CHAPTER 3

QUANTITATIVE RESTRICTIONS

OVERVIEW OF RULES

1. BACKGROUND OF THE RULES

Article XI of the GATT generally prohibits quantitative restrictions on the importation or the exportation of any product by stating "No prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any Contracting Party.…" One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than tariff measures and are more likely to distort the free flow of trade. When a trading partner uses tariffs to restrict imports, it remains 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 (*i.e.*, quotas), however, it is impossible to export in excess of the quota no matter how price competitive the product may be. Thus, quantitative restrictions are considered to have a distortional effect on trade and 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.

2. LEGAL FRAMEWORK

(1) 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 (see Figure II-3-1). This section details quantitative restrictions permitted under the exceptions.

Figure II-3-1 Exceptions Provided in GATT Article XI

- "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products 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 (or the General Council in between Ministerial Conferences).[2]

(2) Import Restrictions for Balance-of-Payments Purposes

Under GATT Articles XII or XVIII: B, 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 as an "IMF Article VIII country", it is not generally permitted to institute foreign exchange restrictions. Members have rarely been found to be experiencing BOP difficulties.

Figure II-3-2 shows recent developments in WTO Committee on Balance-of-Payments Restrictions consultations. While Article XII can be invoked by all Members, Article XVIII:B can be invoked solely by Members who are in the early stages of economic development and whose economy can only support low standards of living.

Figure II-3-2 Consultations in the WTO Committee Regarding Measures Under Under Article XII and Article XVIII: B of the GATT

Country	Article on which Based	Most Recent Consultation	Details of Measures	Circumstance
Ecuador (2015)	XVIII:B	October 2015	Import surcharges	The Committee on Balance of Payments was notified in April 2015 that import surcharges were being imposed for a period of up to 15

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

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

Country	Article on which Based	Most Recent Consultation	Details of Measures	Circumstance
				months due to a worsening international balance of payments. At present, the matter is under discussion at the BOP Committee.
Ukraine (2015)	XII	June 2016	Import surcharges	The Committee on Balance of Payments was notified in January 2015 that import surcharges were being imposed for a period of one year due to a seriously worsening international balance of payments and a substantial decline in foreign exchange reserves. At a meeting in June 2015, however, member countries' consensus on the measure failed to be gained. Ukraine repealed the relevant import surcharge system on January 1, 2016.
Ecuador (2009)	XVIII:B	June 2009	Import restrictions	The Committee on Balance of Payments was notified in February 2009 that import restrictions were being introduced for a period of one year on 630 items due to a worsening international balance of payments. In June, GATT Article XVIII: B was applied after discussion. The Ecuadorian government promised that these restrictions will be lifted by January 2010.
Ukraine (2009)	XII	September 2009	Import surcharges	The Committee on Balance of Payments was notified that a 13% surcharge would be imposed on imports due to problems with international balance of payments. In discussions in September the same year, however, the Committee on Balance of Payments stated that GATT Article XII could not be applied. The surcharges were lifted as of September 2009.
Bangladesh (1962)	XVIII:B	October 2002	Import restrictions on agricultural products	The Committee approved the plan of the Government of Bangladesh to eliminate BOP restrictions on 11 out of 16 items in January 2001. According to the plan, the restrictions on the 11 items would be fully eliminated by January 2005. With respect to the remaining 5 items, the Committee approved retaining restrictions on: (1) sugar until July 2005, together with the submitted elimination plan (Committee on Balance of Payments, February 2002); and (2) chicken, eggs, paper boxes and salt under Article XVIII:B until 2009 (Committee on Balance

Country	Article on which Based	Most Recent Consultation	Details of Measures	Circumstance
				of Payments, October 2002). Subsequently, Bangladesh notified the Committee on Balance of Payments that it had lifted restrictions on paper boxes (2005), salt (2008) and chicken eggs (2009).

Under Articles XII and XVIII: B of the GATT, a Member may 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 attempted to clarify the conditions for invoking the BOP provisions. These conditions are detailed in the Understanding on the Balance-of-Payments Provisions of the GATT 1994 (the Understanding) and summarized below (Figure II-3-3) in the Outline of BOP Understanding. Among other requirements, countries invoking BOP safeguards must now specify products involved and provide a timetable for their elimination. In 2009, both Ukraine and Ecuador introduced import restriction measures after the Lehman Brothers collapse, and have requested the application of GATT Articles XII and XVIII: B. In the case of Ukraine, however, the introduction was merely temporary, both countries had withdrawn all measures. In 2015, Ukraine and Ecuador introduced import restrictions again. Ukraine failed to get consensus on its measure in the Committee on Balance of Payments. Ecuador's measure is under discussion (as of the end of January 2016).

Figure II-3-3 Outline of BOP Understanding

Conditions and Procedures

- Restrictive import measures taken for BOP purposes "may only be applied to control the general level of imports and may not exceed what is necessary to address the balance-of-payments situation" (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).

(3) Agreement on Agriculture

The Agreement on Agriculture created substantial, binding commitments in three areas: market access (tariffication), domestic support (reduction in domestic subsidies) and export competition. These commitments were to be implemented over a six-year period beginning in 1995. This was accomplished despite the following difficulties: (1) the U.S. use of price-support policies to boost grain production and exports to portray itself as "the world's breadbasket"; (2) the European Union's Common Agricultural Policy (CAP) that 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) increased competition for grain exports as the shortages that existed through the mid-1970s turned into surpluses because of changes in the international supply-and-demand balance.

Figure II-3-4, below, outlines the market access provisions of the Agreement on Agriculture to which each WTO Member must conform its import quota measures. The integrated dispute settlement procedures of the WTO apply to consultations and dispute settlements arising under the Agreement on Agriculture.

Figure II-3-4 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, were to be reduced by at least 36 percent overall and at least 15 percent for each tariff line.
Tariff equivalent quantities	Tariff equivalent quantities that can serve as an index in tariffication (domestic and foreign price difference) shall be, in principle, the difference between a domestic wholesale price and an import price, with a base-year period of 1986 to 1988.
"Current access opportunity" Standards for Establishing Minimum Access Opportunities	Current access opportunities will be maintained for tariffed products. If imports are negligible, however, 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	Under Article 5, additional tariffs may be imposed as special safeguard measures for tariffed items and may be increased either by: (i) one-third for the relevant year only; or (ii) 30 percent, if a drop of 10-40 percent occurs for the portion of the drop over 10 percent and applied to the relevant shipment load only. Additional tariffs may also be imposed where price drops exceed 40 percent. Specifically, under Article 5: 1. Tariffs may be increased by one-third if import volumes exceed the following trigger level: (percentage of market access opportunities in domestic consumption quantities): 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, 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. (Article 5.4) 2. Tariffs may be increased if import prices drop more than 10 percent from the

	average prices for 1986-1988 (Article 5.5).
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] (Article 12(1))

3. *ECONOMIC ASPECTS AND SIGNIFICANCE*

The imposition of quantitative restrictions on imports and exports (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 enable the applicable domestic industry, at least for the time being, to secure market share, expand their profits and stabilize employment. 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 and can increase the economic welfare of 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 of foreign products enjoyed by consumers and consuming industries in the importing country. By increasing prices and reducing the range of choice, the economic benefit for these groups is vastly diminished. Although quantitative restrictions may improve the terms of trade for importing countries, they exacerbate the terms of trade for exporting countries and 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 than under an import restriction scenario. Import restrictions require that the quantities, varieties and importers (or in the case of export restrictions, exporters) be determined in advance. These determinations can be arbitrary and opaque, causing unfairness among industries and unfairness in the acquisition of export/import licenses. In addition, import restrictions fail to reflect changes in international prices and exchange rates. Thus, the GATT/WTO prohibits all quantitative restrictions, with only a handful of exceptions.

Badly implemented quantitative restrictions have a detrimental impact on industry - they discourage companies to streamline productivity that they would otherwise have been required to undertake if exposed to intense competition. Unless quantitative restrictions are clearly characterized as temporary measures contingent upon adjustments made to the industrial structure and upon sufficient productivity gains achieved during the period of implementation, they have a high potential over the medium and long term to impair development of the industry and harm the economic interests of the restricting country, regardless of what their short-term benefits may be.

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[3]Special exceptions (implementation waived for six years) to the tariff rule were applied to agricultural products that meet several conditions, including the three criteria below. The exceptions are conditional upon set increases in minimum access opportunities (increasing 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%).

MAJOR CASES

(1) US - Import Restrictions on Yellowfin Tuna (BISD 39S/155) (GATT Panel) (unadopted)

To reduce the incidental taking of dolphins by yellowfin tuna fisheries, the United States implemented the Marine Mammal Protection Act of 1972 to ban imports of yellowfin tuna and their processed products from Mexico and other countries whose fishing methods result in the incidental taking of dolphins in the Eastern Tropical Pacific. A GATT panel established pursuant to a request by Mexico in February 1991 found that the US measures violate the GATT. The panel report concluded that the US measures violate Article XI as quantitative restrictions and that such restrictions are not justified by Article XX(b) and (g) because: (1) the US 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.

Subsequently, in September 1992, a GATT panel was established to examine the issue again at the request of the European Communities and the Netherlands (representing the Dutch Antilles). In May 1994, the panel found that the US measures violate GATT obligations. The report noted that the US import prohibitions are designed to force policy changes in other countries, and were neither measures necessary to protect the life and health of animals nor primarily aimed at the conservation of exhaustible natural resources. As such, the panel concluded that the US measures violated Article XI and were not covered by the exceptions in Articles XX(b) or (g). This report was submitted, however, to the GATT Council for adoption in July 1994, but was never adopted as a result of opposition from the United States.

(2) US - Import Restrictions on Shrimp and Shrimp Products (DS58)

Under Section 609 of Public Law 101-162 of 1989, the United States began requiring shrimp fishers on May 1, 1991, to provide a certificate showing that their governments maintain a regulatory program comparable to that of the United States for protecting sea turtles from shrimp nets, and banned imports of shrimp from countries that cannot provide such certification. In response to this, India, Malaysia, Pakistan and Thailand initiated WTO dispute-settlement procedures, claiming that the US measures violate Article XI and were not justified under any GATT regulation Article XX exception. The panel found that the US measures regarding shrimp imports violated GATT Article XI, and that measures attempting to influence the policies of other countries by threatening to undermine the multilateral trading system were not justified, under GATT Article XX. The Appellate Body subsequently reversed some of the panel's findings, but it nonetheless agreed with the panel's decision.

(3) Brazil - Measures Relating to Import of Recycled Tires (DS332)

In 2004, Brazil introduced restrictions on the import, sale, transportation and storage, etc., of used tires, and prohibited the import of recycled tires, since it was considered that the storage of used tires was creating a breeding ground for disease-carrying mosquitoes, leading to the incidence of malaria and dengue and resulting in a serious negative impact on the life and health of its citizens. In response to this, the EC claimed that prohibiting the import or restriction of used or recycled tires was an infringement of GATT Article XI: 1, and initiated WTO dispute-settlement procedures. The panel acknowledged the EC's claim and judged the measures an infringement of GATT Article XI. Since Brazil did not appeal this issue to the Appellate Body, it was resolved at panel level. In this case, in addition to the infringement of GATT Article XI, whether or not the infringement was justified under GATT Article XX(b) was also disputed. The Appellate Body ruled that the measure was not justified under GATT Article XX (b), stating that the import prohibitions/restrictions were “arbitrarily or unjustifiably discriminatory” (GATT XX introduction) due to the fact that some exceptions had been allowed (such as the import of used and recycled tires from MERCOSUR countries, etc.)

(4) Argentina - Introduction/Expansion of Non-Automatic Import Licensing System (DS438, 444, 445)

In November 2008, Argentina introduced a non-automatic import licensing system for approximately 400 items, including metal products (elevators, etc.), that would require applications to be submitted along with prescribed information. However, the requirements for issuing a license were unclear and the issuance had been delayed (this system was abolished in January 2013, just before the establishment of a panel, and therefore no deliberation took place under the WTO dispute settlement procedures). Since at least 2009 Argentina also imposed various Trade-related Requirements for the purpose of trade balancing (measures to require business operators to export goods from Argentina of a value equivalent to or greater than the value of the business operators’ imports or to make or increase investments in Argentina) and limited the volume of imports by localization, etc. through unwritten verbal instructions. In February 2012, Argentina established the Advance Sworn Import Declaration (DJAI) system, which required importing business operators to provide specified information, including the description of the product, quantity, price, etc., and obtain approval from the Federal Administration of Public Revenue before initiating import procedures.

The United States, the EU and Japan filed a complaint under the WTO dispute settlement procedures, claiming that the import restriction measures by Argentina were in violation of GATT Article XI: 1. The Panel issued a report accepting the claims of the complainant countries in August 2014. The Panel determined that the Trade-related Requirements were in violation of GATT Article XI: 1 for the following reasons: (1) while the existence of the measure was at issue because the it was implemented through unwritten verbal instructions, the measure, which imposed trade balancing requirements, local content requirements, and investment requirements, etc. to importers in a broad range of industries based on the Argentine policy aimed at limiting imports and reducing trade deficits, was found to exist based on documents published by the government and various evidentiary materials submitted by business operators, including sworn affidavits, etc.; and (2) the measure was trade restrictive because satisfying the requirements was established as a condition for import, and the measure lacked transparency and predictability due to its unwritten nature. The Panel also determined that the DJAI system was trade restrictive and therefore in violation of GATT Article XI:1 because obtaining approvals was established as a condition for import, and the scope of administrative agencies that can participate in the system and terminate/delay the approval procedures as well as the standards for exercising their discretion were unclear. Argentina objected to the Panel’s decision and applied. In January 2015, the Appellate Body released a report upholding the Panel’s ruling.