马拉喀什建立世界贸易组织协定——附件1A：货物贸易多边协定——与贸易有关的投资措施协定

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马拉喀什建立世界贸易组织协定

——附件１A：货物贸易多边协定

——与贸易有关的投资措施协定

（关于附件１A的总体解释性说明：如《1994年关税与贸易总协定》的条款与《建立世界贸易组织协定》（附件１A所列各协定中称“《ＷＴＯ协定》”）附件１A中另一协定的条款产生抵触，则以该另一协定的条款为准）

各成员，

考虑到部长们在《埃斯特角城宣言》中同意“在审查与投资措施的贸易限制作用和扭曲作用有关的ＧＡＴＴ条款的运用情况之后，谈判应酌情详述为避免此类对贸易的不利影响而可能需要的进一步规定”；

期望促进世界贸易的扩大和逐步自由化，便利跨国投资，以便提高所有贸易伙伴、特别是发展中国家成员的经济增长，同时保证自由竞争；

考虑到发展中国家成员、特别是最不发达国家成员特殊的贸易、发展和财政需要；

认识到某些投资措施可能产生贸易限制作用和扭曲作用；

特此协议如下：

第1条 范围

本协定仅适用于与货物贸易有关的投资措施（本协定中称“ＴＲＩＭｓ”）。

第2条 国民待遇和数量限制

1．在不损害ＧＡＴＴ 1994项下其他权利和义务的情况下，各成员不得实施任何与ＧＡＴＴ 1994第3条或第11条规定不一致的ＴＲＩＭ。

2．本协定附件列出一份与ＧＡＴＴ 1994第3条第4款规定的国民待遇义务和ＧＡＴＴ 1994第11条第1款规定的普遍取消数量限制义务不一致的ＴＲＩＭｓ例示清单。

第3条 例外

ＧＡＴＴ 1994项下的所有例外均应酌情适用于本协定的规定。

第4条 发展中国家成员

发展中国家成员有权以ＧＡＴＴ 1994第18条、《关于1994年关税与贸易总协定国际收支条款的谅解》和1979年11月28日通过的《关于为国际收支目的而采取贸易措施的宣言》（ＢＩＳＤ26册205至209页）允许该成员偏离ＧＡＴＴ 1994第3条和第11条规定的程度和方式，暂时偏离第2条的规定。

第5条 通知和过渡性安排

1．各成员应在《ＷＴＯ协定》生效之日起 90 天内，将其正在实施的、与本协定规

定不一致的所有ＴＲＩＭｓ通知货物贸易理事会。在通知这些普遍或具体适用的ＴＲＩＭｓ时，应同时说明其主要特征。（注 1）

注 1：如ＴＲＩＭｓ是根据酌定权实施的，则其每一次具体适用均应通知。但可能损害特定企业合法商业利益的信息不必披露。

2. 每一成员均应取消根据第 1 款进行通知的所有ＴＲＩＭｓ，发达国家成员应在《ＷＴＯ协定》生效之日起 2 年内取消，发展中国家成员应在 5 年内取消，最不发达国家成员应在 7 年内取消。

3. 如一发展中国家成员，包括一最不发达国家成员可证明其在实施本协定规定方面存在特殊困难，则货物贸易理事会可应请求延长其取消根据第 1 款进行通知的ＴＲＩＭｓ的过渡期。在考虑该请求时，货物贸易理事会应考虑所涉成员特殊的发展、财政和贸易需要。

4. 在过渡期内，一成员不得修改根据第 1 款进行通知的任何ＴＲＩＭ的条件，使之不同于《ＷＴＯ协定》生效之日通行的条件，从而增加其与第 2 条规定不一致的程度。在《ＷＴＯ协定》生效之日前 180 天内采用的ＴＲＩＭｓ不能获得第 2 款规定的过渡期安排的利益。

5. 尽管有第 2 条的规定，但是一成员为不使受根据第 1 款进行通知的一项ＴＲＩＭ约束的已建企业处于不利地位，在（i）该新投资的产品与已建企业的产品属同类产品，且（ii）在不必要避免扭曲新投资与现有企业之间竞争条件的情况下，仍可在过渡期内对新投资实施相同的ＴＲＩＭ。任何如此对新投资实施的ＴＲＩＭ均应通知货物贸易理事会。该ＴＲＩＭ的条件在竞争效果上应与适用于已建企业的ＴＲＩＭ的条件相同，并应同时终止。

第 6 条 透明度

1. 对于ＴＲＩＭｓ，各成员重申它们在ＧＡＴＴ 1994 第 10 条中、在 1979 年 11 月 28 日通过的《关于通知、磋商、争端解决和监督的谅解》包含的关于“通知”的承诺中以及在 1994 年 4 月 15 日通过的《关于通知程序的部长决定》中，就透明度和通知所承诺的义务。

2. 每一成员均应通知秘书处刊载ＴＲＩＭｓ的出版物，包括其领土内地区及地方政府和主管机关实施的ＴＲＩＭｓ。

3. 每一成员应对另一成员就与本协定有关的任何事项提出的提供信息的请求给予积极考虑，并提供充分的磋商机会。根据ＧＡＴＴ 1994 第 10 条，不要求任何成员披露会妨碍执法或违背公共利益或损害特定公私企业合法商业利益的信息。

第 7 条 与贸易有关的投资措施委员会

1. 特此设立与贸易有关的投资措施委员会（本协定中称“委员会”），对所有成员开放。委员会应选举自己的主席和副主席，每年应至少召开一次会议，或在任何成员请求下召开会议。

2. 委员会应履行货物贸易理事会所指定的职责，并为各成员就与本协定运用和执行有关的任何事项进行磋商提供机会。

3. 委员会监督本协定的运用和执行，并每年应此向货物贸易理事会报告。

第 8 条 磋商和争端解决

由《争端解决谅解》详述和适用的ＧＡＴＴ 1994 第 22 条和第 23 条的规定适用于本协定项下的磋商和争端解决。

第 9 条 货物贸易理事会的审议

在不迟于《ＷＴＯ协定》生效之日后 5 年，货物贸易理事会应审议本协定的运用情况，并酌情建议部长级会议修正本协定的文本。在审议过程中，货物贸易理事会应考虑本协定是否应补充有关投资政策和竞争政策的规定。

附件 例示清单

1．与ＧＡＴＴ 1994 第 3 条第 4 款规定的国民待遇义务不一致的ＴＲＩＭｓ包括根据国内法律或根据行政裁定属强制性或可执行的措施，或为获得一项利益而必须遵守的措施，且该措施：

（a）要求企业购买或使用国产品或自任何国内来源的产品，无论按照特定产品、产品数量或价值规定，还是按照其当地生产在数量或价值上所占比例规定；或

（b）要求企业购买或使用的进口产品限制在与其出口的当地产品的数量或价值相关的水平。

2.与ＧＡＴＴ 1994 第 11 条第 1 款规定的普遍取消数量限制义务不一致的ＴＲＩＭｓ包括根据国内法律或行政裁定属强制性或可执行的措施，或为获得一项利益而必须遵守的措施，且该措施：

（a）普遍限制企业对用于当地生产或与当地生产相关产品的进口，或将进口限制在与其出口的当地产品的数量或价值相关的水平；

（b）通过将企业可使用的外汇限制在与可归因于该企业外汇流入相关的水平，从而限制该企业对用于当地生产或与当地生产相关产品的进口；或

（c）限制企业产品出口或供出口产品的销售，无论是按照特定产品、产品数量或价值规定，还是按照当地产品在数量或价值上所占比例规定。

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

ANNEX 1A OF ANNEX 1 OF MARRAKESH AGREEMENT ESTABLISHING THE WORLDTRADE ORGANIZATION

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Members,

Considering that Ministers agreed in the Punta del Este Declaration that “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”;

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;

Recognizing that certain investment measures can cause trade-restrictive and distorting effects;

Hereby agree as follows:

Article 1 Coverage

This Agreement applies to investment measures related to trade ingoods only (referred to in this Agreement as “TRIMs”).

Article 2 National Treatment and Quantitative Restrictions

1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article Ⅲor Article Ⅺ of GATT 1994.

2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article Ⅲ of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article Ⅺ of GATT 1994 is contained in the Annex to this Agreement.

Article 3 Exceptions

All exceptions under GATT 1994 shall apply, as appropriate, to the provisions of this Agreement.

Article 4 Developing Country Members

A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.

Article 5 Notification and Transitional Arrangements

1. Members, within 90 days of the date of entry into force of the WTO Agreement, shall notify the Council for Trade in Goods of all TRIMs they are applying that are not in conformity with the provisions of this Agreement. Such TRIMs of general or specific application shall be notified, along with their principal features. (Notes 1)

Notes 1: In the case of TRIMs applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

2. Each Member shall eliminate all TRIMs which are notified under paragraph 1within 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.

4. During the transition period, a Member shall not modify the terms of any TRIM which it notifies 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. TRIMs introduced less than 180 days before the date of entry into force of the WTO Agreement shall not benefit from the transitional arrangements provided in paragraph 2.

5. Notwithstanding the provisions of Article 2, a Member, in order not to disadvantage established enterprises which are subject to a TRIM notified under paragraph 1, may apply during the transition period the same TRIM to a new investment (i) where the products of such investment are like products to those of the established enterprises, and (ii) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Any TRIM so applied to a new investment shall be notified to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

Article 6 Transparency

1. Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of GATT 1994, in the undertaking on “Notification” contained in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 and in the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

2. Each Member shall notify the Secretariat of the publications in which TRIMs may be found, including those applied by regional and local governments and authorities within their territories.

3. Each Member shall accord sympathetic consideration to requests for information, and afford adequate opportunity for consultation, on any matter arising from this Agreement raised by another Member. In conformity with Article X of GATT 1994 no Member is required to disclose information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 7 Committee on Trade-Related Investment Measures

1. A Committee on Trade-Related Investment Measures (referred to in this Agreement as the “Committee”) is hereby established, and shall be open to all Members. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any Member.

2. The Committee shall carry out responsibilities assigned to it by the Council for Trade in Goods and shall afford Members the opportunity to consult on any matters relating to the operation and implementation of this Agreement.

3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the Council for Trade in Goods.

Article 8 Consultation and Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

Article 9 Review by the Council for Trade in Goods

Not later than five years after the date of entry into force of the WTO Agreement, the Council for Trade in Goods shall review the operation of this Agreement and, as appropriate, propose to the Ministerial Conference amendments to its text. In the course of this review, the Council for Trade in Goods shall consider whether the Agreement should be complemented with provisions on investment policy and competition policy.

ANNEX ILLUSTRATIVE LIST

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(b) that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.