SUBMISSION BY THE NORDIC COUNTRIES

The following communication, dated 11 June 1987, has been received from the delegations of the Nordic countries with the request that it be circulated to members of the Group.

Trade-Related Investment Measures

1. In pursuance of the negotiating plan adopted for trade-related investment measures and the agreement reached at the first meeting of this group to invite national submissions, the Nordic countries would like to present the following views and suggestions on work we believe should be undertaken in this area during the initial phase of the Uruguay Round. This submission is without prejudice to further views and proposals that the Nordic countries may deem appropriate in light of the developments in the group.

2. The concept of trade-related investment measures is not precisely defined in the context of GATT. It may cover a range of measures and requirements imposed by governments in connection with international investment, and which are more or less directly related to international trade and trade flows. Recognizing the complexity of the issues involved the Nordic countries consider it appropriate to adopt a pragmatic and step-by-step approach in the initial phase in this area. As was stated by the Nordic countries at the first meeting of this group, we thus believe that the examination provided for in the negotiating plan should, as a starting point, focus on those investment measures that have a particularly direct and significant restrictive or distorting impact on trade and which have a direct link to existing GATT rules.

3. The experience of the Nordic countries, and past experience in the GATT and other international fora, indicate that two types of trade-related investment measures are particularly common and could meet such criteria, i.e. local content requirements and export performance requirements.

Local content requirements, i.e. mandatory requirements that certain goods used in local production by a foreign investor be purchased.
locally, result in import substitution and may in practice have the same effect as an import restriction. Experience shows that demands for local content are often increased once the investment has been made, which in turn tend to increase the trade distorting effects of such measures and render production planning more difficult.

Export performance requirements, i.e. mandatory requirements that a certain share of local production be exported are often linked to various production or profit incentives, such as guaranteed prices on the domestic market, and may thus in fact lead to subsidization of exports.

4. The examination of the operation of GATT articles provided for in the negotiating plan should, in light of the above, in the Nordic countries' views notably include the following GATT provisions:

- Article III on national treatment, in particular the provisions of paragraphs III:4 and III:5. Article III:4 was established as being applicable in respect of local content requirements by the panel on the Canadian FIRA system. Article III:5 prohibits the use of internal quantitative regulations which directly or indirectly requires supply from domestic sources.

- Article VI on antidumping and countervailing duties. Requirements to the effect that a specified share of local production be exported, e.g. to finance necessary imports, can result in dumping (or subsidization). It is not unusual that components produced locally in countries with high border protection become too expensive to compete in the world market under normal commercial conditions.

- Article X on publication of trade regulations. An important objective should be to ensure transparency as regards internal regulations in this area that may affect international trade, in order to reduce arbitrariness and strengthen adherence to the principle of national treatment.

- Article XI on quantitative restrictions. As stated above, local content requirements may have the same effects as import restrictions.

- Article XVI on subsidies. Export requirements may lead to subsidization (c.f. also Article VI).

In addition to the above-cited GATT articles, it may also be appropriate to examine related GATT agreements (i.e. the codes on antidumping, subsidies and countervailing measures and government procurement respectively; local content requirements are particularly common in connection with government procurement related to investment projects).
5. The above suggestions in paragraphs 3 and 4 are not intended as an exclusive work programme but rather as possible point of departure for concrete work in this area. The Nordic countries are ready to consider additional suggestions by participants in a constructive spirit.