Chapter 3

QUANTITATIVE RESTRICTIONS

OVERVIEW OF RULES

Article XI of the GATT generally prohibits quantitative restrictions on the importation or the exportation of any product by stating that "No prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any Member . . . ." One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than do tariff measures, and are more likely to distort the free flow of trade. When a trading partner uses tariffs to restrict imports, it is still possible to increase exports as long as foreign products become price-competitive enough to overcome the barriers created by the tariff. When a trading partner uses quantitative restrictions, however, it is impossible to export in excess of the quota no matter how price competitive foreign products may be. Thus, quantitative restrictions are considered to have such a distortional effect on trade that their prohibition is one of the fundamental principles of the GATT.

However, the GATT provides exceptions to this fundamental principle. These exceptions permit the imposition of quantitative measures under limited conditions, and only if they are taken on policy grounds justifiable under the GATT, such as critical shortages of foodstuffs (Article XI:2) or balance of payment problems (Article XVIII:B). As long as these exceptions are invoked formally in accordance with GATT provisions, they cannot be criticized as unfair trade measures.

LEGAL FRAMEWORK

GATT Provisions Regarding Quantitative Restrictions

Quantitative import and export restrictions against WTO Members are prohibited by Article XI:1 of the GATT. GATT provisions, however, provide some exceptions for quantitative restrictions applied on a limited or temporary basis. The following describes in detail quantitative restrictions explicitly provided for in the WTO Agreement.

<u>Exceptions Provided in GATT Article XI</u>

- Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs essential to the exporting WTO Member (Paragraph 2 (a));
- Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade (Paragraph 2 (b)); and
- Import restrictions on any agricultural or fisheries product, necessary to the enforcement of governmental measures which operate to restrict production of the domestic product or for certain other purposes (Paragraph 2 (c)).

Exceptions Provided in Other Articles

Non-Economic Reasons

- General exceptions for measures such as those necessary to protect public morals or protect human, animal, or plant life or health (Article XX);
- Exceptions for security reasons (Article XXI).

Economic Reasons

- Restrictions to safeguard the balance of payments (Article XII regarding all WTO Members; Article XVIII:B regarding developing WTO Members in the early stages of economic development);
- Quantitative restrictions necessary to the development of a particular industry by a WTO Member in the early stages of economic development or in certain other situations (Article XVIII:C, D);
- Quantitative restrictions necessary to prevent sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury (Article XIX);[1]
- Quantitative restrictions imposed with the authorization of the Dispute Settlement Body as retaliatory measures in the event that the recommendations and rulings of a panel are not implemented within a reasonable period of time (Article XXIII:2);
- Quantitative restrictions imposed pursuant to a specific waiver of obligations granted in exceptional circumstances by the Ministerial Conference.[2]

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[1] Quantitative restrictions imposed under the above-mentioned three exceptions should be applied, in principle, in a non-discriminatory manner (Article XIII).

[2] See Chapter 1 for a discussion of the conditions for waivers under the WTO Agreement.

Import Restrictions Through Waiver of Obligations

Article XXV:5 of the original GATT (referred to as the "GATT 1947" in the WTO Agreement) permitted a waiver of obligations thereunder with the consent of the other contracting parties. Once a waiver was obtained, the contracting party was allowed to impose import restrictions.

Waivers granted under the GATT 1947 and still in effect when the WTO Agreement became effective could be extended under the WTO Agreement provided that necessary procedural steps were taken before 31 December 1996. Waivers are also allowed under the WTO Agreement when certain conditions are met, as described in Chapter 1 on the MFN Principle.

Import Restrictions for Balance-of-Payments Purposes

Under Articles XII or XVIII:B of the GATT, a WTO Member may restrict imports in order to safeguard its balance-of-payments (BOP) if the International Monetary Fund (IMF) finds that the country is experiencing BOP difficulties (Article XV:2). When a country is designated to be an "IMF Article VIII country", it is not generally allowed to institute foreign exchange restrictions. Members have rarely been found to be experiencing BOP difficulties.

Figure 3-1 shows recent developments in consultations made in the WTO Committee on Balance-of-Payments Restrictions. While Article XII can be invoked by all Members, Article XVIII:B can be invoked only by Members whose economy can only support low standards of living and who are in the early stages of development.

Figure 3-1

Consultations in WTO Committee on Balance of Payments Restrictions Under Article XII of the GATT

Country	Year of Resort	Most Recent Consultation	Measures	Circumstance
Slovak Republic	1999	Sept. 2000	Import surcharge (3 percent as of September 2000)	A seven percent surcharge was introduced in June 1999. In the consultation held in September, the committee found the Slovak Republic in conformity with its obligations under Article XII of GATT 1994. The rate of the import surcharge was gradually reduced, and the surcharge was to be abolished in 2001.
Romania	1998	Sept. 2000	Import surcharge on most items (4 percent as of March 1999)	The measure was introduced in October 1998. In the consultation held in February 1999, the committee found Romania in conformity with its obligations under Article XII of GATT 1994. The rate of import surcharge was to be gradually reduced and abolished by the end of 2000.

Consultations in WTO Committee on Balance-of-Payments Restrictions Under Article XVIII: B of the GATT

Country	Year of Resort	Most recent Consultation	Measures	Circumstance
Bangladesh	1962	May 2000	Import restrictions on agricultural products	Bangladesh was deemed to have fulfilled its obligations under Article XVIII:B. The committee had accepted the request from Bangladesh to adjourn its consultation until May 2000 on account of its economic crisis caused by flooding. At the end of 2000, Bangladesh submitted a phase-out plan.
Egypt	1963	Jun. 1995	Import restrictions on textiles, clothing, and poultry	Egypt ceased invoking Article XVIII:B effective 30 June 1995. The conditional prohibition on some textile products was eliminated in January 1998. The remaining import restrictions on clothing will be abolished no later than 1 January 2002.
Nigeria	1984	Feb. 1998	Import restrictions on cereal, vegetable oils, wheat flour, plastic materials, minerals, etc.	Nigeria has proposed a plan to eliminate import restrictions by 2005, but in the last consultations held in February 1998, developed countries requested the immediate abolition of measures and as a result, the consultation was suspended.
Tunisia	1967	Jun. 1997	Import restrictions on automobiles	At the June 1997 meeting of the Committee on Balance-of- Payments an agreement was reached on a plan to phase-out restrictions on automotive items. Tunisia's only remaining restrictions, will be phased out in four stages over three years, with full elimination by July 2000.

Under Articles XII and XVIII:B of the GATT, a Member may exceptionally restrict imports in order to safeguard its balance of payments. However, a lack of well-defined criteria with which to judge whether the country has met the conditions of these articles has led to occasional abuse. To correct this, the WTO Agreement has attempted to clarify the conditions for invoking the BOP provisions, as summarized below (see Outline of BOP Understanding). Among other requirements, countries invoking BOP safeguards must now specify products involved and a timetable for the elimination of measures. Nevertheless, even with the new Agreement, there appears to be examples of misuse or abuse of the BOP provisions that have already occurred.

The WTO Committee on Balance-of-Payments Restrictions has recently recommended on several occasions that Members invoking BOP provisions should phase out such measures.

<u>Outline of BOP Understanding</u>

Conditions and Procedures

- Restrictive import measures adopted for BOP purposes may only be taken to control the general level of imports and may not exceed the extent necessary to address the BOP difficulty (Paragraph 4 of the Understanding).
- Members must announce time-schedules for removing restrictive import measures taken for BOP purposes (Paragraphs 1 and 9).
- Wherever possible, price-based restrictions are to be preferred to quantitative restrictions, except in times of crisis (Paragraph 3).
- Cumulative restrictions on the same product are prohibited (Paragraph 3).

Committee on Balance-of-Payments Restrictions

- A Member invoking restrictive import measures for BOP purposes shall enter into consultations with the Committee within four months of adopting such measures and consult in accordance with Article XII or XVIII as appropriate (Paragraph 6).
- The Committee shall report on its consultations to the General Council (Paragraph 13).

The Agreement on Agriculture

The Agreement on Agriculture created substantial, binding commitments in three areas: market access (tariffication), domestic support (reduction in subsidies), and export competition. These commitments were to be implemented over a period of six years from 1995 to 2000. This was accomplished despite the following difficulties: (1) the United States had used price-support policies to boost its grain production and exports in making itself into “the world’s breadbasket”; (2) the European Union's Common Agricultural Policy (CAP) had used price supports, variable import levies, and export subsidies, and consequently transformed the European Union from one of the world's largest importers of agricultural products to one of the largest exporters; and (3) competition for grain exports has intensified as the shortages that existed through the mid-1970s turned to surpluses because of changes in the international supply-and-demand balance.

Provided below is an outline of the final agreement on market access in agriculture. Pursuant to this agreement, countries have brought their quantitative restrictions on agricultural imports into conformity with the WTO Agreement. The integrated dispute settlement procedures of the WTO apply to consultations and dispute settlements under the Agreement on Agriculture.

Outline of the Agreement on Agriculture

Tariffication of Non-Tariff Barriers	All non-tariff barriers are to be converted to tariffs using tariff equivalents (tariffication), (Article 4.2) and concessions are to be made. After conversion, tariffs, in principle, should be equal to the difference between import prices and domestic wholesale prices.
Reduction in Ordinary Tariffs	Over a period of six years, ordinary tariffs, including tariff equivalents, are to be reduced by at least 36 percent overall and at least 15 percent for each tariff line.
Base Period	Domestic and foreign prices for the period 1986-1988 are to serve as indexes used in tariffication.
Standards for Establishing Minimum Access Opportunities	Current access opportunities will be maintained for tariffied products. If imports are negligible, a minimum access opportunity of 3 percent of domestic consumption will be provided in the first year, expanding to 5 percent by the end of the implementation period (Article 4.2 and Annex 5).

Special Safeguards	Additional tariffs may be imposed as special safeguard measures for tarified items, as shown below (in the first case tariffs are hiked 30 percent; in the second case, if a drop of 10-40 percent occurs, tariffs may be hiked by 30 percent for the portion of the drop over 10 percent) (Article 5): 1. Tariffs may be increased by one-third if import volumes exceed the following trigger levels: a) Where market access opportunities are 10 percent or less, the base trigger level shall be equal to 125 percent; b) Where market access opportunities are greater than 10 percent but less than or equal to 30 percent or less, the base trigger level shall be equal to 110 percent; c) Where market access opportunities are greater than 30 percent, the base trigger level shall be equal to 105 percent. 2. If import prices drop more than a certain percentage from the average prices for 1986-1988.
Rules on Export Prohibitions and Restrictions	Any Member instituting a new export prohibition or restriction on foodstuffs shall give due consideration to the effects thereof on the importing Member's food security, notify the Committee on Agriculture, and consult with any other Member having a substantial interest.[3]

[3] Special exceptions (implementation waived for six years) to the tariffication rule are applied to agricultural products that meet several conditions, including the three criteria below. The exceptions are conditional upon set increases in minimum access opportunities (improving those of 3 percent and 5 percent, to those of 4 percent and 8 percent, respectively). The three criteria for special exceptions are:

(1) Imports during the base period (1986-1988) were less than 3 percent of domestic consumption;
(2) Export subsidies are not provided;
(3) Effective production limits are in place.

When exceptions are ended during implementation, the annual rate of increase for minimum access is reduced beginning the next year (from 0.8% to 0.4%).

ECONOMIC IMPLICATIONS

The imposition of quantitative restrictions on imports (including export restrictions by the trading partner and other similar measures also act as quantitative restrictions on imports), through direct restriction on the amount of the foreign product imported enables domestic products to avoid direct competition. Quantitative restrictions also enables the domestic industry, at least for the time being, to secure and expand the profits of the domestic industry producing the product and to stabilize employment within that industry. When quantitative restrictions are employed by a "large country" with enough trade volume to influence international prices, the decline in import volumes may improve the terms of trade, which can increase economic welfare for the importing country as a whole. Quantitative restrictions on imports and the resulting declines in export volumes may convince foreign companies to make direct investments in the importing country and to transfer production there. Such investments have the effect of promoting employment and technology transfers.

At the same time, quantitative restrictions impair access to foreign products enjoyed by consumers and industries in the importing country, and by driving up prices and reducing the range of choice, they reduce the economic benefit for these groups. Although quantitative restrictions may improve the terms of trade for importing countries, they exacerbate the terms of trade for exporting countries, and thereby reduce their economic welfare. The disparity between international and domestic prices caused by quantitative restrictions becomes a "rent" that profits those who own export and import licenses. In the case of export restrictions, the rent shifts overseas; consequently, economic welfare in the importing country is reduced more compared to the case of import restrictions. Import restrictions require that the quantities, varieties, and importers (or in the case of export restrictions, exporters) be determined in advance. This decision is prone to become arbitrary and opaque, causing unfairness among industries and unfairness in the acquisition of export/import licenses. Import restrictions also have the problem that they fail to reflect changes in international prices and exchange rates. The GATT/WTO prohibits all quantitative restrictions, with only a handful of exceptions.

Badly managed maintenance of quantitative restrictions has a detrimental impact on industry — it discourages the companies to make the productivity gains and streamlining that they would have made if they had been exposed to intense competition. Unless quantitative restrictions are clearly characterized as temporary measures with sufficient adjustments made to the industrial structure and sufficient productivity gains achieved during the period of implementation, over the medium and long term they have a high potential to impair development of the industry and harm the economic interests of the restricting country, regardless of what their short-term benefits may be.

RELATIONSHIP BETWEEN THE WTO AGREEMENT AND TRADE RESTRICTIVE MEASURES PURSUANT TO MULTILATERAL ENVIRONMENTAL AGREEMENTS

The WTO Committee on Trade and Environment (CTE) discussed the relationship between the WTO Agreement and trade measures pursuant to Multilateral Environmental Agreements (MEAs) as an issue related to quantitative restrictions.

The GATT generally bans trade restrictions, but allows those which fall under the general exceptions as described in Articles XX(b) (necessary to protect human, animal, or plant life or health) and XX(g) (relating to the conservation of exhaustible natural resources), provided that such measures are not applied in a manner that would constitute a means of unjustifiable discrimination or disguised restriction. Some GATT panel reports, however, have found that measures taken to protect human, animal, plant life or health, or exhaustible natural resources outside the jurisdiction of a regulatory country are not justified by Articles XX(b) or (g), or that measures taken so as to force other countries to change their policies are not justified by Articles XX(b) or (g) (see the section on "Problems of Trade Policies and Measures in Individual Countries" below).

Further, some MEAs, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, authorize trade measures, which are aimed at protection of the environment outside either member countries' jurisdiction or the global environment, or which serve to encourage changes in the environmental policy of non-signatories of MEAs. The finding of the past GATT panel reports would seem to indicate that such measures conflict with the WTO Agreement. The Committee has therefore been examining how to clearly ensure the WTO compatibility of trade measures taken pursuant to MEAs.

One opinion voiced is that Article XX of the GATT (general exceptions) should be amended to expressly permit exceptional treatment for measures taken for environmental protection. Opposing this is the view that allowing waivers on a case-by-case basis is adequate to address the issue. There has also been a proposal to formulate guidelines for the kind of trade measures pursuant to MEAs that would be considered consistent with the WTO Agreement.

In the CTE's report to the Singapore Ministerial Conference in December 1996, the CTE noted that there may be cases in which trade measures pursuant to specifically agreed-upon provisions would be necessary to achieve the objectives of MEAs. The CTE, however, offered no conclusions on how to ensure conformity with the WTO Agreement. Discussions on this topic are still ongoing. .

It is the majority's opinion that unilateral measures for reasons of protecting the environment outside the jurisdiction of one's own country should be strictly avoided when such measures are not based on MEAs.[4]

The Ministerial Declaration produced by the November 2001 Doha Ministerial Conference included an agreement to hold negotiations on the relationship between existing WTO rules and multilateral environmental agreements (MEAs), albeit limited to the applicability of such rules among parties to the MEA in question. Japan will follow negotiations in this area with interest.

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[4] On a related subject, see the discussion in Chapter 10 on the relationship between Eco-labelling schemes and the TBT Agreement, another major subject discussed in the CTE.

PROBLEMS OF TRADE POLICIES AND MEASURES IN INDIVIDUAL COUNTRIES

UNITED STATES

Import Restrictions on Yellowfin Tuna

To reduce the incidental intake of dolphins by yellowfin tuna fisheries, the United States enacted the Marine Mammal Protection Act in 1972, which bans imports of yellowfin tuna and their processed products from Mexico and other countries where fishing methods result in the incidental intake of dolphins. To prevent circumvention, the United States also demands that similar import restrictions be adopted by third countries importing yellowfin tuna or their processed products from countries subjected to the above import restrictions and prohibits imports of yellowfin tuna and their products from countries which do not comply with this demand. Japan, the European Union, and others have been targeted by the US measures.

The United States contends that the above measures are designed to protect dolphins and are therefore measures "necessary to protect human, animal, or plant life or health" (Article XX (b)) and measures "relating to the conservation of exhaustible natural resources" (Article XX (g)). Thus, the United States maintains that these measures are permissible under the GATT as exceptions to the general prohibition of quantitative restrictions.

However, a GATT panel established pursuant to the request of Mexico in February 1991 found in September 1991 that the U.S. measures violate the GATT. (Because Mexico sought resolution through bilateral negotiations with the United States, the report was not adopted by the GATT Council.) The panel report concluded that the U.S. measures violate Article XI as quantitative restrictions and that such restrictions are not justified by Article XX on the grounds that: (1) the measures may not be a necessary and appropriate means of protecting dolphins, and (2) allowing countries to apply conservation measures that protect objects outside their territory and thus to determine unilaterally the necessity of the regulation and its degree would jeopardize the rights of other countries.

In September 1992, a GATT panel was established again at the behest of the European Communities and the Netherlands (representing the Dutch Antilles). Its report, issued in May 1994, also found the U.S. measures to be in violation of the GATT. The report noted that the U.S. import prohibitions are designed to force policy changes in other countries and can only be effective if such changes are made. Because these prohibitions are not measures necessary to protect the life and health of animals nor are they primarily aimed at the conservation of exhaustible natural resources, the report concluded that the U.S. measures are contrary to Article XI:1, and are not covered by the exceptions in Articles XX:(b) or (g).

The report was submitted to the GATT Council for adoption in July 1994, but the United States blocked it. In reaction to this deadlock, the United States and the governments of countries concerned, such as Latin American countries, have agreed to the Panama Declaration, which adopts restrictive measures pursuant to the annual plan prepared in 1992 to regulate the incidental intake of dolphins. In response, the United States enacted the International Dolphin Conservation Program Act (Public Law No. 105-42) in August 1997, which would remove the embargo on yellowfin tuna with respect to imports from those countries that participate in a dolphin conservation program formulated under the law, as long as an enforceable international agreement enters into force the Panama Declaration. The international agreement that has the legal binding force to implement the Panama Declaration—the International Dolphin Preservation Agreement—was adopted in February 1998.

Although the United States is considering lifting the measures, it maintains them at present. Japan should continue to watch to ensure that the United States honours its obligations under the WTO Agreement.

Import Restrictions on Shrimp and Shrimp Products

Under Section 609 of Public Law 101-162 of 1989, the United States began requiring on 1 May 1991 that shrimp fishers provide a certificate showing that their governments have a regulatory program comparable to the United States to protect sea turtles from shrimp nets. Absent such a certificate, imports of shrimp are banned from countries that allow harvest methods of shrimp that may be harmful to sea turtles.

The United States initially limited application of the law to 14 countries in the Caribbean and Gulf of Mexico region, requesting that these countries use the same kind of turtle excluder devices as US shrimp trawlers. In 1993, a U.S. environmental non-governmental organization called the "Earth Island Institute" brought a lawsuit challenging the selective application of the law. In accordance with the United States Court of International Trade (USCIT) decision of December 1995, the United States began applying the law to countries all over the world, including Japan, beginning 1 May 1996. A subsequent USCIT ruling allows shrimp to be imported without a certificate if it is raised on fish farms (for more than 30 days), is harvested by methods that do not involve the use of engines, or is cold-water shrimp (from regions where sea turtles do not live). Otherwise, imports without a certificate were banned, regardless of whether excluder devices were used.

India, Malaysia, Pakistan and Thailand (later joined by the Philippines) responded by requesting consultations pursuant to GATT Article XXII on the grounds that the U.S. measures violate Article XI and are not justified under any provision, including Article XX. Subsequently, at a DSB meeting held in February 1997, a WTO panel was established in response to requests from Thailand, Malaysia, and Pakistan. Japan participated as a third party.

The panel report issued in May 1998 found that the U.S. measures regarding shrimp imports violated GATT Article XI. It also found that measures that attempted to influence the policies of other countries by threatening to undermine the multilateral trading system were not justified, even under GATT Article XX.

The United States appealed the decision in July 1998. Although the Appellate Body did reverse some of the panel's findings in October, it nonetheless found that the U.S. measures were not justified under Article XX. In November 1998, the DSB adopted the report by the Appellate Body, which recommended that the DSB request the United States to bring its measures into conformity with its obligations under the WTO Agreement. Some objections were made during the DSB meeting to the Appellate Body's interpretation of Article XX (because, among other reasons, it left room for the extraterritorial application of domestic measures), but the meeting adopted the report nonetheless.

In response to Malaysia's claim that the United States had not adequately fulfilled the recommendation, a panel was established in October 2000 pursuant to Article 21.5 of the Dispute Settlement Understanding. In June 2001, the panel ruled that the United States was in compliance with GATT Article XX requirements given its continued and sincere efforts to negotiate the Inter-American Convention and other actions. In October 2001, the Appellate Body upheld the panel's findings, confirming the U.S. implementation of the panel recommendation.