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 I: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 THE PROTECTION OF BALANCE OF PAYMENTS

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 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

[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
				were being imposed for a period of up to 15 months due to a worsening international balance of payments. Due to April 2016 earthquake, it was notified to the committee that for another year the measures will be extended. In addition, in July 2017, it was reported that the measures were terminated in June of the same year. After a total of seven consultations at the BOP Committee, it did not reach a consensus on whether the import surcharges complied with the WTO rules. In August 2017, the BOP Committee confirmed that the measures were lifted, submitted a report to the General Council that the consultations with Ecuador have ended, and in October of the same year, the report was adopted.
Ukraine (2015)	XII	June 2015	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

Country	Article on which Based	Most Recent Consultation	Details of Measures	Circumstance
				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 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 restriction again, but, without being able to reach a consensus in the BOP Committee, both of them were abolished.

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

[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%).

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.

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 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 various evidentiary materials including documents published by the government and sworn affidavits submitted by business operators etc.,; and (2) according to the jurisprudence, the criteria for determining whether or not a measure falls under import restrictions under GATT Article XI:1 is whether or not such measure has a limiting effect on imports, and thus the measure at issue limited importation because satisfying the requirements was required 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 restricted importation and therefore in violation of GATT Article XI:1 because obtaining approvals was required 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 published a report upholding the panel's ruling.

(5) Colombia - Introduction and Expansion of Non-Automatic Import License System (DS461)

Regarding the compound tariff system for textiles, apparel and footwear introduced by Colombia in January 2013, Panama claimed that the measure is inconsistent with GATT Article II for exceeding the level of concession and requested establishment of the panel in June of the same year. In November 2015, the panel report was published, and the panel acknowledged the inconsistency with GATT Article II, did not accept justification based on GATT Article XX (a) (protection of public morals). In the Appellate Body report published in June 2016, the Appellate Body supported the panel's findings. (For details of the original procedure, see, Part II Chapter 4.2 "Major Cases" (13) for reference)

Later, Colombia revised the tariff measures as of November 2016, and in February 2017, Colombia filed a compliance panel procedure requesting the Panel to confirm that Colombia has fully implemented the original recommendations and findings. On the other hand, in May of the same year, Panama made a counter claim that the following two measures were inconsistent with GATT Article XI:1, etc.: (1) measures requires provision of collateral (guarantees by banks, etc.) at the time of customs clearance for import items, if there is a dispute over the estimation value that are below the average price (the "specific bond" measures), and: (2) the customs regime consisting of various measures that are applicable to import items that are below the standard price, (including the above specific bond measures, written submission obligations, entry point restrictions, etc.) (the "special import regime").

In October 2018, the panel report was published. The panel found that: (1) regarding the specific bond measures, while Panama claimed that the burden of the measures was heavy, and the measures lack stability (because it was subject to conditions by banks, etc.) and are arbitrary, such

claims should be rejected and the measures do not have a limiting effect on import considering that the measures provide only a calculation method of the special bond rather than its amount, that the collateral requirement at the time of customs clearance when there is a dispute over the valuation is an acceptable measure under the WTO law, and that it is common to seek guarantees by banks; and that,(2) for the special import regime, Panama has failed to prove that any component itself or the accumulation of components have a limiting effect on imports, adding that certain requirements for risk analysis are a routine aspect of international trade. Therefore, the panel did not find neither of measures (1) and (2) is inconsistent with GATT Article XI:1.

In addition, the panel rejected all other claims under GATT Article II:1 (concession tax rate), Article X:3 (a) (implementation in a uniform, impartial and reasonable manner), or the various provisions in the Customs Valuation Agreement (determination of the minimum custom value and delaying of the customs valuation decision), and concluded that Colombia has implemented DSB recommendations and findings consistently with the WTO Agreement.

The case was appealed by Panama in November 2018, and the procedure of the Appellate Body is currently pending.

(6) EU – Measures Regarding Energy Industry (DS476)

In the panel report published in August 2018,specific determinations of the infrastructure exemption measures (those exempting the unbundling obligations for certain major infrastructure measures) under the EU Gas Directive were found to be inconsistent with GATT Article XI:1 as, among others, such determinations imposed an upper limit of exit capacity) (see Part II Chapter 12.7 “Major cases” (7): (4) the infrastructure measure under the Gas Directive for details.).

(7) Indonesia - Import Restrictions on Horticultural Products (DS477, 484) and Indonesia - Import Restrictions on Chicken Products (DS480)

From 2013 to 2014, Indonesia introduced new import license systems for (1) horticultural products and meat, and (2) chicken and chicken products, respectively. Both of them basically require that a recommendation letter be issued by the Ministry of Agriculture, which is responsible for of the subject products for import licenses to be issued by Ministry of Commerce, and that the import license or recommendation letter are subject to various conditions. (1) Regarding horticultural products and meat, the United States and New Zealand requested consultations in May 2014 alleging violations of GATT Article XI:1, and (2) regarding chicken and chicken products, Brazil requested consultations in October 2014 alleging violations of GATT Article XI:1. Though these two are different cases, the measures at issue are of the same kind, and contain many common issues,

A. Import restrictions on horticultural products, animals and animal products (DS477, 478)

The panel report was published in December 2016. The complainants first identified individual measures as, among others, (i) limited application windows and validity period for import licenses and recommendations, (ii) rigid import conditions set at the time of application, (iii) the obligation to actually import 80% of the import volume specified in the import license, (iv) the limited period of imports depending on the harvest period, (v) the requirement to have a storage in Indonesia that has a capacity to accommodate the total imports applied; (vi) the limited use, sales, distribution of imported products, (vii) the application of reference prices for certain items, (viii) the requirement to import within 6 months after harvest. In addition, the entire import license regulation (as a whole) consisting of these individual measures, was also identified as a separate measure.

The panel found these measures are inconsistent with GATT Article XI:1 by recognizing a

limitation effect on imports for each individual measure, and for the entire regulation as the component individual measures are interrelated, and exacerbate the limitation effect of each other.

Indonesia claimed justification by GATT Article XX (a) (protection of public morals), (b) (protection of health), and (d) (compliance with laws and regulations). With regard to the aforementioned measures (i) - (vii), the panel found that, even assessing the structure of measures, there is no such linkage between the measures and the regulatory objectives of GATT Article XX (a) and (b) that the measures are "not incapable" of achieving the regulatory objectives of the paragraphs (a) and (b), and thus the relationship between the measures and these regulatory objectives is not recognized. In addition, Indonesia has not been able to identify WTO-compliant laws and regulations under the paragraph (d) (thus, the relationship between the measures and the purpose under paragraph (d) cannot be assessed). Regarding the measure (viii) above, while the relevance to the regulatory purposes under paragraph (b) is recognized, the necessity is not recognized, and the application of the measure constitutes "arbitrary or unjustifiable discrimination" under the chapeau of GATT Article XX. Finally, regarding the overall regulation, the panel found that, even if each paragraph were satisfied, the application of the measure constitutes "arbitrary or unjustifiable discrimination" under the chapeau. Therefore, the panel reject justification for any of the measures.

The complainants also claimed that the same measures are inconsistent with Article 4.2 of the Agricultural Agreement, but the panel exercised the judicial economy and did not make findings. In addition, the panel found that: since GATT Article XI: 2 (c) is a provision specific to agriculture, it does not fall under "general, non-agriculture-specific provisions" under Article 4.2 footnote 1 of the Agricultural Agreement, it cannot be claimed as a justification for the inconsistency with Article 4.2 of the Agricultural Agreement; and that GATT Article XI:2 (c) has been rendered inoperative under Article 4.2 of the Agricultural Agreement, and that it cannot be claimed as a reason for justification against GATT Article XI.

In February 2017, Indonesia appealed only with regards to the relationship between GATT Article XI and Article 4.2 of the Agricultural Agreement, the effectiveness of GATT Article XI:2 (c), and the finding process for justification of reason, (regarding certain measures including the overall regulation, only the chapeau was assessed without making any findings regarding satisfaction of each paragraph). In November 2017, the Appellate Body report was published.

Regarding the relationship between GATT Article XI and Article 4.2 of the Agricultural Agreement, the Appellate Body found that, as far as quantitative import restrictions on agricultural products are concerned, both articles provide the same obligations, and that the panel had discretion over the order of analysis. In addition, the Appellate Body maintained the panel's findings that GATT Article XI:2 (c) (ii) does not provide grounds for justifying measures inconsistent with Article 4.2 of the Agricultural Agreement. On the other hand, the Appellate Body did not make findings as to whether GATT Article XI:2 (c) has been rendered inoperative by Article 4.2 of the Agricultural Agreement for violation of GATT Article XI:1 (for agricultural products) due to .

In addition, as to the finding process of a reason for justification, the Appellate Body found that, as the chapeau of GATT Article XX has the purpose of preventing the abuse of exceptions under the Article, the sequence intended under Article XX is to determine the relevance of the chapeau after finding whether a measure falls under any paragraphs. The Appellate Body further found that, a panel that deviates from such sequence might not necessarily, for that reason alone, commit a reversible legal error, provided the panel has made findings on those elements under the applicable paragraphs that are relevant for its analysis of the requirements of chapeau. However, the Appellate Body concludes that, in the current case, while stating that it would not rule on Indonesia's claims

because such claims would not affect the conclusion, the findings by the panel that concluded the measures could not be justified without assessing whether the measures fall under paragraphs under GATT Article XX is moot.

B. Import regulations for chicken meat and chicken products (DS484)

In this case, a panel report was published in May 2017, and the decision was adopted without appeal. The outline of the panel's findings are as follows.

The import permit list (positive list) measures (items not included in the list cannot be imported) are inconsistent with GATT Article XI:1. While the relevance of the measure to Indonesia's halal-related domestic laws is recognized, the necessity of the measure is not recognized as, among others, the certification system exists as an alternative measure, and the measure cannot be justified under Article XX (d).

Among the measures to restrict on usage, because there are no equivalent measures applicable to domestic products for regulations that allow frozen chicken to be imported only for specific uses such as hotels and restaurants or for sale in the modern market, GATT Article III:4 is not applicable. However, the measures are inconsistent with Article XI:1. And for claims of justification by Article XX (b) (health protection) and (d) (compliance with domestic laws to prevent consumer misconceptions), although the relationship with the policy purpose is recognized, the necessity of the measures is not recognized and hence the justification is rejected as there is doubt about the contribution to the purpose and the level of trade restrictiveness is high. On the other hand, among the measures of usage restrictions, for regulations requiring refrigerated storage, since there are equivalent measures for domestic products, GATT Article III:4 applies, and the measure is inconsistent with GATT Article III:4 as it requires stricter enforcement for imported products than for domestic products (i.e., stricter sanctions regulations, distribution plan submission and compliance obligations apply). Also, since Indonesia cannot explain the reason for distinguishing between domestic and imported products, justification under GATT Article XX (b) or (d) is not allowed.

As for import permit regime measures (i.e., various related procedures are burdensome for the applicant), the measures are inconsistent with GATT Article XI:1 considering that there will be a period during which import cannot be done in practice due to the limited application window and validity period, and that the conditions of import are operated rigidly, etc. Indonesia also claimed justification under Article XX (d) as the measures would enable personnel to be assigned to comply with domestic laws and regulations concerning halal regulations, public health, consumer misconceptions, customs, etc. Although the relationship between the measures and the policy purpose is recognized, as the significance of the information available through the measures is questionable, there is no significant contribution of the measure to the policy purpose. The necessity of the measure and thus justification based on the paragraph (d) is rejected, as there could be an alternative measure that Brazil claims (i.e., human resource allocation based on other information such as export cargo volume).

On the other hand, with regard to the halal label regulations (with respect to the enforcement of label regulations for halal products, domestic products are allowed a grace period and exceptions to small-scale sales), the measures are not inconsistent with GATT Article III:4 since: a grace period is not actually provided for domestic products under the interpretation of domestic law; and the adverse effect alleged by Brazil (i.e., imported frozen chicken is forced to be packaged even after thawing and as a result the label is also forced) is based on another regulation (imported chicken must be packaged and labeled before reaching the traditional market, etc.) and are not recognized as having a genuine connection with the exceptions to small-scale sales.

In addition, as for direct delivery obligations (requirement of direct delivery from the country of origin to Indonesian imports), the measures are not found to be inconsistent with GATT Article XI:1 because the fact that berthing in a third country is prohibited under the interpretation of domestic law is not demonstrated.

In addition, in this case, Brazil claims the existence of an unwritten measure of general prohibition of imports of chicken meat and chicken products, which is (a) composed of multiple individual measures and (b) generated and enforced through their combined operation, and (c) established to achieve a single overriding purpose. Brazil claimed that this measure will continue to be maintained even if individual component measures are changed, and is inconsistent with GATT Article XI:1. Brazil claims that the measure is composed of provisions to prioritize domestic supply over imports for animals and animal products, and the wide discretion of government for import of essential and strategic goods including subject products, in addition to the above import permit list measures, usage of restriction measures, import permit regimes, etc. However, it is not found that this measure exists as a single measure that is distinct from the individual components, and there was no linkage between each individual measure and the single priority objective (self-sufficiency policy) alleged by Brazil. Also, it was not demonstrated that such objective could be implemented in the future through trade restrictive measures. Accordingly, Brazil has not been able to demonstrate the existence of a general prohibition, and the claims regarding this measures cannot not be accepted.