

<REFERENCE>

EXPORT RESTRICTIONS

THE SIGNIFICANCE OF DISCUSSING EXPORT RESTRICTIONS

Export restrictions on natural resources and foodstuffs have been raised recently as a problem issue in terms of international trade, and have been a topic of discussion several times, including in the WTO Doha Round negotiations in the fields of Non-Agricultural Market Access (NAMA) and agriculture. Quantitative restrictions have conventionally focused on imports, but in this section we will particularly look at the export aspect, explaining the disciplines over export restrictions prescribed mainly in the WTO Agreements, in addition to considering current problems and future potential strategies.

PROBLEMS RELATING TO EXPORT RESTRICTIONS

1. CURRENT SITUATION

Similar to restrictions on imports, a number of countries implement restrictions and controls on exports. The following export restrictions can be observed and categorized depending on their objectives.

(1) EXPORT TARIFFS (TAXES) DESIGNED TO GENERATE FISCAL REVENUE

One type of measures, as seen in developing countries where domestic tax collection mechanism is insufficiently developed, involves restricting exports in order to generate fiscal revenue. This usually takes the form of an export tax (export tariffs), which can be effectively levied at borders. (See Chapter 5, “Tariffs” (1) 2. “The function of tariffs”)

(2) EXPORT RESTRICTIONS/EXPORT TARIFFS (TAXES) TO PROTECT DOMESTIC INDUSTRY

Similar to import restrictions, export restrictions are sometimes used not only to generate fiscal revenue from exports, but also to maintain the competitiveness of a country’s industry. For example, restricting the export of a rare resource material and allocating it preferentially for domestic industry allows country to maintain the competitiveness of their domestic industry.

(3) EXPORT LIMITS/EXPORT TARIFFS (TAXES) TO PROTECT DOMESTIC SUPPLY

If a country is short of foodstuffs, export restrictions on food are sometimes imposed, in order to ensure sufficient domestic supply.

(4) INVESTMENT-RELATED EXPORT DEMAND

The execution of certain measures may be required (performance requirement) as one condition of authorizing investment. One example of this is an export performance requirement that seeks a specific level of exports, etc. (for rules relating to investment-related performance requirements, see Part III, Ch.5).

(5) OTHERS (DIPLOMATIC MEASURES, TRADE SECURITY MANAGEMENT, ETC.)

Export restrictions may also be implemented as a diplomatic tool. For example, as an economic sanction measure based on United Nations Security Council Resolution 748, Japan prohibited engaging in the export in or the trade agency for trade in aircrafts and component parts to Libya by revising the Foreign Exchange Order and the Export Trade Control Order. (The sanctions based on the Security Council resolution in question were later suspended after the resolution of the case. The Japanese government thus decided, in principle, not to prohibit or reject such transactions on basis of the Security Council Resolution when applying laws and regulations since then).

Furthermore, export restrictions may be implemented based on United Nations Security Council resolutions, international treaties, and international export control frameworks, with the objective of preventing the proliferation of nuclear and other weapons of mass destruction.

In the past, often exports were voluntarily restrained according to the demands of the importing country. As explained below, however, currently voluntary export restrictions including requests for such restrictions are now clearly prohibited by the Agreement on Safeguards.

Of all the types mentioned above, export restrictions on natural resources implemented by producing countries have the greatest potential to become a vital problem from the point of view of individual countries' economic activities and security, due to the fact that countries with few natural resources, such as Japan, are dependent on imports of natural resources such as crude oil and rare metals from a limited number of countries. Furthermore, export restrictions on food also cause serious problems that directly affect the lives of people in developing countries and other countries that import food by leading to the reduction of food supply to international market and raising international prices.

2. PROBLEMS ARISING WITH INTERNATIONAL RULES REGARDING EXPORT RESTRICTION MEASURES BY VARIOUS COUNTRIES

The chapters of Section 1 of this report comment on the following individual countries' export restriction measures.

a) China (See Part I, Chapter 1: China)

- Export restrictions on raw materials

b) ASEAN (See Part I, Chapter 2: ASEAN)

- Export restrictions, etc. on logs and processed wood (Indonesia)
- Export restrictions on mineral resources (Indonesia)
- Export restrictions on raw minerals (the Philippines)

c) USA (See Part I, Chapter 3: USA)

- Export control systems
- Export restrictions on logs

d) Canada (See Part I, Chapter 10: Canada)

- Export restrictions on logs

e) Ukraine (See Part I, Chapter 13: Miscellaneous Issues)

- Export restrictions on grain

OVERVIEW OF THE EXISTING RULES

1. *OUTLINE OF LEGAL PROVISIONS*

The current WTO Agreement contains provisions relating to export restrictions. The WTO Agreement can be broadly divided into (i) general prohibitions on quantitative restrictions, (ii) provisions relating to the procedures for application, and (iii) other considered regulations. In addition, provisions other than those in the WTO Agreement are outlined briefly below.

2. *GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS*

(1) **GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS (GATT ARTICLE XI)**

This is the major provision setting forth the general prohibition of quantitative restrictions, and it is applicable to exports as well as imports. There are many exceptions for a variety of reasons (see Chapter 3 “Quantitative Restrictions” 1. Overview of rules, and Chapter 4 “Justifiable Reasons”). As set out in this article, the prohibition does not apply to tariffs and other charges, so the prohibition does not apply to export tariffs (there is a debate, however, as to whether export tariffs fall under the scope of tariff concessions as in GATT Article II. Furthermore, high rates of export tariff (to an extent that is considered normally unthinkable, for example an export tariff of 3,000%) can also be pointed to as equivalent to quantitative restrictions as defined in GATT Article XI. On the other hand, it could be argued that such an export tariff does not constitute a quantitative restriction since exports are not prohibited so long as the exporter pays the tax. This issue requires further consideration. The definition/significance of tariffs is discussed in Chapter 5 “Tariffs”.)

Furthermore, there are many exception provisions that apply to exports as well as imports.

<Exceptions to GATT Article XI>

Exception in order to meet shortage in domestic supply of substance in question

- GATT Article XI:2(a) Shortage of food or other vital substance*
- GATT Article XI:2(c): Import restrictions on agricultural and fisheries products

*Article 12 of the Agreement on Agriculture contains the obligation of notification when GATT Article XI: 2(a) (critical shortage of food or other vital substance) is applied, and an obligation to act considerably towards importing countries.

Other exceptions

- GATT Article XX: General Exceptions (in particular, (b) measures necessary to protect human, animal or plant life or health, (g) measures to conserve limited natural resources, (i) measures to guarantee the availability of vital raw materials for domestic processing industries, and (j) measures for the acquisition or allocation of commodities that are in short supply
- GATT Article XXI: Security Exceptions

Figure II-3-1(Ref) Exceptions to the application of GATT Article XI, and application to export measures

	Application to import measures	Application to export measures
GATT Article XI:2(a): Shortage of food or other vital substance	○	○
GATT Article XI:2(c): Import restrictions on agricultural and fisheries products	○	× (Obligation to notify and take consideration, outlined in Article 12 of Agreement on Agriculture, applies, however)
GATT Article XX: General Exceptions	○	○
GATT Article XXI: Security Exceptions	○	○

(2) PROVISIONS REGARDING PROCEDURE FOR APPLICATION

General Most Favoured Nation Treatment (GATT Article I:1)

As with imports, WTO Members must grant most favoured nation status to equivalent commodities from of other Members (see Chapter 1 “Most Favoured Nation Treatment”)

Non-Discriminatory Administration of Quantitative Restrictions (GATT Article XIII)

As with imports, restrictions implemented on exports based on exceptional provisions must, in principle, be applied on a non-discriminatory basis (see Chapter 3 “Quantitative restrictions”, Overview of rules).

Fees and Formalities (GATT Article VIII)

Export fees and procedures must be limited in amount to the approximate cost of services provided. There is also a need to minimize the complexity of the procedure, and reduce and simplify the required documents.

Publication and Administration of Trade Regulations (GATT Article X)

All laws and legal decisions, etc., related to international trade must be published immediately on issue. The publication and execution of trade regulations relating to exports are subject to the discipline of this regulation, as one of the conditional regulations of GATT regarding transparency.

Understanding relating to the interpretation of GATT Article XVII

Defines the notification obligations of entities engaging in state trade.

(3) OTHER SIGNIFICANT REGULATIONS

Agreement on Safeguards (Article XI:3)

Prohibits so-called “grey area measures”, in which the government of an importing country requests or extorts the government of an exporting country to impose autonomous export restrictions or similar actions (see Chapter 8 “Safeguards”).

Agreement on TRIMS (Article II:1)

Prohibits investment related to trade that infringes GATT Article III (National Treatment) or Article XI. A typical example would be export-performance requirements (see Chapter 9 “Trade-related Investment Measures”).

Figure II-3-2(Ref) Comparison between provisions regarding importing and exporting countries with respect to agricultural products

	Import side	Export side
Tariffs	<ul style="list-style-type: none"> ● Concessions to import tariffs on all agricultural products ● Required to reduce through UR agreement ● Safeguard measures in line with rules may be used to raise tariffs 	<ul style="list-style-type: none"> ● No concessions regarding export tariffs ● No requirement to reduce export tariffs ● No provisions, so new tariffs and raising of tariffs unregulated
Quantitative restrictions	<ul style="list-style-type: none"> ● Import quantitative restrictions must in principle take the form of tariffs ● Minimum import opportunity (“Minimum access”) defined 	<ul style="list-style-type: none"> ● New export restrictions can be set based on the following conditions <ol style="list-style-type: none"> 1. Consideration of the impact measures may have on food security in the importing country 2. Prior notification, and agreement with the importing country if required

Figure II-3-3(Ref) Rules by types of export measures

Types of export measures	Rules under the WTO Agreements
Measures based on the function of revenue source (in particular, the imposition of export tariff)	<p>[Principle] No particular provision of prohibition.</p> <p>[Note] Rules under the commitments upon WTO accession may apply in some cases. There is controversy as to whether this type of measure is subject to tariff concession under GATT Article II.</p>
Measures for protection of domestic industry	<p>[Principle] Prohibited under GATT Article XI.</p> <p>[Exception]</p> <ul style="list-style-type: none"> ● GATT Article XX (General Exception) (i) Measures to guarantee the availability of vital raw materials for domestic processing industries
Measures to address the shortage in domestic supply of goods	<p>[Principle] Prohibited under GATT Article XI.</p> <p>[Exception]</p> <p>(A) Exceptions to address the shortage in domestic supply of goods</p> <ul style="list-style-type: none"> ● GATT XI:2(a): shortage of food or other vital substance ● GATT XI:2(c): import restrictions on agricultural and fisheries products

	(B) Other exceptions <ul style="list-style-type: none"> ● GATT Article XX (general exceptions) (g) measures to conserve limited natural resources (i) measures to guarantee the availability of vital raw materials for domestic processing industries (j) measures for the acquisition or allocation of commodities that are in short supply
Measures relevant to investment	Prohibition of export performance requirements etc., under the TRIMS Agreement Article 2.1.
Measures as diplomatic means	[Principle] Prohibited under GATT Article XI [Exception] <ul style="list-style-type: none"> ● GATT Article XXI (national security exception) ● “Grey area measures” under Agreement on Safeguards Article XI:3

3. OTHER PROVISIONS

(1) WTO ACCESSION NEGOTIATIONS

Since the establishment of the WTO, countries negotiating membership have been required to make certain promises relating to export restrictions and are required to strictly observe certain obligations regarding these on admission to the organization.

According to the OECD report TD/TC/WP (2003) 7/FINAL: ANALYSIS OF NON-TARIFF MEASURES: THE CASE OF EXPORT RESTRICTIONS), promises relating to export restrictions can be classified into the following categories.

- I. Promise or confirmation of strict adherence to the existing WTO Agreement (regulates adherence, regarding export restrictions, to GATT Articles XI, XII, XIII, XVII, XVIII, XIX, XX, XXI, the Agreement on Agriculture and the Agreement on Safeguards).
- II. Emphasis on transparency requirements in GATT Article X
- III. Provisions relating to commodities of interest to Member countries (ex. Mongolia: cashmere wool and non-ferrous metals; Albania: hides and leather; Moldova: wine)
- IV. Additional requirements beyond the provisions of GATT (ex. China is required to make annual notifications of non-automatic export restrictions, export tariffs can only be imposed on commodities on which China reserved its rights in the Accession Protocol)

<Figure II-3-4(Ref)> Outline of provisions relating to export restrictions on accession to the WTO

Ecuador (acceded 1996)	I. Obligation exceeding those in the WTO Agreement <ul style="list-style-type: none"> ● Elimination of export restrictions unjustified within the WTO Agreement, which were not declared in the accession Working Group Report at time of accession.
Bulgaria (acceded 1996)	I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement

	<ul style="list-style-type: none"> ● Export tariffs applied in order to reduce critical shortage of food and critical poverty of supply to domestic industry. These tariffs to be applied consistent with the WTO Agreement subsequent to accession. ● Subsequent to acceding to the WTO, export tariffs to be minimized, or their size and scope of application to be changed, and details to be published in official publication.
Mongolia (acceded 1997)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● After acceding to the WTO, applicable conditions for licensing cessation of imports/exports or limiting trade volumes to be adapted to conditions in the WTO Agreement. <p>III. Provisions relating to commodities of interest to existing Member countries</p> <ul style="list-style-type: none"> ● Maintain export prohibition measures on cashmere wool until 1st October 1996 (subsequent introduction of 30% ad tax value export tariff) ● Elimination of export license conditions for iron and non-ferrous metals by January 1997 <p>II. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● Progressive reduction in export tariffs, with elimination within 10 years of acceding
Panama (acceded 1997)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● After acceding to the WTO, applicable conditions for licensing cessation of imports/exports or limiting trade volumes to be adapted to conditions in the WTO Agreement. ● Subsequent to accession, export controls may only be applied where they are consistent with regulations in the WTO Agreement
Republic of Kyrgyzstan (acceded 1998)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Subsequent to accession, export license controls to be brought in line with conditions in GATT Article XI
Latvia (acceded 1999)	<p>IV. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● Publish all (export) tariff changes in official publication ● Abolish all export tariffs, other than those applied to antiquities, covered by regulations in Appendix 3, by 1st January 2000
Estonia (acceded 1999)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Ensure complete alignment of export control conditions still in existence on accession with the WTO Agreement regulations <p>II. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● Subsequent to acceding to the WTO, minimize the application of export taxes and bring those still applied in line with regulations in the WTO Agreement and with details published in official publication. Changes to the size and scope of application to be published in official publication.
Jordan (acceded 2000)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Ensure complete alignment of export control conditions still in existence on accession with WTO Agreement regulations
Georgia	<p>I. Confirmation of strict adherence to obligations related to export</p>

(acceded 2000)	<p>restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Ensure complete alignment of export control conditions still in existence on accession with WTO Agreement regulations.
Albania (acceded 2000)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Ensure complete alignment of export control conditions still in existence on accession with WTO Agreement regulations ● Subsequent to accession, only export restrictions consistent with the regulations of GATT Article XI may be applied <p>III. Provisions relating to commodities of interest to existing Member countries</p> <ul style="list-style-type: none"> ● Decision taken on 16th September 1999 to abolish export prohibitions on designated leather and other commodities
Oman (acceded 2000)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Ensure complete alignment of export control conditions still in existence on accession with WTO Agreement regulations
Croatia (acceded 2000)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Subsequent to accession, only export restrictions consistent with the regulations of the WTO Agreement may be applied <p>IV. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● As of January 1999, all export allocations, export prohibitions and other forms of export restrictions abolished
Lithuania (acceded 2001)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Subsequent to accession, only export restrictions consistent with the regulations of GATT Article XI may be applied
Moldova (acceded 2001)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● All new policy mechanisms introduced in the future to be completely in line with regulations in the WTO Agreement <p>II. Provisions relating to commodities of interest to existing Member countries</p> <ul style="list-style-type: none"> ● Interim export restrictions imposed on non-bottled wine, designed to improve the image of Moldovan wine, to be lifted
China (acceded 2001)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● All customs fees and levies, as well as domestic taxes and domestic surcharges (including additional value tax) to be brought in line with GATT ● Strict adherence to regulations in the WTO Agreement with regard to non-automatic export permits and export limits ● Align external trade laws with GATT conditions ● Subsequent to accession, only export limits and permits justified by the regulations GATT may be applied <p>IV. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● Abolition of all levies and surcharges on exported goods, except where the accession agreement specifically details otherwise or the charge is in line with the regulations of GATT Article VIII. (Where tariffs are levied, upper

	<p>limits for tariffs must be set.)</p> <ul style="list-style-type: none"> ● The list of export permits/accredited supervising agencies to be kept up to date, and changes to be published in an official publication ● Remaining non-automatic export limits to be notified to the WTO on an annual basis, and to be lifted other than where they are justified based on the WTO Agreement or China's accession agreement
Chinese Taipei (acceded 2002)	No additional obligations in addition to those relating to export restrictions in the WTO Agreement
Macedonia (acceded 2003)	No additional obligations in addition to those relating to export restrictions in the WTO Agreement
Armenia (acceded 2003)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Export license conditions and other export control conditions to be made consistent with regulations in the WTO Agreement
Cambodia (acceded 2004)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Subsequent to accession, export measure laws and regulations, and their application, to be made consistent with regulations in the WTO Agreement
Nepal (acceded 2004)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Surcharges, fees, etc., occurring in relation to exports to be made consistent with the WTO Agreement ● Export license conditions and other export control conditions to be made consistent with regulations in the WTO Agreement
Saudi Arabia (acceded 2005)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● All laws, regulations, conditions and surcharges/taxes relating to exports, as well as export control conditions remaining at time of accession, to be made consistent with WTO obligations. <p>IV. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● No export control measures to be maintained, other than those regarding certain exceptional commodities (plants, bred horses and subsidized wheat/flour) ● No controls on the export of wheat/flour, other than subsidized products, and export licenses to be approved ● Any trading company or manufacturing company to be able to apply for an export license without paying a fee ● Reasons for the automatic/non-automatic approval of export licenses to be detailed in appendix ● Export license application procedures to be published on website, and any changes to the details of export restrictions to be published in official publication ● Export prohibitions on scrap metal to be abolished before accession ● Conditions for approval of re-exports of food to be abolished on accession (re-export of subsidized foods to depend on the repayment of the subsidy value) ● Export tariffs may only be applied to leather (level of tariff to be specifically regulated) <p>- Iron and steel scrap may not have export tariffs imposed.</p>

Viet Nam (acceded 2007)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Export restrictions to be brought completely in line with regulations in the WTO Agreement
Tonga (acceded 2007)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Export restrictions to be brought in line with regulations in the WTO Agreement
Ukraine (acceded 2008)	<p>I. Confirmation of strict adherence to obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● All future export license requirements, export restrictions, quantitative export restrictions and other measures to be consistent with the WTO Agreement ● Export license fees to be made consistent with GATT Article VIII, both now and in the future <p>IV. Obligation exceeding those in the WTO Agreement</p> <ul style="list-style-type: none"> ● No application of staged reduction, increase or other effect equivalent to an increase in export tariffs relating to designated commodities (except in cases justified by GATT exceptions) ● Publication of all changes in policy relating to the application of existing export tariffs ● No application of minimum export price restrictions subsequent to accession ● Abolition of existing export restrictions relating to non-ferrous metals, precious metals other than gold or silver, precious stones other than diamonds, or cereals ● Revision of quantitative export restrictions applied as part of trade bail-out decision process
Russian Federation (acceded 2012)	<p>I. Confirmation of compliance with obligations related to export restrictions in the WTO Agreement</p> <ul style="list-style-type: none"> ● Export restrictions such as quantitative export restrictions and export licenses, etc. to be brought in line with regulations in the WTO Agreement ● Export tariffs to be eliminated or reduced in accordance with the specified schedule

(2) Provisions in Bilateral/Multilateral Agreements

Some provisions relating to export restrictions have also been defined in bilateral or multilateral agreements. A look at Japan's EPAs shows the following regulations (for details, see Part III, Chapter 1 "Issues on Trade in Goods", 4. Related Provisions). Furthermore, the Japan-Brunei EPA, which features the first chapter relating to energy ever included in a Japanese EPA, regulates implementing export restrictions in existing contracts, and requires notification in writing when such measures are introduced. Additionally, the Japan-Indonesia EPA and the Japan-Australia EPA include a chapter on energy and mined resources, as well as defining a range of requirements in relation to export and import restrictions (see Part III Chapter 7 on "Energy").

- Export tariffs

Prohibitions on export tariffs	Japan-Singapore EPA, Japan-Mexico EPA, Japan-Chile EPA (with conditions attached), Japan-Brunei EPA (in relation to new tariffs only),
--------------------------------	--

	Japan-Switzerland EPA, Japan-Peru EPA, Japan-Australia EPA
Working towards abolition of export tariffs	Japan-Philippines EPA

- **Export limits**

Reconfirming GATT regulations	Japan-Mexico EPA, Japan-Chile EPA
-------------------------------	-----------------------------------

(3) Other Provisions (Multilateral Agreements (Basel Convention, Montreal Protocol, Washington Convention))

The Basel Convention (the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal), the Montreal Protocol (the Montreal Protocol on Substances that Deplete the Ozone Layer) and the Washington Convention (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) include provisions relating to export restrictions.

In addition, “International Commodities Agreements” also have provisions to regulate export regulations. International Commodities Agreements aim to facilitate the sustainable development of emerging economies, through ensuring a stable supply of primary commodities to consumer countries, and avoiding price crashes or sudden fluctuations. Japan is party to several such agreements. Additionally, in the WTO Agreement, GATT Article XX(h) regulates “measures undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the contracting parties and not disapproved by them or which is itself so submitted and not so disapproved”, thereby acknowledging such agreements in GATT’s General Exceptions. (To date, however, no such procedures have been approved).

VALIDITY OF CURRENT PROVISIONS, AND FUTURE RESPONSE

1. VALIDITY OF CURRENT PROVISIONS

The current WTO Agreement contains a certain level of provisions regarding export restrictions. However, it also contains a range of exceptional provisions; based on awareness that the provisions are not always valid with regard to various export restrictions currently in effect, a debate is underway regarding the strengthening of these provisions. Since there are so many complexities to formulate effective rules export restrictions valid among multiple states (such as individual state sovereignty, the retention of resources, environmental conservation, domestic industry protections, and fiscal aspects (generation of income through tariffs), etc.), interested states (usually importing countries) individually implement provisions (in addition to the WTO provisions) to regulate export restrictions by establishing specific rules (promises made on acceding to the WTO or bilateral agreements) in the existing circumstances.

2. THE IMPACT OF EXPORT LIMITS (INCLUDING ECONOMIC PERSPECTIVES)

Various countries’ export limits have been relaxed in comparison with earlier times. The fact, however, that no valid provisions exist regarding export restrictions, means that restrictions are

introduced and abolished in response to economic conditions, making it difficult for companies to forecast developments. This may, in some cases, be unavoidably restricting the further progress of free trade and investment.

In the first half of this chapter, which deals with quantitative restrictions, as stated in “(3) Economic Aspects and Significance”, there is a strong possibility that quantitative restrictions (including those on exports) may in fact damage the long-term development and profitability of the industry in question. Furthermore, since export quantitative restrictions, as with those imposed on imports, specify in advance the quantity and type of exports, as well as the business or company involved, these decisions may become arbitrary and unclear.

In addition, export restrictions cause countries to hesitate regarding the specialization of industries in which they have high productivity, and to protect its own manufacturing industry. In particular, in recent years there has been a trend of resource nationalism mainly among emerging countries to take actions to retain their mineral resources. This trend will result in obstacles to free trade, which raises the standard of welfare throughout the world.

3. FUTURE RESPONSE

Japan emphasized the importance of the transparency of procedures relating to the setting of export limits for multilateral trade at the NAMA negotiations in the Doha Round of Negotiations (NAMA negotiations NTB Proposal: TN/MA/W/15/Add.4/Rev.5; joint proposers Taiwan, Korea, Ukraine, USA). Additionally, Japan has emphasized the need to strengthen regulations relating to export restrictions and limits, and export tariffs, which threaten the stability of food supplies, at agricultural negotiations. Furthermore, at OECD Trade Committee meetings, Japan has continually emphasized the need for policy discussion regarding the “transparency of regulations relating to trade and investment”. In addition, Japan will negotiate with each country to strengthen disciplines on export regulations in individual EPAs, etc.

As stated in the introduction to this report, “In cases where international law has not existed until now it is necessary to establish such”, and that “this position is the basic one taken within this report”. As was also discussed in the introduction, however, when considering models for new international laws, it is necessary to ensure that “socially beneficial systems are selected, based on an accurate view of the implications of alternative rules and mechanisms to the economic welfare of each state”.

MAJOR CASES

(1) Japan - Semiconductors (minimum price) (BISD 35S/116)

During the 1980s, based on the Japan-USA Semiconductor Agreement, Japan implemented minimum price restrictions on semiconductors it exported to regions other than the USA. (The export permit system was based on its Foreign Exchange and Foreign Trade Law, introduced with the objective of implementing COCOM restrictions, having been used since November 1986 for the monitoring of semiconductor export prices. Furthermore, at the time, Japan had also implemented semiconductor export monitoring measures, in order to prevent dumping, and was repeatedly giving guidance to exporting businesses not to implement dumping). The EEC (as it was then) stated that Japan’s minimum export pricing restrictions on semiconductors were equivalent to an export restriction defined in GATT Article XI. Japan pointed out that the price restriction on exports of semiconductors was not legally binding, and that its measures were not within the scope

of GATT provisions, However, the Panel considered that even though the export restrictions were not implemented according to legally binding measures, but rather according to measures comprising unofficial guidance from government, they were within the scope of GATT Article XI:1, and they were an infringement of GATT Article XI.

(2) Argentina - Leather (DS155)

Argentina's leather industry organization was granted pre-export customs agency rights over leather and other goods, and regulations were published regarding the procedures for leather and other products. According to these procedures, it was regulated that a domestic leather industry representative must accompany all pre-loading export inspections, and that the actual inspection must be implemented by a domestic leather industry representative.

The EU claimed that the presence of a domestic leather industry representative during export customs procedures was in fact equivalent to an export restriction, constituting an infringement of GATT Articles X:3(a) and XI:1. The panel judged that the measure was an infringement of GATT Article X:3(a), which requires that laws, regulations and other measures must be implemented fairly and rationally in respect to trade, and that the procedures that regulate the export restrictions were covered by GATT Article XI. (However, since the EU had not proven that the intervention of a domestic leather industry in customs procedures was an infringement of GATT Article XI, the claim that this infringed Article XI was denied). Furthermore, the Panel ruled that although the procedure itself was not a direct restriction of exports, it could have the indirect effect of restricting exports, and was therefore an infringement of GATT Article XI. It added that the fact that the domestic industry and the department responsible for export restrictions could be considered to be in a "collusive relationship" meant that there were indeed problems in reconciling the situation to GATT.

(3) US - Measures that Utilize Export Limits as Subsidies (DS194)

Canada alleged that Section 771(5) of the 1930 Tariff Act (revised by the Uruguay Round Agreements Act (URAA)), as interpreted by the Statement of Administrative Action accompanying the URAA, the Commerce Department's explanation of final rules with regard to countervailing duties, and the US administration's handling of export controls were contributing financially to other countries' export limit measures, and were in infringement of the Agreement on Subsidies.

The Panel indicated that in an abstract way, export limits did not constitute subsidies as defined by the Agreement on Subsidies, and that in this case, the export controls did not meet the conditions given in Article I:1(a)(1)(iv) of the Agreement on Subsidies of having been consigned or instructed by the government, and that for this reason they could not be considered financial contributions as defined by Article I:1(a) of the Agreement on Subsidies.

(4) China - Measures relating to the Export Restrictions on Nine Raw Materials (DS394, 395, 398)

The US/EU had continued discussions relating to the fact that US/EU manufacturers were finding it difficult to source raw materials, but failing to find a satisfactory solution, requested a consultation with China at the WTO in June 2009 regarding China's export limits on raw materials. (Mexico also requested a consultation in August of the same year). Subsequently, in November 2009, the US, EU and Mexico, having consulted with China in both July and September but not having come to a solution, trilaterally requested the formation of a WTO panel. The problem highlighted by the three countries was the quantitative restrictions and export tariffs levied by China on nine substances (bauxite, coke, fluorite, magnesium, manganese, silicon carbide,

silicon metal, white phosphorus and lead), and on processed or semi-processed products that incorporated these raw materials. They claimed that the measures infringed the general prohibitions on quantitative restrictions contained in GATT Article XI, and of China's accession agreement with the WTO (which contained promises to abolish export tariffs and establish an upper limit on export tariff rates). In response to this, China claimed that the measures were intended to protect the environment and conserve exhaustible natural resources, and were therefore consistent with WTO rules. In July 2011, the panel report ruled that China's export restrictions and export duties were not consistent with the WTO agreement. Although China appealed in August of the same year, the Appellate Body report, issued at the end of January 2012, overall supports the panel's decision.

The RPT (reasonable period of time) set for this case was December 31, 2012, and since January 2013, the export tax on 7 items -- bauxite, coke, fluorspar, magnesium, manganese, silicon metal, zinc -- was eliminated. Also, the tax rate on yellow phosphorus was changed to fall within the scope set forth in the Accession Protocol. In addition, the export quota for bauxite, coke, fluorspar, silicon carbide and zinc were removed.

(5) China - Measures relating to the Export Restrictions on Three Items including Rare Earths (DS431, 432, 433)

Japan had requested China to remove its export restrictions (export duties, quantitative export restrictions and restrictions on rights to trade) on rare earths, tungsten, and molybdenum through bilateral and multilateral consultations, but the issue had not been resolved. Therefore, together with the US and the EU, Japan requested WTO consultations in March 2012. However, no agreement was reached in the consultations, and thus three countries requested the establishment of a panel in June of the same year. The panels were established (DS431, 432, 433) on July 23 of the same year. In the panel examinations, Japan, the US, and the EU claimed that (1) China's imposition of export tariffs on rare earths, tungsten, and molybdenum violated Article XI:3 of the WTO Accession Protocol of China; and (2) China's export licensing system (restrictions on rights to trade) violated Article V of the Accession Protocol and Accession Working Group Report. China claimed that the measure was justifiable under paragraphs (b) and (g) of GATT Article XX. On March 26, 2014, the Panel report fully accepting the claim of Japan, the US, and the EU was published. The report concluded that China's export restrictions (export duties, quantitative export restrictions, and restrictions on rights to trade) on rare earths, tungsten, and molybdenum violated GATT and the WTO Accession Protocol of China. China appealed the Panel's ruling in April of the same year. In August the Appellate Body report fully supported the Panel's ruling that (1) provisions of China's Accession Protocol with respect to export duties imposed by China could not be justified by invoking GATT Article XX (b), which provided for the exceptions to the obligations under GATT for a measure necessary to protect environment ; and (2) quantitative export restrictions implemented by China were not a measure "relating to the conservation of exhaustible natural resources" provided for in GATT Article XX (g), and therefore could not be justified by invoking that Article. (See the above column for the detailed content of this report).

The parties agreed to set the reasonable period of time (RPT) for complying with the report as May 2, 2015, and notified to DSB of this agreement on December 8, 2014. China made public, by the list of items subject to quantitative export restrictions published on December 31, 2014, that quantitative export restrictions on rare earths, tungsten, and molybdenum would be eliminated after January 1, 2015. In addition, China announced on April 23, 2015 that it would abolish export duties on rare earths, tungsten, and molybdenum on May 1. It did abolish the export duties on rare earths, tungsten, and molybdenum on May 1 as announced.