*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 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.

#### Exceptions Provided in GATT Article XI

- Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs essential to the exporting WTO Members (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

Exceptions for 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).

| Exceptions for Economic Reasons | |
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| | • 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);<br>• 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);<br>• 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] ;<br>• 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);<br>• Quantitative restrictions imposed pursuant to a specific waiver of obligations granted in exceptional circumstances by the Ministerial Conference.[2] |

*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

[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.

(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 which is 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) | The measure with a 7 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 had been gradually reduced, and the surcharge will 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 will be gradually reduced and abolished at 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 disinvoked Article XVIII:B effective 30 June 1995. Conditional prohibition was eliminated on part of textile products in January 1998. Remaining import restrictions on clothing will also 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 the consultation was suspended. |
| Tunisia | 1967 | Jun. 1997 | Import restrictions on Automobiles | Agreement was reached at a June 1997 meeting of the Committee on Balance-of-Payments restrictions on a plan to phase-out restrictions on automotive items, Tunisia's only remaining restrictions, 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 had met the conditions of these articles 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 the Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 (the "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, examples that may be considered misuse or abuse of the BOP provisions have already occurred.

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

## Outline of BOP Understanding

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| 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).<br>• Members must announce time-schedules for removing restrictive import measures taken for BOP purposes (Paragraphs 1 and 9).<br>• Wherever possible, price-based restrictions are to be preferred to quantitative restrictions, except in times of crisis (Paragraph 3).<br>• 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).<br>• 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 are 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 its largest exporters; and (3) competition for grain exports has been intensified as the shortages that existed through the mid-1970s turned to surpluses because of changes in the international supply-and-demand balance.

Below is the 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. Tariffs after conversion are, in principle, to 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 the minimum of 36 percent overall and the minimum of 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 tariffied items, as shown below (in the first case tariffs are hiked 30 percent; in the second case, due to a drop of 10-40 percent, tariffs may be hiked by 30 percent for the portion of the drop over 10 percent) (Article 5):<br>1. Tariffs may be increased by one-third if import volumes exceed the following trigger levels:<br>a) where market access opportunities are 10 percent or less, the base trigger level shall be equal to 125 percent;<br>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;<br>c) where market access opportunities are greater than 30 percent, the base trigger level shall be equal to 105 percent. |

| | |
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| | 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). 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 measures that are in effect the same as quantitative restrictions on imports), through direct restriction on the amount of the foreign product imported enables domestic products to avoid direct competition and, 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, which will have the effect of promoting employment and technology transfers.

However, quantitative restrictions also impair the access to foreign products enjoyed by consumers and industries in the importing country, and through driving up prices and reducing the range of choice, it reduces economic benefit for these groups. Similarly, quantitative restrictions may improve the terms of trade for importing countries, but will worsen them for exporting countries, reducing 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 the exporters for export restrictions) 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, whatever their short-term benefits.

## 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), providing 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, or 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 2(1)(i)(a) of this chapter).

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 are taken so as 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 the WTO compatibility of trade measures taken pursuant to MEAs can be clearly ensured.

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, but it offered no conclusions on how to ensure conformity. Discussions are still going on.

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]

## PROBLEMS OF TRADE POLICIES AND MEASURES IN INDIVIDUAL COUNTRIES

### 1. 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

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

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)). These measures are thus permissible under the GATT as exceptions to the general prohibition of quantitative restrictions.

However, a panel established pursuant to the request of Mexico in February 1991 found in September 1991 that the US 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 US 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 panel was established again at the behest of the European Communities and the Netherlands (representing the Dutch Antilles). Its report, issued in May 1994, found the US measures to be in violation of the GATT. The report noted that the US import prohibitions are designed to force policy changes in other countries and indeed can only be effective if such changes are made. Since these prohibitions are not measures necessary to protect the life and health of animals exempted by nor primarily aimed at the conservation of exhaustible natural resources, the report concluded that the US 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 to regulate the incidental intake of dolphins, as prepared in 1992. 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 programme formulated under the law, if an enforceable international agreement enters into force to implement the

Panama Declaration. The international agreement that has the legal binding force to carry this out—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 honors 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 programme 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 accordance with the United States Court of International Trade (USCIT) decision of December 1995 with regard to a lawsuit brought by a US environmental non-governmental organization called the "Earth Island Institute" in 1993, 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 were banned without a certificate, regardless of whether excluder devices are used.

In response to this US measure, India, Malaysia, Pakistan, and Thailand requested consultations (the Philippines later joined as well), claiming the US measures violate Article XI and are not justified by any provision, including Article XX. The first round of consultations was held in November, with Japan participating as a third party. Further, at a DSB meeting held in January 1997, Thailand and Malaysia requested the establishment of a panel, but the United States disagreed. Thailand, Malaysia, and Pakistan (India later joined as well) requested again, and the establishment of the panel was decided at the DSB meeting held in February 1997. Japan reserved its rights as a third party.

The panel report issued in May 1998 found that the US measures regarding shrimp imports constituted “prohibitions or restrictions” under Article XI:1, and therefore violated 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 Article XX. The panel recommended the DSB to request the United States to bring the measures in question into conformity with its obligations under the WTO Agreement.

The United States appealed the decision in July 1998. The Appellate Body did reverse some of the panel’s findings in October, but it also found that the US 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. However, to date, the United States has not modified its shrimp import regime so as to bring it into conformity with the US obligations under the WTO Agreement. On 12 October 2000, Malaysia requested the establishment of a panel to adjudicate US compliance with the panel/Appellate Body report pursuant to Article 21.5 of the Dispute Settlement Understanding.

*Export Restrictions on Logs*

To conserve the habitats of spotted owls, the United States regulated the cutting of forests. This in turn, reduced supply on the domestic log market. In response, the United States imposed a permanent ban on exports of logs cut from federally owned forests and implemented export restrictions on logs cut from state-owned forests. From the beginning, the Forest Resource Conservation and Shortage Relief Act of 1990, which took effect in August 1990, regulated the export volume of state logs as follows:

A. States selling not more than 400 million board feet a year are permanently banned from exporting logs cut from state-owned forests.

B. States selling more than 400 million board feet a year are, without exception, banned from exporting three-quarters of all logs cut from state-owned forests.

The sole state satisfying the requirements stated in B is the State of Washington; thus only 25 percent of the logs cut from its state-owned forests were allowed for export. Nevertheless, domestic lumber mills strongly requested to be allowed to maintain or even increase the supply of logs cut from state-owned forests in order to achieve job security and other objectives. In September 1992, the Secretary of Commerce published a notice that totally banned the export of logs cut from state-owned forests from October of that year until the end of 1993.

Further, the Forest Resource Conservation and Shortage Relief Act was amended in June 1993 to totally ban exports from states satisfying the conditions B until the end of 1995 and to ban exports from states that are selling more than their annual sales as of January 1996, or 400 million board, whichever is less.

Nevertheless, the Balanced Budget Downpayment Act enacted in January 1996 and the later Omnibus Consolidated Rescissions and Appropriations Act of 1996 enacted in April extended the total ban until October 1996. In October 1996, the Omnibus Consolidated Appropriations Act of 1997 further extended the terms of the ban until October 1997, which was followed by the public notice of the Department of Commerce in November 1996 that formally extended it one year. Since the amendment of this act in November 1997, the export of logs from forests west of 100 degrees west longitude was permanently banned.

The United States contends that its measures are implemented to protect spotted owls and related forest resources and to relieve the resultant shortage of lumber. It reasoned that the restrictions are permissible “to protect human, animal, or plant life or health” (Article XX (b)) as well as to relieve a shortage of products consumed domestically (Article XI:2(a) and Article XX (j)), both of which exempt certain quantitative restrictions from their ban.

It is unlikely that the above measures are necessary or appropriate to protect the habitats of spotted owls, nor to relieve the shortage of products in the domestic market. Conservation of spotted owls should be accomplished by restrictions on the cutting of forests rather than export restrictions of logs. Although the government imposes restrictions on log exports, it allows domestic sales of logs without any restriction and promotes exports of lumber. Thus, these restrictions should be characterized as quantitative restrictions implemented to protect domestic lumber mills, and as a violation of Article XI that cannot be justified by Article XX. Japan should continue to request that these measures should be brought into conformity with the WTO Agreement.

*Helms-Burton Law (the "Cuban Liberty and Democratic Solidarity Act")*

The US Cuban Liberty and Democratic Solidarity Act bans the import of Cuban products and products with Cuban content from third countries. For further discussion, refer to the relevant discussion in Chapter 14.

*Export Management System*

Under its "International Emergency Economic Powers Act", the United States can restrict exports: 1) for security reasons, 2) for foreign policy reasons, and 3) to cover domestic shortages. These powers were invoked in 1973 to ban or restrict exports of soybeans and soybean products after short supplies within the United States caused prices to soar. The move had serious implications for Japan and the EC. When global wheat supplies were tight and prices soaring in 1974 and 1975, the Act was used to restrict exports to the Soviet Union and Poland.

Trade in primary products like agricultural goods is different from trade in other forms of goods in that international demand is not elastic and for most items there is a large number of importers but only a few specific exporters. There is always the risk, therefore, that these actions taken by exporters will result in major swings in international prices.

The US system allows the exporter to unilaterally restrict exports of agricultural products for foreign policy reasons or to cover domestic shortages. This not only distorts trade—it also prevents importing countries from importing stable supplies of food and therefore raises food security concerns.

*US Re-export Control Regimes*

The US re-export control regime requires permits from the US government for all exports, even from Japan if: 1) the product is US-made, 2) a US-made product is used as a part (in an assembled product), or 3) a US-made product is used as a means or tool of production (in a direct product). These rules by the US government apply even to exports that have gone through the export control procedures of the government of Japan, which adheres faithfully to all international agreements on export controls.

The US re-export control regime has long been considered a potential violation of international law because of its broad—even by US standards—extraterritorial application of domestic laws. There are problems with administration too, since the US re-export control regime lacks adequate transparency. In short, this is a regime that places excessive burdens on the industries of Japan and other countries.

At the WTO Trade Policy Review of the United States (July 1999), the Government of Japan noted the problems with the re-export control regime. Moreover, during US-Japan deregulation talks (1999-2000), Japan has sought the full exclusion from US re-export controls of Japan and other countries that participate in international export control regimes and that have sufficiently effective export controls in place and operating. During the time until exclusion, Japan also has sought reductions in the burdens on foreign exporters from US authorities by the preparation and publication of guidelines on the methods used to calculate content ratio of software and technology, the waiver of permits from US authorities for cases that are covered by the guidelines under the *de minimis* rule allowing foreign exporters to do their own calculations, and other improvements.

## 2. INDONESIA

### *Quantitative Import Restrictions*

Indonesia has maintained an import ban and quantitative restrictions on a variety of items for the protection of domestic industries, including an import ban on automobiles and motorbikes, and import quotas on commercial vehicles. Recent deregulation has caused a year-by-year decrease in the number of covered items. Under the terms of the Decree of the Minister of Commerce No.133 (June 1996), however, Indonesia still places import restrictions on 197 items (HS 9-digit basis, 203 items at the previous proclamation).

Restrictions for the protection of domestic industry have been eased substantially since 1986 through the elimination or curtailment of central buying, and we welcome that development. However, prohibitive high tariff barriers remain on automobile imports, and further bans or restrictions on other residual items cannot be justified by the invocation of exceptions, such as the balance of payment provisions, and are therefore likely incompatible with Article XI.

Exclusive import rights to these products are given to sole agents designated by the government of Indonesia and to a quasi-public corporation, PERSERO.

The system is administered through central buying systems and through administrative guidance given to the above organizations.

In January 1998, Indonesia announced that it had agreed with the IMF to abolish by 2003 restrictions on imports of ships and the other restrictions except for those consistent with the GATT on health, safety, environment, and national security grounds.

### *Export Restrictions on Logs and Lumber Products*

In January 1998, the government of Indonesia, under an IMF agreement, announced that it would be switching from a specific duty on the export of logs and lumber products (calculated according to volume) to an *ad valorem* (calculated according to price) system. It reduced the export duty to 30 percent in April 1998, to 20 percent in the end of December 1998, and to 15 percent in the end of December 1999. It also set export regulations, including export quotas for logs and lumber products.

Under these regulations, the *ad valorem* values are calculated based on export standard prices, which themselves are determined by the government according to methods that remain opaque. The setting of export quotas for logs and lumber products is also likely to be in violation of Article XI, which prohibits restrictions on product exports. Japan should request that these measures be brought into conformity with the WTO Agreement.

## 3. THAILAND

Thailand imposes import restrictions under Article 5 and other provisions of the Export and Import Act of 1979. Restrictions are provided not only to protect national security, public order, and morality, but also for the economic purpose of protecting domestic industries. Specific items are prescribed by Royal Decrees or Notifications of the Ministry of Commerce, with slight changes in the number of restricted items from year to year. The 1995 list of items requiring import licenses, prepared by the Ministry of Commerce, includes 43 items (classification is not according to the HTS system but according to the Ministry classification). However, in line with the Uruguay Round Agreement, the cabinet approved an import liberalization policy for agricultural products on 20 December 1994, which has introduced a tariff quota system for 23 agricultural, forestry, and fishing products before the end of 1995, and import restrictions were accordingly lifted at this time. Even still, restrictions remain in place for 20 items, including machinery, electrical equipment, and used automobiles, about 30 percent of which are for the protection of domestic industries. These measures are likely to constitute violations of Article XI since they have not been justified under any exception, such as the balance of payment provisions.

## 4. CANADA

*Export Restrictions on Logs*

Since 1906, the Province of British Columbia has limited exports of logs and chips, except for surplus stockpiles, in order to protect domestic industries. In 1986, the Province banned exports of high-quality Douglas fir, spruce, and red cedar that do not have permission by the Provincial Secretary of Forestry regardless of whether any surplus existed. Because these quantitative restrictions are designed to protect domestic industry, it is highly likely that they violate Article XI. Although these measures are implemented by a provincial government not directly committed to obligations under the WTO Agreements, the government of Canada must "take such reasonable measures as may be available to it to ensure observance of the provisions", pursuant to Article XXIV:12. Japan should continue to request the government of Canada to take reasonable measures to ensure the WTO consistency of these measures by local governments.

*US-Canada Soft Wood Lumber Pact*

The United States argued before a GATT panel and the US-Canada Free Trade Agreement panel that cheap stumpage in provincial Canadian forests constitutes a government subsidy that makes the price of coniferous products imported into the United States unreasonably low and damages US industry. However, the United States lost both cases because of insufficient evidence. Unsatisfied with these results, the United States pursued the issue through bilateral negotiations, which reached a formal agreement in May 1996.

Under the agreement, the Canadian federal government will levy an export tax on lumber companies for any exports from British Columbia, Alberta, Ontario, or Quebec in excess of a set volume (14.7 billion board feet, or about 35 million cubic meters). The term of the agreement is for five years beginning 1 April 1996, during which US lumber producers agree that the government of the United States will take no trade-restrictive measures against Canada.

The measure will expire at the end of March 2001, and the United States and Canada have initiated discussions on whether to renew the pact. Canada has been arguing for elimination, but the final outcome is still not clear. The United States is not adamant about extension, but it wants changes in provincial lumber sales methods and logging fees. Full-fledged bilateral negotiations have not yet begun. The purpose of this measure, however, is clearly to protect the United States lumber industry and as such it probably constitutes an export restriction that is prohibited under Article 11.1(b) of the Agreement on Safeguards.

## 5. MALAYSIA

### *Import Restrictions Under the Customs Act*

Under the terms of tariff orders and other provisions of Article 31 of the Customs Act of 1967, Malaysia restricts imports of four classes of products: 1) products subject to a total import ban (15 items, including multicolour copy machines and weapons); 2) products that may be imported under certain conditions (38 items, including magnetic video cassette tapes and complete vehicles), supposedly for the protection of domestic industry; 3) products subject to temporary import restrictions in order to protect a domestic industry (15 items, including cement and plastic raw materials); and 4) products subject to conditions as to the manner of importation and procedures requiring quality and safety certifications from competent authorities in Malaysia or the exporting country (40 items, including fertilizers and home electronic appliances). Such import restrictions may be in violation of Article XI since they cannot be justified under any GATT exception, such as restrictions necessary to safeguard the balance of payments.

### *Export Restrictions on Logs*

The Malaysian government, with a view to increasing domestic timber processing in its territory, has banned exports of all logs except for small size wood in 1985. The Malay State of Sabah set an annual export quota of two million cubic meters in November 1996. Sabah also banned the export of Selangan Batu log and sawn timber from August 2000 to ensure adequate supply of Selangan Batu products in the local manufactures. However, the export ban of some logs and sawn timber certified by a qualified log grader permitted by the Sabah Forestry Department was exempted in December 2000. The State of Sarawak also has been implementing export quotas so as to set aside a certain share of logs produced in its territory for domestic processing. These measures, such as the export ban and export quotas, are highly likely to violate Article XI. Japan should continue to request that these measures be brought into conformity with the WTO Agreement.