

**2010 Report on
Compliance by Major Trading Partners
with Trade Agreements
- WTO, FTAs/EPAs, BITs -**

March 2010

International Legal Affairs Office
Multilateral Trade System Department
Trade Policy Bureau

What is the Report on Compliance by Major Trading Partners with Trade Agreements?

1. Outline of the Report on Compliance by Major Trading Partners with Trade Agreements

The Report:

- is an annual report on policies and measures of major trading partners in light of international rules,
- has been published every year since 1992 and the 2010 Report is the 19th edition,
- is prepared by the Subcommittee on Unfair Trade Policies and Measures (Industrial Structure Council), which consists of experts in trade, and is submitted to the Minister of Economy, Trade and Industry; and
- was adopted this year at the April meeting of the Subcommittee and published.

2. Schedule of the Report

April: Adopted and published by the Subcommittee on Unfair Trade Policies and Measures.

May and after: English edition will be prepared and published.

- The Report is distributed to foreign embassies in Japan of more than 50 countries worldwide, as well as the officials of the governments of Japan's major trading partners, the World Trade Organization (WTO) and the Organisation for Economic Co-operation and Development (OECD).

Actions Taken for International Economic Dispute Resolution Using the Report on Compliance by Major Trading Partners with Trade Agreements

Report on Compliance by Major Trading Partners with Trade Agreements

- (1) Experts analyze problems on trade policies and measures of major trading partners based on international rules, including WTO agreements, etc.
- (2) The Report in Japanese and English is published on the website, and the English edition is sent to the governments of each country in order to urge the governments to improve their trade policies and measures on their own initiatives.

METI Priorities

- (1) Select priority issues from among measures the Report addressed.
- (2) Announce actions taken for priority issues and the achievements.
 - * Ensure the accountability of trade policy and promote collaborative efforts of the government and the private sector while sharing information with the industrial sector.

Foreign Governments

Send the English Edition to Each Country

Urge Foreign Governments to Abolish Unfair Measures

Plan (Planning)

- Make analysis based on investigations of measures and rules
- Draw up response policies

Do (Implementation)

- Make approach both at working level and political level
- File a protest with a dispute resolution organization, including WTO

Government

Act (Improvement)

- Revise response policies

Check (Evaluation)

- Check actions taken and resulted improvements

Request the Provision of Information

Report Findings/
Present policies

Industrial Sector

Promote Collaborative Efforts of Government and Private sector

Origin of the Report on Compliance by Major Trading Partners with Trade Agreements

Counter the U.S. "Results-Oriented" Approach and Pursue the Establishment of "Rules-Oriented" Approach

	● <u>Results-oriented Approach (U.S.)</u>	○ <u>Rules-oriented Approach (Japan)</u>
"Unfairness" Standards"	Results of trades	Consistency with rules agreed on internationally
1995 Automotive Consultation	<p>(1) Request numerical targets. Request the revision of the plan for Japanese makers to purchase U.S.-made autos, and an increase in purchase units.</p> <p>(2) Invoke unilateral countermeasures. Propose the imposition of 100% customs duties on imports of Japanese autos based on the Article 301 of the Trade Act</p>	<p>(1) Reject numerical targets. Numerical targets go against the market-based economic mechanism and WTO rules.</p> <p>(2) Request the withdrawal of the proposal. Japan brought a lawsuit with WTO because the proposal was inconsistent with WTO rules (violation of GATT bound duties and violation of prohibition of unilateral countermeasures, etc.). → Japan proceeded with ministerial-level consultations in parallel with WTO procedures. The consultations were finalized in June 1995 and the following was agreed on.</p> <ul style="list-style-type: none"> • Ensuring compliance with international rules such as WTO rules • Elimination of numerical targets <p>Following the above, Japan suspended WTO procedures</p>
Japan - U.S. Film Friction (Fuji versus Kodak case)	Kodak claimed that Kodak held 70% share in the U.S. but only 30% in Japan because of unfair Japanese market practice.	Japan asserted that all Japanese government measures for distribution of films were not a preferential treatment of domestically-made products so did not breach national treatment obligations. → WTO supported Japan's assertions.

1. Growing Issues to be Addressed in East Asia and Southeast Asia

- We investigated 13 countries and territories with the large amount of trades and other factors with Japan and pointed out problems concerning total 128 policies/measures.
- The number of newly listed policies/measures are increasing with as many as 11 (previous year: 5). Of which 7 are East Asian and Southeast Asian issues.

2. Increasing Measures Taken as *Domestic Measures, including Technical Regulation and Safety Regulations

* Measures other than border measures, including ordinary customs duties, anti-dumping duties, and import license restrictions

(Details of New 11 Issues)

- | | | | |
|---------|---|---|--|
| China: | Indigenous innovation product accreditation system
concerning government procurement
“Buy China” (“draft ordinance for the implementation of the
government procurement law”)
Making it compulsory to mount the censorware “Green Dam | } | Japan expressed concerns in
concert with the U.S. and EU
and urged China to improve the
new measures. |
| ASEAN*: | Technical regulations for steel products *Indonesia, Malaysia, Thailand | | |
| Korea: | Making it compulsory to conduct inspections relating to the certification of lithium battery | | |
| Canada: | Preferential treatment clause for local products in the “Buy Ontario” clause (local content) | | |
| Russia: | Raising import duties on some steel products, agricultural machinery, liquid crystal TVs, etc. | | |

3. Analysis of Boarder Measures relating to Climate Changes

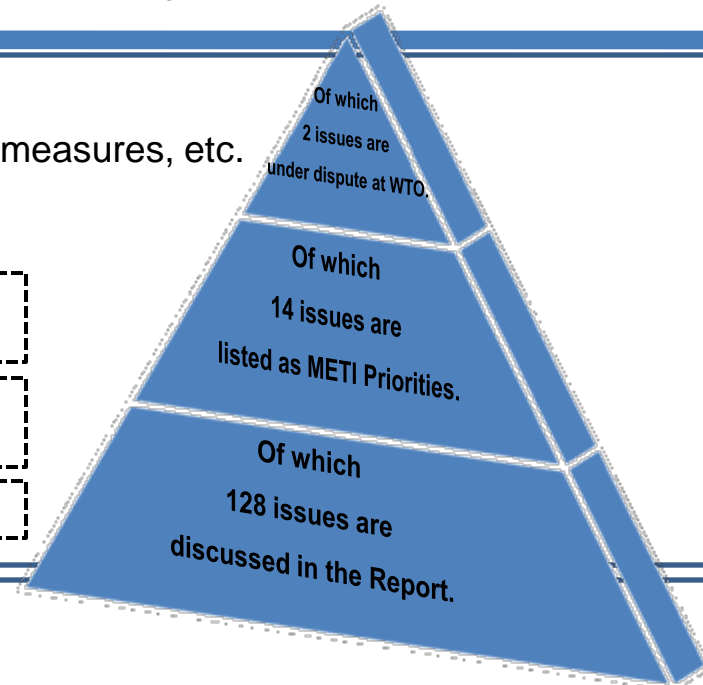
- Outline of measures under consideration in the U.S. and EU
- Major legal questions on the evaluation of the consistency with WTO agreements (conclusions through the institutional designs and the use of institutional system)

Actions Taken by Ministry of Economy, Trade and Industry (METI) for the Report

1. Report on This Year's Achievements

Six issues achieved significant improvements, including abolition of measures, etc.
(Among 15 issues listed as METI Priorities last year and 11 issues newly added in the 2009 Report)

- India: **Special Additional Duties on Imported Products (Example 1)**
- Korea: **Certification of lithium ion batteries (Example 2)**
- Ukraine: **Repeal of Increases in Customs Duties(Example 3),etc.**



2. This Year's Priority Issues

Pending priority issues are 14, remain at a high level.

<Issues Over which Japan Urges the Prompt Implementations of WTO Recommendations>

China	<ul style="list-style-type: none"> ● Prompt Implementation of the WTO Recommendations concerning the Protection and Enforcement of Intellectual Property Rights * This still needs to be on list because the United States and other Members including Japan have yet to confirm China's reporting on the implementation of the WTO recommendations in DS362 panel to the DSB meeting of March 19, 2010..
U.S.	<ul style="list-style-type: none"> ● Halt of Distribution of Duty Revenues Collected through Anti-dumping and Countervailing Duty Measures against Goods Already Passed Custom Inspection to U.S. Companies Based upon the Byrd Amendment ● Prompt Implementation of the WTO Recommendations on the Zeroing Methodology (Example 4) ● Prompt Implementation of the WTO Recommendations on Anti-dumping Measures against Hot-Rolled Steel Products from Japan

METI Priorities – Contained in the Report

<Issues Already Referred to WTO Dispute Settlement Mechanism>

EU	<ul style="list-style-type: none"> ● Elimination of Import Duties Imposed on Products Covered by the Information Technology Agreement (Example 5)
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<Issues, while not having been Referred to WTO Dispute Settlement Mechanism, for which Solutions Continue to be Sought

China	<ul style="list-style-type: none"> ● Correction of Discrimination of National Indigenous Innovation Product Accreditation System and Other Government ● Negotiation on Export Restrictions on Raw (Example 6) ● Improvement with regard to Inappropriate Application of Anti-dumping Measures ● Handling of Counterfeit, Pirated and Other Infringing Products
U.S.	<ul style="list-style-type: none"> ● Securing the WTO-consistent implementation of the “Buy American” Clause Included in the American Recovery and Reinvestment Act of 2009
Canada	<ul style="list-style-type: none"> ● Abolition of the “Local Content Requirement” in the Feed-in Tariff Program
Asian countries and regions	<ul style="list-style-type: none"> ● Handling of Counterfeit, Pirated and Other Infringing Products (ASEAN countries, Korea, Chinese Taipei, Hong Kong and India)
Russia	<ul style="list-style-type: none"> ● Abolition of the Measure to Increase Duties on Vehicles, etc.
Argentina	<ul style="list-style-type: none"> ● Improvement of Application of the Non-Automatic Import Licensing System for Elevators, etc.



Outline of Measures

- In March 2006, the Indian government imposed “special additional duties” (5.07%) on imported products. The duties are refunded after the payment of the state value-added tax.
- Procedures for refund are complex so there have only been a limited number of cases for which a refund was actually provided, resulting in an annual burden of 2 billion yen or greater.
- This issue has continuously been raised as a problem from the 2007 Report on Compliance by Major Trading Partners with Trade Agreements.
- The problem was settled at the end of February 2010 through the efforts of the working level and the industrial sector.

Background

1. Initial Actions and follow-up at Working Level

- This problem is difficult to be settled in EPA negotiations. Accordingly, in July 2009, the Vice-Minister for International Affairs, METI urged the chief director general of the Ministry of Finance of India to repeal the additional duties.
- In October, the Counselor of the Multilateral Trade System Department submitted to the director-general of the Ministry of Finance of India (in charge of revenue) a request to improve the additional duties by presenting problems on consistency with WTO rules.
- Later, as well, the same request was submitted from the Vice-Minister for International Affairs, METI to the ambassador of India’s WTO Representative and from other government officials of Japan to the Ministry of Finance of India.

2. Actions Taken by Industrial Sector

- In December 2009, Nobuo Ohashi, the Chairman of the Japan-India Business Cooperation Committee (then the Chairman of the Board, Mitsui & Co., Ltd.), made a courtesy call on the finance minister of India and submitted a request. The finance minister replied that he would evaluate and respond to the request soon.

3. Solution

- On February 27, 2010, the Ministry of Finance of India announced the abolition of the special additional duties on major items and abolished them the same day. Through this, most problems on products exported from Japan were solved. (However, the duties on automobiles were not abolished. We will continue making efforts to eliminate them.)



Outline of Measures

- In April 2009, the Korean government announced an imposition of certification procedures for safety regulations on lithium ion batteries from July.
- There was a possibility that those procedures would impede the exports from Japan because testing/inspecting organizations that take data for certification were limited to a small number.
- Political-level approach succeeded and Japanese certification organizations were accredited.

Background

1. Initial Actions at Working Level

- In June 2009, the Japanese government official expressed concerns to the Korean for Technology and Standards that the testing/inspecting organizations were limited to a small number of organizations in Korea and there was no sufficient lead time. The Korean Agency replied that it postponed mandatory impositions but made a negative reply that it was difficult to accredit Japanese testing/inspecting organizations.

2. Actions Taken at Political Level

- On June 22, 2009, the Minister of Economy, Trade and Industry expressed concerns about the system in question at a press conference. Also in June, at the meeting of the OECD Council at Ministerial Level, the Minister of Economy, Trade and Industry approached the Minister (ministerial level) for Trade of Korea to settle those problems.

3. Solution

- The Korean government announced on June 23, the following day of the press conference, that 1) it will set a transitional period until the end of December 2009, and 2) a report card for test that is ordered from Korean government-approved overseas testing/inspecting organizations can be used without a separate test in case of imports from outside Korea. In October 2009, the Japan Electrical Safety & Environment Technology Laboratories (JET) was accredited as a Japanese testing organization.



Outline of Measures

- In March 2009, the Ukraine government imposed additional customs duties of 13% on a broad range of products, including automobiles, refrigerators, processing food, textile products, etc.
- Customs duties on automobiles that account for approx 73% share of Japan’s exports to the Ukraine were raised from 10% to 23%, having a negative impact on exports from Japan. (See the Figure on the lower-right.)
- This issue was raised as a problem also in the 2009 Report on Compliance by Major Trading Partners with Trade Agreements.
- The additional duties were abolished based on WTO recommendations in September 2009.

Background

1. Actions Taken at Political Level

- In March 2009, working-level officials urged to abolish the measures to increase duties and also the Senior Vice Minister of Economy, Trade and Industry expressed concerns to the minister of economy of Ukraine as well as the Prime Minister to the Prime Minister of Ukraine.
- Also in June 2009, the Senior Vice Minister of Economy, Trade and Industry issued a letter to the minister of economy of Ukraine.

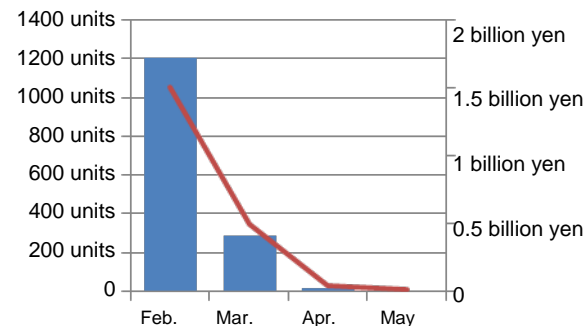
2. Follow-up at Working Level

- In May 2009, Japanese government officials requested an Ukrainian high ranking government officials and legislators to abolish the measures to increase duties.
- In June of the same year, working-level officials made the same request again.
- Later, as well, consultations were held between WTO Member countries and Ukraine, and WTO recommended Ukraine to abolish the measures to add duties by September.

3. Solution

- Based on WTO recommendations, the measures were abolished in September 2009.

Figure: Trend in Exports of Automobiles to Ukraine



Source: Trade Statistics of Japan



Example 4 (Significant Improvement): Zeroing

Outline of Measures

- The U.S. government evaluates foreign dumping through an unjust methodology called “zeroing” and imposes the anti-dumping tax also on trades without the fact of dumping.
- Since 1989, unjust AD duties have been imposed on the Japanese bearing industry under the zeroing methodology and the industry paid additional approx. 2 billion yen every year concerning about a 16 billion yen export to the U.S.

Background

1. Developments at WTO

- In November 2004, Japan brought a complaint against the U.S. with the WTO.
- In January 2007, the WTO Appellate Body concluded the zeroing methodology violated WTO agreements and recommended the U.S. to abolish the zeroing methodology.
- In August 2009, the WTO Appellate Body decided that the U.S. has not complied with WTO recommendations also after the deadline of implementing the recommendations.



2. Future Developments

- Currently, an arbitration procedure, which determines the amount for countermeasures (Retaliatory tariffs on exports from the U.S. to Japan) are being taken. The amount applied for by Japan is US\$248.5 million.



Outline of Measures

- EU participates in the Information Technology Agreement (ITA) and is obligated to apply a zero duty to IT products covered by the Agreement.
- EU was inconsistent with this commitment and imposed duties on IT products which should be free from duty.
 - * EU regards some IT products as those not subject to the ITA products and is imposing tariffs because such products incorporate multiple/advanced functions through technological development.
- For only combined machinery, exports of Japanese companies to EU amount to approximately 300 billion yen, providing a significant impact on them.



Multi-functional printers (MFP)
with copier, facsimile and printer

EU tariff: 0% → **6%**



PC monitor with DVI terminal

EU tariff: 0% → **14%**



Set top box with
recording function

EU tariff: 0% → **13.9%**

Background

1. Developments at the WTO

- On May 28, 2008, Japan requested a consultation along with the U.S., and Chinese Taipei. A panel was established in September.
- In May and July 2009, the panel meetings were held pursuant to the WTO Agreement. We made presentations on the meetings.

2. Future Developments

- Around the summer of 2010, WTO will issue a report to make a judgment on this matter.



Outline of Measures

- The Chinese government issues export licenses for many raw material items, including coke, rare earths, etc. to control parties capable of exports and exportable quantity.
- In addition, China imposes high tariffs on exports (For 2009, coke: 40%, rare earths: 20%, zinc: 15%, etc.).
- These measures may be inconsistent with WTO agreements but China argued that these measures were taken to protect environment and preserve natural resources so fell under exceptions set forth in WTO agreements.

Background

1. Developments at Bilateral Consultations/WTO

- In April 2009, government-private dialogs between Japan and China (Japan-China Rare Earth Conference) were implemented. In May, working and senior official-level negotiations continued, for example the Vice-Minister of International Affairs, METI approached the Vice-Minister and senior official of the Ministry of Commerce of China. In June, the Minister of Economy, Trade and Industry urged the Minister of the Ministry of Commerce to improve the measures to restrict exports of resources at Japan-China high level economic dialogs.
- In October 2009, at the talks between the Minister of Economy, Trade and Industry and the Minister of the Ministry of Commerce, the commerce minister made a commitment that the export restrictions were imposed to preserve environment not targeting at specific countries and so would deliver the Japanese concerns to ministries and agencies concerned in China. Later, as well, the Vice-Minister of International Affairs, METI followed-up, conducting exchanges of opinions with the Vice-Minister of Ministry of Industry and Information Technology of China.
- The U.S. and EU requested that consultations under the WTO Agreement be held. A panel was established in January 2010 based on the request (Japan participated in the proceedings as a third party).

2. Future Developments

- We continue urging China to settle those issues while paying close attention to arguments at the WTO.

Discussions of Climate Change Related Border Measures



June 26

June 28

September 10

September 18

December 7 to 19

COP 15

(No agreement reached on border measures)

U.S. climate change bill passed by the House of Representatives.

U.S. President Obama says the United States must not send protectionist signals.

French President Sarkozy "I will take the lead in introducing a border carbon tax."

Joint letter from French President Sarkozy and German Chancellor Merkel "It should be possible to put in place appropriate adjustment measures targeting the countries that do not implement or fail to support [a climate change] accord."

2009

2010

Jun.

Jul.

Aug.

Sept.

Oct.

Nov.

Dec.

Jan.

June 26

July 3

August 12

October 15

January 12

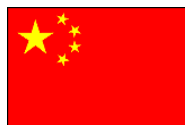
WTO and UNEP issues their report on Trade and Climate Change.

The Ministry of Commerce of China states that carbon tariffs are protectionist measures that violates WTO agreements.

India proposes prohibiting the border measures at the UNFCCC negotiations.

EU Commissioner for Environment Dimas says border carbon taxes should not be adopted to put pressure on developing countries.

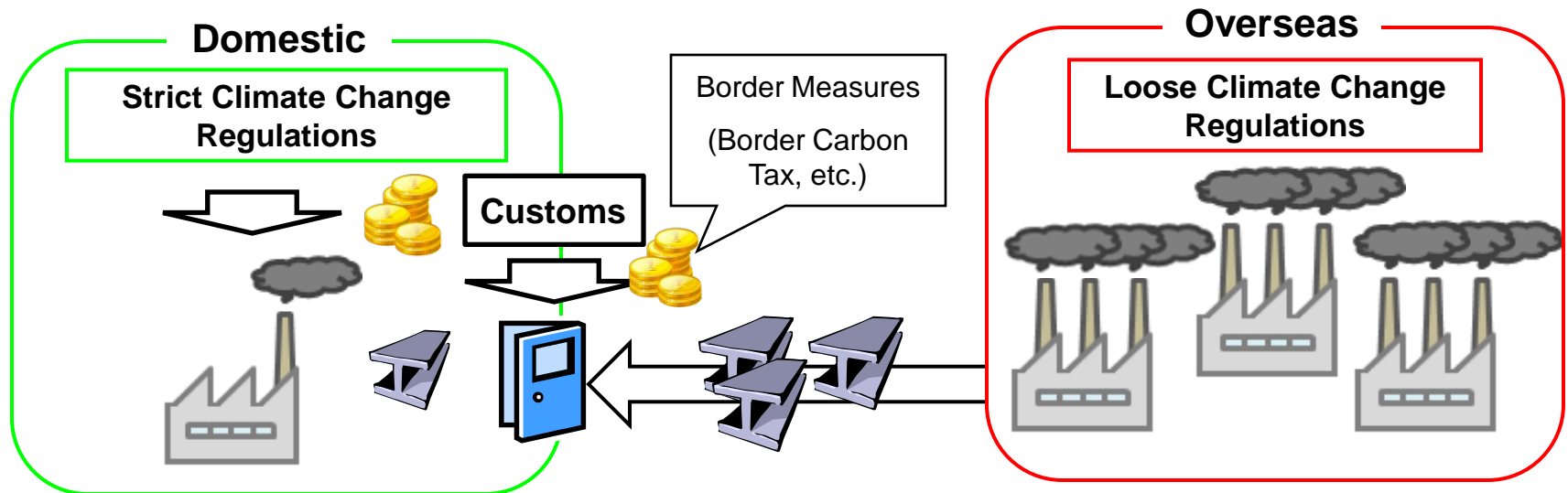
EU Commissioner -designate for Trade De Gucht says he does not agree with carbon emission related border adjustments due o the risk of a trade war.



What are Climate Change Related Border Measures?

- Border measures seek to impose additional burdens at the border on imports from countries that have not implemented an adequate climate change strategy.

(E.g. obligations may be introduced to pay a border carbon tax or to purchase emission rights for imports, in parallel to measures implemented domestically.)











- Border measures prevent negative impacts caused by differences in climate change strategies inside and outside the country.
 - Any burden imposed only on domestic companies can cause a cost increase, leading to competitive disadvantages.
 - If, as a result, manufacturers move from a country with a strong climate change strategy to that with a weak strategy, greenhouse gas emissions will not be reduced.
- Border measures provide incentives for emerging countries to take action against climate change.

Types of Measures to Prevent Carbon Leakage

		Carbon Tax	Emission Trading Scheme
Trade Measures	Imports	Border Carbon Tax	Obligation to Provide Emission Permits for Imports
	Exports	Tax Refund	Refund of Emission Permits?
Other Measures		Tax Exemption	Free Allocation of Emission Permits

* Measures other than the above are possible, e.g. the adoption of compulsory product based environmental standards.

Climate Change Policies and Position on Border Measures of Major Players

Country/Region	Environmental Tax	Emission Trading Scheme	Position on Border Measures
 U.S.	None	Bill under consideration (Passed by the House of Representatives)	○ ? (Congress is in favor, but President Obama has expressed concerns about protectionist signals)
 EU	- (Differs among member states)	Yes	△ (Not ruled out as a future alternative)
 France	Bill delayed indefinitely	- (EU-wide system)	○ (President Sarkozy promoting along with environmental tax)
 Germany	(Only on fuel and electricity)		△ (Agrees with France in general terms)
 UK	(Only on business activities)		× (Not the best alternative)
 Australia	None	Bill under consideration	× (Not the best alternative)
 China	None	None	× × (In total opposition)
 India	None	None	× × (In total opposition)

Major Issues Regarding Consistency of Border Carbon Tax with WTO Agreements

Issue 1: Can carbon tax be collected from imports at the border in excess of tariff limits? (GATT Article 2 and 3)

(Past Examples Consumption tax: ○, Corporation tax: ×, Taxes on energy used for the production of products: Uncertain)

Issue 2: Is "national treatment" satisfied? (GATT Article 3)

Issue 3: Is "most favoured nation" treatment satisfied? (GATT Article 1)

Issue 4: Is it allowed as an exception to the GATT? (GATT Article 20)

- Is it "related to the conservation of national resources"?
- Does it avoid arbitrary or unjust discrimination?

Allowed by
the WTO agreements

Not allowed by
the WTO agreements

↑ "Core Provisions" of GATT
↓ "Exceptions" of GATT