7.1 MEANING OF TRIMS (TRADE RELATED INTELLECTUAL MEASURES)

The objectives of the Agreement, as defined in its preamble, include "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".

The coverage of the Agreement is defined in Article 1, which sites that the Agreement applies to investment measures related to trade in goods only. Thus, the TRIMs Agreement does not apply to services.

The term "trade-related investment measures" ("TRIMs") is not defined in the Agreement. However, the Agreement contains in an annex an Illustrative List of measures that are inconsistent with GATT Article III:4 or Article XI:1 of GATT 1994.

The Trims Agreement and Regulation of Foreign Invest

As an agreement that is based on existing GATT disciplines on trade in goods, the Agreement is not concerned with the regulation of foreign investment. The disciplines of the TRIMs Agreement focus on discriminatory treatment of imported and exported products and do not govern the issue of entry and
treatment of foreign investment. For example, a enterprise is inconsistent with the TRIMs Agreement because it involves discriminatory treatment of imported products in favour of domestic products. The fact that there is no discrimination between domestic and foreign investors in the imposition of the requirement is irrelevant under the TRIMs Agreement.

**Basic Substantive Obligations**

Article 2.1 of the TRIMs Agreement requires Members not to apply any TRIM that is inconsistent with the provisions of Article III (national treatment of imported products) or Article XI (prohibition of quantitative restrictions on imports or exports) of GATT 1994.

**TRIMs which are inconsistent with the national treatment obligation of Article III:4 of GATT 1994**

(i) TRIMs, which require the purchase or use by an enterprise of products of domestic origin or domestic source (local content requirements).

(ii) Trade-balancing TRIMs, which limit the purchase or use of imported products by an enterprise to an amount related to the volume or value of local products that it exports. In both cases, the inconsistency with Article III:4 of GATT 1994 results from the fact that the measure subjects the purchase or use by an enterprise of imported products of less favourable conditions than the purchase or use of domestic products.
TRIMs which are inconsistent with the prohibition on imposition of quantitative restrictions of Article XI:1 of GATT 1994

Paragraph 2(a) of the Illustrative List covers measures which limit the importation by an enterprise of products used in its local production in general terms or to an amount related to the volume or value of local production exported by the enterprise. There is a conceptual balancing measure. The difference is that paragraph 1(b) deals with internal measures affecting the purchase or use of products after they have been imported, while paragraph 29a) deals with border measures affecting the importation of products.

Measures identified in paragraph 2(b) of the list involve a restriction of imports in the form of a foreign exchange balancing requirement, whereby the ability to import products used in or related to local production is limited by restrictions on the exportation of or sale for export by an enterprise, whether specified in terms of particular products, volume or value of products or in terms of proportion of volume or value of its local production. Since paragraph 2 applies the provisions of Article XI:1 of GATT 1994, it deals only with measures that restrict exports. Other measures relating to exports, such as export inventive and export performance requirements are therefore not covered by the TRIMs Agreement.

General exceptions in TRIMs

Article 3 of the TRIMs Agreement provides that all exceptions under GATT 1994 shall apply, as appropriate, to the provisions of
Developing countries and TRIMs

Article 4 allows developing countries to deviate temporarily from the obligations of the TRIMs Agreement, as provided for in Article XVIII of GATT 1994 and related WTO provisions on safeguard measures for balance-of-payments difficulties.

Committee on Trade-Related Investment Measures

Article 7 of the TRIMs Agreement establishes a committee on Trade-Related Investment Measures as a forum to examine the implementation operation of the Agreement. The Committee usually meets twice a year. Much of the work of the Committee to date has focused on the notifications received under Article 5.1 of the Agreement.

Dispute Settlement

The general WTO dispute settlement procedure, as laid down in the Dispute Settlement Understanding, also applies to disputes arising under the TRIMs Agreement (Article 8). Issues relating to the alleged inconsistency of particular measures with the TRIMs Agreement have been raised in a dispute settlement proceeding in which a panel was established in 1997 concerning measures applied by Indonesia in the automotive sector. The TRIMs Agreement has also been referred to in the disputes concerning the European Community import regime for bananas; however, the panels established in those disputes did not make findings under
the TRIMs Agreement. Measures taken by Brazil and the Philippines have been the subject of bilateral consultations pursuant to the TRIMs Agreement.

**Review of the TRIMs Agreement: Investment Policy and Competition Policy as Subjects for Future Consideration**

Article 9 stipulates that, not later than five years after the date of entry into force of the Agreement, the Council for Trade in Goods shall review the operation of the TRIMs Agreement. In this review, consideration is to be given as to whether the Agreement should be supplemented with provisions on investment policy and competition policy. The first WTO Ministerial conference held in Singapore in 1996, established working groups on trade and investment and on trade and competition "having regard to the existing WTO provisions on matters related to investment and competition policy and the built-in agenda in these areas, including under the TRIMs Agreement.

7.2 FAVOURABLE EFFECTS OF TRIMS

The Agreement on Trade-Related Investment Measures (TRIMS) under the WTO regime is another sensitive area in the context of the Indian economy. The very purpose of TRIMS is to monitor investment measures which may have the effect of restricting and distorting trade. It aims at making it free and easy for investment to move across international frontiers, while doing so, it takes note of the development and financial needs of developing countries. The Article relating to the Agreement on
TRIMS mandates national treatment to international investments on trade in goods.

Provisions regarding TRIMS is not different from those which we have incorporated in our New Economic Policy since July 1991, leading to opening the economy for foreign investors, we have already advanced on the past of economic liberalisation and now the taste is to broaden and quicken the pace of economic reforms in the years to come. There is no question of going back to the old restrictive and protective regime, which gave birth to an inefficient high cost economy.

TRIMS restrict the power of the Government to regulate and control foreign investment. Foreign investors have been given advantageous position vis-a-vis our domestic investors. Foreign investors enjoy full freedom to operate with the backing of their Government.

In the post-reform period, foreign direct investment (FDI) is the major form of financial inflows in India, which as increased remarkably. The actual inflow of FDI into India was $154 million in 1991, which increased to about $2 billion in 1995&96. Still, India’s share in the FDI inflow to developing countries is just 2 per cent. Jardine Fleming India has forecast that FDI inflow into the country would touch the $10 billion mark by the year 2000 A.D. This investment banking company has said that India would need an annual inflow of $6.5 to 7 billion to meet the demand supply gap, it is to consistently flow at over 6 per cent over the next five years.
7.3 UNFAVOURABLE EFFECTS OF TRIMS

The new liberalisation policy has undoubtedly attempted to woo foreign investment, but unfortunately there are still many encouraging factors. For instance, foreign investors particularly the Japanese feel that an exit policy for labour is essential for attracting strong capital inflows. Overseas businessman also want to avoid complex legal procedures if factories need to be closed for workers laid off.

Overall, the importance of foreign investment for a developing country like India needs no over-emphasis but the country have bitter experience as they suffered from the dominations of foreign capital and the resultant political arm-twisting. As such, the danger involved in inviting foreign capital indiscriminately cannot be lost sight of.

In the concluding paragraphs based on the questionnaire the researcher has found that no doubt, despite various criticism, these proposals and agreements have been signed world over. Hence we can’t leave it. The only effort which is sincerely needed at this juncture is to find out a way that could minimise the damages and maximise the benefits. And this need sincere and continuous efforts towards the improvement an upgrading of technology.