. In such cases, to encourage obligations, it is important for developed countries to provide appropriate assistance based on its past experiences without lowering the standards of the rules. In the existing WTO Agreements, GATS (Article 25) and TRIPS (Article 66.2 and Article 67) make provisions for technical assistance to ensure flexibility in developing countries responses to such situations. (ANNEX (12)).

9. Activities of Investors in the Host Countries

45. The importance of striking a balance between investment rules and development policies has already been stated, but it is actually the multi-national enterprises (MNEs) that work as the investors and undertake the economic activities in this balance. It is imperative that both the rights of investors and their obligations should be considered.

46. Accordingly, one approach could be to consider articles concerning investor activities as a factor for flexibility in the investment rules.

47. One option would be to incorporate as a reference any guidelines for investors in the investment rules. Although, as was pointed out in an EU paper[14], international agreements are unable to directly impose obligations on companies, and it is appropriate to treat it as firmly non-binding.

III. CONCLUSION AND FUTURE POINTS FOR DISCUSSION

48. As we have seen, in the existing International Investment Agreements and investment-related agreements, and in the existing WTO Agreements, provisions have already been formulated that take into consideration developmental aspects. This trend is particularly noticeable in the WTO Agreements. When deliberating a possible Investment Agreement in the future, while taking into account articles of the existing agreements, it should be also possible to formulate flexible rules in a manner that respects development policies.

49. The following lists the possible choices regarding what kind of flexibility should be pursued in the compilation of rules and the actual provisions of the International Investment Agreements. While several points of view can be reflected in a flexible approach, further discussion is necessary. The list laid out below enumerates a number of elements, including those that have not been discussed in this paper. These elements are, of course, also very important and cannot be ignored.

50. (Modalities for compilation of rules and actual provisions)

- Preamble and Objectives

  Confirmation the importance of domestic development policies, flexibility of discipline, and technical assistance, etc.

- Composition of Schedules

  In addition to Most Favoured Nation exemptions(MFN), impose limits and conditions on market access (MA) and national treatment (NT) (in both negative and positive lists)

  Exceptions concerning pledges in specified areas

- Exemption or lowering of obligations

  Grace periods, progressive implementation and relaxation of commitments

  Making exceptions for measures that deal with emergency situations

- Permissibility of performance requirements necessary for development

- Technical and financial assistance

[14] WT/WGTI/W/81.

- Consideration of developmental aspects in dispute settlement procedures

- Others

Competition policies

Measures by governments of developed countries to promote increased FDI in developing countries and other measures.

ANNEX

(1)

Agreement Establishing The World Trade Organization (Preamble)

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

GATS (Preamble)

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Agreement on TRIMs (Preamble)

Desiring to promote the expansion and progressive liberalization of world trade and to facilitate investment across international frontiers so as to increase the economic growth of all trading partners, particularly developing country Members, while ensuring free competition;

Taking into account the particular trade, development and financial needs of developing country Members, particularly those of the least-developed country Members;

Agreement on TRIPS (Preamble)

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

(2)

OECD Code of Liberalisation of Capital Movements

Direct investment: investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof:

1. Creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;
2. Participation in a new or existing enterprise;
3. A loan of five years or longer

(3)

GATS (Article 28(d))

"Commercial presence" means any type of business or professional establishment, including through:

i) the constitution, acquisition or maintenance of a juridical person,

or

ii) the creation or maintenance of a branch or representative office, within the territory of a Member for the purpose of supplying a service.

(4)

GATS (Article 3)

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.

(5)

GATS (Article 17.1)

In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

(6)

Agreement on TRIMs

Article 1: Coverage

This Agreement applies to investment measures related to trade in goods only (referred to in this Agreement as "TRIMs").

(7)

GATS (Article 16)

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(8) NAFTA

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.

3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.

(9)

DSU (Article 24.1)

At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

(10)

Agreement on TRIMs (Article 5.2,3)

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.

Agreement on TRIPS (Article 65.2)

A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

(11)

GATS *(Article 4)*

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement,
   (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis;
   (b) the improvement of their access to distribution channels and information networks;
   and
   (c) the liberalization of market access in sectors and modes of supply of export interest to them.
2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets,
   (a) commercial and technical aspects of the supply of services;
   (b) registration, recognition and obtaining of professional qualifications; and
   (c) the availability of services technology.
3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article 19.2

The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

Agreement on Technical Barriers to Trade (Article 12.8)

Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.

Agreement on The Application of Sanitary and Photosanitary Measures (Article 10.3)

With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

(12)

GATS (Article 25)

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.
2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

Agreement on Technical Barriers to Trade (Article 11.1,2)

1. Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.

2. Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

Agreement on The Application of Sanitary and Photosanitary Measures (Article 9.1,2)

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply

with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.
2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

Agreement on TRIPS (Article 66.2, 67)
66.2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.
67. In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.