CHAPTER 3 QUANTITATIVE RESTRICTIONS

1. OVERVIEW OF RULES

(1) Quantitative Restrictions

Article XI of the GATT generally prohibits quantitative restrictions on the importation or the exportation of any product, by stating “[n]o prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any Member...” One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than tariff measures and are more likely to distort free trade. When a trading partner uses tariffs to restrict imports, it is still possible to increase exports as long as foreign products become price competitive enough to overcome the barriers created by the tariff. When a trading partner uses quantitative restrictions, however, it is impossible to export in excess of the quota no matter how price competitive foreign products may be. Thus, quantitative restrictions are considered to have such a greater distortional effect on trade than tariffs that their prohibition is one of the fundamental principles of the GATT.

However, the GATT provides exceptions to this fundamental principle. These exceptional rules 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) and balance of payment (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

(i) GATT Provisions Regarding Quantitative Restrictions

Quantitative import and export restrictions against WTO Members are prohibited by GATT Article XI:1. GATT provisions, however, provide some exceptions for quantitative restrictions applied on a limited or temporary basis. The following describes, in detail, quantitative restrictions explicitly provided for in the WTO Agreement.

(a) Exceptions Provided in Article XI

- Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs essential to the exporting WTO Members (Paragraph 2 (a));
- Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade (Paragraph 2 (b)); and
- Import restrictions on any agricultural or fisheries product, necessary to the enforcement of governmental measures which operate to restrict production of the domestic product or for certain other purposes (Paragraph 2 (c)).

(b) Exceptions Provided in Other Articles

Exceptions for Non-Economic Reasons
- General exceptions for measures such as those necessary to protect public morals or protect human, animal or plant life or health (Article XX);
- Exceptions for security reasons (Article XXI).

Exceptions for Economic Reasons
- 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.\(^2\)

(ii) Import Restrictions through Waiver of Obligations

Article XXV:5 of the GATT 1947 permitted a partial waiver of obligations thereunder with the consent of the other contracting parties. When a waiver was obtained, then the contracting party was allowed to impose import restrictions.

Waivers admitted under the GATT 1947 and still in effect when the WTO Agreement became effective could be extended under the WTO Agreement, provided, however, that necessary procedural steps were taken before 31 December 1996. Waivers are also allowed under the WTO Agreement when certain conditions are met as described in Chapter 1 on Most-Favoured-Nation Treatment Principle.

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

\(^2\) See Chapter 1 for discussion of the conditions for waivers under the WTO Agreement.
(iii) Import Restrictions for Balance of Payments (BOP) Purposes

Under GATT Articles XII or XVIII:B, a WTO Member may restrict imports in order to safeguard BOP if the IMF finds that such country is experiencing BOP difficulties (Article XV:2). When a country is designated to be an “IMF Article VIII country,” it is not generally allowed to institute foreign exchange restrictions. Members have rarely been found to be experiencing BOP difficulties.

Figure 3-1 shows recent developments in consultations made in the WTO Committee on Balance-of-Payments restrictions. While Article XII can be invoked by all Members, Article XVIII:B can be invoked only by Members whose economy can only support low standards of living and is in the early stages of development.

<table>
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<th>Figure 3-1</th>
<th>Consultations in WTO Committee on Balance of Payments restrictions under Article XII of the GATT 1994</th>
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<tr>
<td>Country</td>
<td>Year of Resort</td>
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<tr>
<td>Romania</td>
<td>1998</td>
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<td>Slovakia</td>
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<td>Czech</td>
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<td>Hungary</td>
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<td>Poland</td>
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<th>Article XVIII: B of the GATT 1994</th>
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<td>Country</td>
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<tr>
<td>Bangladesh</td>
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<td>Tunisia</td>
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<td>Turkey</td>
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</table>

Under GATT Articles XII and XVIII:B, a Member may exceptionally restrict imports in order to safeguard its balance of payments (BOP). However, a lack of well-defined criteria with which to judge whether the country had met the conditions of these articles led to occasional abuse. To correct this, the WTO Agreement has attempted to clarify the conditions for invoking the BOP provisions as summarized below (see the Understanding on Balance-of-
Payments Provisions of the General Agreement on Tariffs and Trade 1994 (the “Understanding”). Among other requirements, countries invoking BOP safeguards must now specify products involved and a timetable for the elimination of measures. Nevertheless, even with the new Agreement, an example which may be considered misuse or abuse of the BOP provisions can already be seen.

On the other hand, WTO Committee on balance of payments restrictions has recently recommended on several occasions Members invoking BOP provisions to phase out such measures.

<Conditions and Procedures>
- Restrictive import measures adopted for BOP purposes may only be taken to control the general level of imports and may not exceed to the extent necessary to address the BOP difficulty (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).

(vi) The Agreement on Agriculture

The Agreement on Agriculture was concluded creating substantial, binding commitments in three areas: market access (tariffication), domestic supports (reduction in subsidies), and export competition. These commitments are to be implemented over a period of six years from 1995 to 2000. This was accomplished despite the following difficulties: (1) the United States had used price support policies to boost its grain production and exports making itself into “the world’s breadbasket;” (2) the European Union’s Common Agricultural Policy (CAP) had used price supports, import levies, and export subsidies, and consequently, transformed the European Union from one of the world’s largest importers of agricultural products to one of its largest exporters; and (3) competition for grain exports has been intensified as the shortages that existed through the mid-seventies turned to surpluses because of changes in the international supply-and-demand balance.

Below is the outline of the final agreement on market access in agriculture. When it
takes full effect, countries will be expected to bring their quantitative restrictions on imports in conformity with the WTO Agreement.

<Outline of the Agreement on Agriculture>
- Tariffication of Non-Tariff Barriers
  All non-tariff barriers are to be converted to tariffs using tariff equivalents (tariffication), (Article 4.2) and concessions are to be made. Tariffs after conversion are, in principle, to be equal to the difference between import prices and domestic wholesale prices.
- Reduction in Ordinary Tariffs
  Over a period of six years, ordinary tariffs, including tariff equivalents, are to be reduced by the minimum of 36 percent overall and the minimum of 15 percent for each tariff line.
- Base Year
  Domestic and foreign prices for the period 1986-1988 are to serve as indexes used in tariffication.
- Standards for Establishing Minimum Access Opportunities
  Current access opportunities will be maintained for tariffed products. If imports are negligible, a minimum access opportunity of 3 percent of domestic consumption will be provided in the first year, expanding to 5 percent by the end of the implementation period (Article 4.2 and Annex 5).
- Special Safeguards
  Additional tariffs may be imposed as special safeguard measures for tariffed items, as shown below (in the first case tariffs are hiked 30 percent; in the second case, due to a drop of 10-40 percent, tariffs may be hiked by 30 percent for the portion of the drop over 10 percent)(Article 5):
  1. Tariffs may be increased by one-third if import volumes exceed the following trigger levels:
     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 or less, 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.
  2. If import prices drop more than a certain percentage from the average prices for 1986-1988.
- Rules on Export Prohibitions and Restrictions
  Any Member instituting a new export prohibition or restriction on foodstuffs shall give due consideration to the effects thereof on the importing Member’s food security, notify the Committee on Agriculture and consult with any other Member having a substantial
The integrated dispute settlement procedures of the WTO apply to consultations and dispute settlements under the Agreement on Agriculture.

**<Reference> Relationship Between the WTO Agreement and Trade Restrictive Measures Pursuant to Multilateral Environmental Agreements**

The WTO Committee on Trade and Environment (CTE) discussed the relationship between the WTO agreement and trade measures pursuant to Multilateral Environmental Agreements (MEAs) as an issue related to quantitative restrictions.

The GATT generally bans trade restrictions, but allows those which fall under the general exceptions, as described in Articles XX(b) (necessary to protect human, animal or plant life or health) and XX(g) (relating to the conservation of exhaustible natural resources), providing such measures are not applied in a manner which would constitute a means of unjustifiable discrimination or disguised restriction. Some GATT panel reports, however, have found that measures taken to protect human, animal or plant life or health, or exhaustible natural resources outside the jurisdiction of a regulatory country are not justified by Articles XX(b) or (g), or that measures taken so as to force other countries to change their policies are not justified by Articles XX(b) or (g) (See 2(1)(i)(a) of this chapter).

Further, some MEAs, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, authorize trade measures which are aimed at protection of the environment outside either member countries’ jurisdiction or the global environment, or which are taken so as to encourage changes in the environmental policy of non-signatories of MEAs. It was pointed out that the finding of the past GATT panel reports would seem to indicate that such measures conflict with the WTO Agreement.

The Committee has therefore been examining how the WTO compatibility of trade measures taken pursuant to MEAs can be clearly ensured.

One opinion voiced is that GATT Article XX (general exceptions) be amended to expressly permit exceptional treatment for measures taken for environmental protection. Opposing this is the view that allowing waivers on a case-by-case basis is adequate to address the issue. There has also been a proposal to formulate guidelines for the kind of trade measures pursuant to MEAs that would be considered consistent with the WTO Agreement.

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3 Special exceptions (implementation waived for six years) to the tariffication rule are applied to agricultural products that meet several conditions including the three criteria below. The exceptions are conditional upon set increases in minimum access opportunities (improving those of 3 percent and 5 percent, to those of 4 percent and 8 percent). The three criteria for special exceptions are:

1. imports during the base period (1986-1988) were less than 3 percent of domestic consumption.
2. export subsidies are not provided.
3. effective production limits are in place.
In the CTE’s report to the Singapore Ministerial Conference in December 1996, the CTE noted that there may be cases in which trade measures pursuant to specifically agreed-upon provisions would be necessary to achieve the objectives of MEAs, but it offered no conclusions on how to ensure conformity. Discussions are still going on.

It is the majority’s opinion that unilateral measures for reasons of protecting the environment outside the jurisdiction of one’s own country should be strictly avoided when such measures are not based on MEAs.4

(3) Economic Implications

(i) Short Term Results of Import Restrictions

Because quantitative import restrictions, including *de facto* restrictions and voluntary export restraints by exporting countries, protect particular domestic products from competition with foreign products having a high level of competitiveness, they may be beneficial in the short-term in protecting and increasing profits of the domestic industry producing competing products and maintaining stable employment in that industry. In order to establish sales channels, foreign companies frequently respond to such restrictions by increasing their direct investment in import-restricting countries and by commencing production, which might create jobs and encourage technology transfer. Quantitative restrictions, however, distort the distribution of economic benefits between importing and exporting countries in favour of the producers in the importing country. The restrictions also harm consumers and downstream industries in the importing countries, which have to bear the economic cost of losing access to competitive imported products.

(ii) Mid and Long Term Results of Import Restrictions

Quantitative restraints impose mid- and long-term costs that clearly outweigh the benefits of protecting domestic industries. For example, quantitative import restrictions may impede efforts of domestic producers to improve productivity or streamline operations in order to survive a tough business environment, depending on the operation of the quantitative restriction. Unless it is clarified that the restrictions are temporary, and appropriate measures are taken to ensure that protected producers acquire sufficient competitiveness, quantitative restrictions could harm the mid- or long-term development of the affected industry and the economic benefits of the country employing such restrictions. Without mid-term plans to eliminate restrictive measures, domestic producers will be unlikely to develop the ability to earn foreign currency through exports, which is the true indication of competitive strength.

4 On a related subject, see the discussion in Chapter 10 of the relationship between Eco-labelling schemes and the TBT Agreement, another major subject discussed in the CTE (See Chapter 10 Eco-labelling and TBT for a related
The quantitative restrictions leave, at best, an import-substitute effect, and consumers and downstream industries in the importing country also suffer from higher prices and other disadvantages that are the immediate results of import restrictions. Therefore, such measures may cause a negative overall effect on the importing nation’s economy in the mid- or long term.

2. PROBLEMS OF TRADE POLICIES AND MEASURES IN INDIVIDUAL COUNTRIES

(1) United States

(a) Import Restrictions on Yellowfin Tuna

To reduce the incidental intake of dolphins by Yellowfin tuna fisheries, the United States enacted the Marine Mammal Protection Act in 1972, which bans imports of Yellowfin tuna and their processed products from Mexico and other countries where fishing methods result in the incidental intake of dolphins. To prevent circumvention, the United States also demands that similar import restrictions be adopted by third countries importing Yellowfin tuna or their processed products from countries subjected to the above import restrictions and prohibits imports of Yellowfin tuna and their products from countries which do not comply with this demand. Japan, the European Union, and others have been targeted by the US measures.

The United States contends that the above measures are designed to protect dolphins and are measures “necessary to protect human, animal or plant life or health” (Article XX (b)) and measures “relating to the conservation of exhaustible natural resources” (Article XX (g)) and therefore, these measures are permissible under the GATT as exceptions to the general prohibition of quantitative restrictions.

However, a panel established pursuant to the request of Mexico in February 1991 found in September 1991 that the US measures violate the GATT. (However, because Mexico sought resolution through bilateral negotiations with the United States, the report was not adopted by the GATT Council.)

The panel report concluded that the US measures violate Article XI as quantitative restrictions and that such restrictions are not justified by Article XX on the grounds that (1) the measures may not be a necessary and appropriate means of protecting dolphins, and (2) allowing countries to apply conservation measures which protect objects outside territories and thus to unilaterally determine the necessity of the regulation and its degree would jeopardize the rights of other countries.

In September 1992, a panel was established again at the behest of the European Communities and the Netherlands (representing the Dutch Antilles). Its report, issued in May 1994, found US measures to be in violation of the GATT.
The report noted that the United States’ import prohibitions are designed to force policy changes in other countries and indeed can only be effective if such changes are made. Since these prohibitions are not measures necessary to protect the life and health of animals exempted by nor primarily aimed at the conservation of exhaustible natural resources, the report concluded that the US measures are contrary to GATT Article XI:1, and are not covered by the exceptions in Articles XX:(b) or (g).

The report was submitted to the Council for adoption in July 1994, but the United States blocked adoption. In reaction to this deadlock situation, the United States and the governments of countries concerned, such as Latin American countries, have agreed to the Panama Declaration which adopts restrictive measures under the IATTC pursuant to the annual plan to regulate the incidental intake of dolphins, as prepared in 1992. In response, the United States enacted the International Dolphin Conservation Programme Act (Public Law No. 105-42) in August 1997, which would remove the embargo on Yellowfin tuna with respect to imports from those IATTC members who participate in a dolphins conservation programme formulated under the Law, if an enforceable international agreement enters into force to implement the Panama Declaration. The international agreement which has the legal binding force to carry this out, the international dolphin preservation agreement was adopted in February 1998.

Although the United States is considering the lifting of the measures concerned, it maintains them at present. We will continue to watch to ensure that the movement of the United States closely as consistency with its obligations under the WTO Agreement.

(b) Import Restrictions on Shrimp and Shrimp Products

Under Section 609 of Public Law 101-162 of 1989, the United States began requiring on 1 May 1991 that shrimp fishers provide a certificate showing that their governments have a regulatory programme comparable to the United States to protect sea turtles from shrimpers’ nets. Absent such a certificate, imports of shrimp from countries that allow harvest methods of shrimp which may be harmful to sea turtles are banned.

The United States initially limited application of the law to fourteen countries in the Caribbean and Gulf of Mexico region, requesting that these countries use the same kind of turtle excluder devices as US shrimp trawlers. In accordance with the United States Court of International Trade (USCIT) decision of December 1995 with regard to a lawsuit brought by a US environmental NGO called “Earth Island Institute” in 1993, the United States began applying the law to countries all over the world, including Japan, beginning 1 May 1996. A subsequent USCIT ruling allows shrimp to be imported without a certificate if it is raised on fish farms (for more than 30 days), is harvested by methods that do not involve the use of engines, or is cold-water shrimp (from regions where sea turtles do not live). Otherwise, imports were banned without a certificate (regardless of whether excluder devices are used or not).

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

The panel report issued in May 1998 found that US measures regarding shrimp imports constituted “prohibitions or restrictions” under GATT Article XI:1 and were therefore in violation of Article XI of the GATT 1994. It also found that measures that attempted to influence the policies of other countries by threatening to undermine the multilateral trading system were not justified even under GATT Article XX. The panel recommended the DSB to request the United States to bring the measures in question into conformity with its obligations under the WTO Agreement.

The United States appealed the decision in July. The Appellate Body did reverse some of the panel’s findings in October, but it also found that the US measures were not justified under Article XX of the GATT 1994. In November 1998, the DSB adopted the report by the Appellate Body which recommended the DSB to request the United States to bring its measures into conformity with its obligations under the WTO Agreement. There were some objections during the DSB meeting to the Appellate Body’s interpretation of GATT Article XX, because it left room for the extraterritorial application of domestic measures, but the meeting adopted the report nonetheless. We expect that the United States will modify its shrimp import regime so that the measures in question are consistent with its obligations under the WTO Agreement, and we will continue to watch to ensure that this is done.

(c) Export Restrictions on Logs

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

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

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

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

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

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

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

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

(d) **Helms-Burton Law (the “Cuban Liberty and Democratic Solidarity Act”)**

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

(2) **Korea**
(a) Source Diversification System for Specific Imports

In an effort to reduce its trade deficit with Japan, Korea instituted in 1980 a source diversification system for specific imports, as amended by Article 25 of the Executive Order of Korea’s Foreign Trade Law of 1987. Article 14(2) of this law authorizes the Minister of Trade, Industry and Energy to approve exports and imports of certain products designated in accordance with standards set forth in a presidential order for the purpose of balancing trade with countries. Under this system, the approval of the Association of Foreign Trading Agents of Korea is required for imports of products exported by the country that had the largest trade surplus with Korea for the last five years (Notice of Ministry of Trade, Industry and Energy Proclamation on Import Source Diversification Article 2). This approval is not normally given, thereby functioning as a de facto import ban. This measure is clearly in violation of Article XI of the GATT, which prohibits quantitative restrictions.

At the outset of its administration, the system applied to Japan, the country having the largest trade surplus with Korea during the previous year. However, when Saudi Arabia became the country with the largest trade surplus in 1982, the system was amended in 1983 to apply to the country with the largest trade surplus “in the past five years.” As a result, Japanese products have been continuously subjected to the import restrictions. As quantitative import restrictions are applied in a discriminatory fashion against a specific country, the system is inconsistent with Articles I and XIII of the GATT, which require the non-discriminatory administration of such restrictions. Practical problems associated with its administration and sometimes arbitrary interpretation of tariff classifications for the items covered by the system are also noted.

Japan has requested the immediate elimination of these measures, ever since their introduction, taking every opportunity, at the ministerial level, and with the accession of Korea to the OECD.

As a measure to improve Japan-Korea economic relations, Korea decided to reduce the 258 products subject to the restriction by half in the five-year period beginning in 1994, and has been gradually removing items accordingly.

With membership in OECD, Korea is committed to the elimination of this programme by the end of 1999. In addition, at the end of 1997, the government of Korea reached an agreement with the IMF on measures to reinforce its economic reform programme. To support this programme, Korea is receiving loans from the IMF, the G7 and other leading developed countries. This resulted in a commitment from Korea to eliminate the import source diversification programme by the end of June 1999. (Korea agreed to remove twenty-five items from the list by the end of 1997, forty by the end of June 1998, thirty-two by the end of 1998, and sixteen by the end of June 1999.) As a result, the number of designated items in January 1998 was reduced to eighty-eight (HS 10-digit headings), primarily in the industrial machinery, electrical and electronic equipment, and automotive sectors. (Note: Restrictions
had already been lifted on twenty-five items by the end of 1997 and forty items by the end of June 1998.)

At the end of December 1998, restrictions were lifted on an additional thirty-two items, including station wagons with engine displacement of 1500cc or less, photocopying machines, ship engines, and wheat flour. At the end of June 1999, restrictions are scheduled to be lifted on the remaining sixteen items, including sedan automobiles and station wagons with engine displacement of 3000 cc or less. This will eliminate all restrictions and bring an end to this system.

We believe that the abolition of this system will contribute toward the development of free trade, since it will constitute the elimination of a measure that was inconsistent with the WTO and was an impediment to trade between Japan and Korea.

(3) Indonesia

(a) Quantitative Import Restrictions

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

It is welcomed that restrictions for the protection of domestic industry have been eased substantially since 1986 through the elimination or curtailment of central buying. However, prohibitive high tariff barriers remain on automobile imports and further, bans or restrictions on other residual items cannot be justified by the invocation of exceptions, such as the balance of payment provisions, and are likely incompatible with Article XI of the GATT 1994.

Exclusive import rights to these products are given to "sole agents" designated by the Government of Indonesia and to a quasi-public corporation, "Persero." The system is administered through central buying systems, and administrative guidance given to the above organizations.

In January 1998, Indonesia announced that it has agreed with IMF to abolish, by 2003, restrictions on imports of ships and the other restrictions except for those consistent with GATT 1994 on health, safety, environment and national security grounds.

(b) Export Restrictions on Logs and Lumber Products

In January 1998, the Government of Indonesia, under an IMF agreement, announced that it would be switching from a specific duty on the export of logs and lumber products (calculated according to volume) to an ad valorem (calculated according to price) and would
reduce the duty to 10 percent in March. It was, however, late in implementing this measure, and in April reached a second agreement with the IMF that contained a specific schedule for reducing the export duty (to 30 percent by 22 April 1998, to 20 percent by the end of December 1998, to 15 percent by the end of December 1999, and to 10 percent by the end of December 2000) and also set export quotas for logs and lumber products, as well as additional export regulations.

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

(4) Thailand

**Import Restrictions under the Export and Import Act**

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

(5) Canada

(a) **Export Restrictions on Logs**

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

Japan will continue to request the Government of Canada to take reasonable measures to ensure the WTO consistency of these measures by the local government.

(b) US-Canada Soft Wood Lumber Pact

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

Under the agreement, the Canadian federal government will levy an export tax on lumber companies for any exports from British Columbia, Alberta, Ontario, or Quebec in excess of a set volume (14.7 billion board feet, or about 35 million cubic meters). The term of the agreement is for five years beginning 1 April 1996, during which US lumber producers agree that the government of the United States will take no trade-restrictive measures against Canada. The purpose of this measure, however, is clearly to protect the US lumber industry and as such it probably constitutes an export restriction that is prohibited under Article 11.1(b) of the Agreement on Safeguards.

(6) Malaysia

(a) Import Restrictions under the Customs Act

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

(b) Export Restrictions on Logs

The Malaysian Government, with a view to increasing domestic timber processing in its territory, initiated an export ban on logs of ten species from the Malay Peninsula in 1972 and, since then, has strengthened the ban from time to time, culminating in the prohibition of exports of all logs except for small size wood in 1985. Since January 1993, similar bans on exports had been imposed on a temporary basis in the State of Sabah, which was permitted its own forest industry policy. Sabah’s ban on exports changed to an annual export quota of two million cubic meters in November 1996 because the state’s finances had deteriorated and it needed the tax revenues that log exports generate. The State of Sarawak also has been implementing export quotas so as to set aside a certain share of logs produced in its territory for domestic processing. These measures are highly likely to violate GATT Article XI.

Japan will continue to request that these measures be brought into conformity with the WTO Agreement.

<Column> Malaysian Export Promotion/ Import Reduction Programme

<table>
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<th>1. Outline of Programme</th>
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<td>The Government of Malaysia announced in its 1998 budget speech in October that it will take various measures, such as the increase of tariffs, as a part of an “Export Promotion/Import Reduction Programme” in response to the currency crisis in ASEAN countries. Set forth below are relevant points of the programme.</td>
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(a) All imports of heavy machinery for the construction sector will be required to obtain permission to import from the Ministry of International Trade and Industry and permission will only be given if such machinery is not available domestically (as of 18 October 1997).

(b) Tariffs will be significantly increased on such products as automobiles and automobile parts, construction material (paints, cement, steal materials, etc.), consumer durables (pottery, refrigerators, cleaners, microwave ovens, etc.), and heavy machinery (cranes, etc.) (as of 18 October 1997).

- automobiles: 170% 200%, 50% 150%, 35% 100%, etc.
- construction material: 25% 30%
- consumer durables: 25% 30%
(c) Tariffs will be increased in practice by changing the calculation method regarding Licensed Manufacturing Warehouses and Free Industrial Zones (changing from either an input/component basis or a finished goods basis to only a finished goods basis) (as of 18 October 1997). However, the amendments to this measure, as enacted at the end of January 1998, and retroactively made effective as of 18 October 1997, have lessened the impact on enterprises.

(d) For the manufacturing sector, companies exporting goods with value-added of 30 percent or 50 percent will be given, respectively, a 10 percent or 15 percent income tax exemption. In the agricultural sector and the service sector, such as health, education, and professional services, companies exporting will be given an income tax exemption of 10 percent of the increase in the export value (as of 1 January 1998).

(e) Expenditure incurred on advertising local brands will be given a preferential tax deduction (as of 1 January 1998).

2. Assessment of the Above Measures

(a) Regarding the import restrictions on heavy machinery for the construction sector, prohibiting imports of products that are produced domestically is an import restriction, and thus, may be in violation of Article XI of the GATT.

(b) and (c) If the tariff increases are within the bound rate, these measures are WTO-consistent, but there is concern regarding negative effects on trade (for details see Chapter 4 on Tariffs).

(d) These measures are considered to be prohibited subsidies in violation of the Agreement on Subsidies and Countervailing Measures. They are further inconsistent with the standstill provision under the Agreement (for details see Chapter 6 on Subsidies and Countervailing Measures).

(e) These measures discriminate between foreign brands and local brands, and may well violate Article 3 of the TRIPS Agreement. They may also violate Article III of the GATT since they provide preferential treatment to some domestic products (for details see Chapter 12 on Intellectual Property).

<table>
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<th>Column&gt;Import Restrictions by India for Balance of Payments (BOP) Reasons</th>
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<tr>
<td>1. India has been invoking Article XVIII balance of payment provisions to restrict a broad range of more than 3,300 items (mainly consumer goods) since 1960 (at present, about 2,700</td>
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</table>
There are several problems with these restrictions:

1. Although trade restrictions taken for balance of payment reasons are supposed to be temporary measures, these restrictions have been in place since 1960.

2. The restrictions cover an enormously broad range of items most of which are consumer goods, which suggests that they are taken not for balance of payments reasons, but to achieve industrial policy objectives (according to paragraph 4 of Understanding on the Balance-of-Payments Provisions of the GATT, it is regulated that restrictive import measures taken for balance of payments purposes may only be applied to control the general level of imports).

3. The administration of licenses for the importation of restricted goods lacks transparency and the nature of the trade restrictions is unclear. In the complaint requesting consultations under Article XXII of the GATT, Article I (the rules and import licensing procedures shall be neutral in application and administered in a fair and equitable manner; EU), and Article III (prohibition of non-automatic import licensing procedures which shall have trade-restrictive and/or distortive effects on imports additional to those caused by the imposition of the restriction; United States, Canada, EU, Australia, New Zealand, Switzerland) of the Agreement on Import Licensing Procedures have been cited.

4. There are a plethora of special licensing systems that give exporting companies priority access to import licenses. Not only are these systems used as if they were export subsidies, but special import licenses are in fact hard to use because there is often no one to resell them to.

2. The Committee on Balance-of-Payments restrictions held a review of India’s import restrictions on 21 January 1997. At the review the IMF reported that India’s foreign currency reserves were not in a state that would justify quantitative restrictions nor was there any threat of a serious decline. It therefore recommended that quantitative restrictions be eliminated within a short period.

The BOP Committee subsequently invited the government of India to present a plan for eliminating the measures taken for balance of payments reasons and decided to continue the discussion of a phase-out plan. A discussion of the phase-out plan was scheduled for June 1997. In May 1997, India proposed a three-stage and nine-year phase-out schedule. That plan was unsatisfactory to some developed countries. After that, these countries had negotiations with India, but did not reach agreement. The United States, EU, Canada, Switzerland,
Australia and New Zealand requested consultations under Article XXII of the GATT in July 1997. Japan joined these consultations as a third party and in parallel, held bilateral negotiations with India. As a result, each country, except the United States, reached agreement on the phase-out plan with India. The phase-out plan, with which Japan agreed, is a three-stage six-year phase out schedule (the first stage-three years, the second stage-two years, the third stage-one year). The phase-out period of Japan’s interested items were shortened in comparison with that proposed in May 1997 by India (items which moved to the first stage: ITA products, electric products, watches, cosmetics, and some textile and clothing; the items which moved to the second stage: some cosmetic, and some automobiles, the remaining textile and clothing). On the other hand, the negotiations between India and the United States did not reach agreement and a panel was established at the DSB in July 1997 pursuant to the request of the United States.

According to this agreement, India’s import restrictions under Article XVIII of the GATT will be abolished (including the system of Special Import License under Article XVIII ), but regarding the India’s export and import policy, some problems on TRIMs remain (see Chapter 8 on Trade-Related Investment Measures).

3. In October 1998, the EU requested consultations with India under Article XXII of the GATT regarding import restrictions that India had put in place under Articles XX and XXI of the GATT. The purpose of these consultations was to clarify the consistency with Articles XX and XXI of the GATT of import restrictions concerning the EU priorities items on the import restrictions list submitted by India to the Committee on Balance-of-Payments Restrictions in 1997. Japan participated as a third party in the India-EU consultations held in December 1998.

<Column> Brazilian Measures Affecting Import Financing

Under the past import financing scheme, it was possible for importers to borrow foreign currency at the low international rate, and to invest funds obtained through the resale of the imported products at the higher domestic interest rate, in the period before the repayment date. In March 1997, claiming that this system grants export subsidies in practice, the Government of Brazil imposed strict restrictions on import finances used for imports of products with certain exceptions, in order to equalize the competitive conditions for domestic and imported products.  

5 The exchange contract had to be concluded within 48 hours before the conclusion of the transactions for import financing before the current regulations were put in place. As of 1 April 1997 the exchange contract now is to be concluded within the following period for import financing transactions with a term of under 360 days, as applied to shipments occurring on or after 1 April 1997.

a) import finances with a term of no more than 180 days: before customs clearance
b) import finances with a term between 180 days and 360 days: within 180 days after the finance deadline.
c) exchange contracts concluded after the required date: the imposition of fines is calculated on the basis of a certain rate according to the length of the violation.

(Exchange contract is a contract concluded to purchase foreign currency, between the importer and Central bank to settle payments for imports. Central bank pools it and pays exporters on the day of clearance. Foreign currency
The measures have compelled importers to obtain financing before withdrawing the cost of the import products, and consequently imports have been suppressed. However, the Brazilian government regulates import finances and borrowing on a foreign currency by residents, but the nature of the measures suggests that they go beyond the limits of valid exchange control, and were introduced for the purpose of restricting imports.

On 1 January 1997, the European Union requested consultations under Article XXII of the GATT claiming that the Brazilian measures violate Article II (ban on any import charge other than tariffs) and Article XI (general prohibition of quantitative restrictions) of the GATT. Other interested Members including Japan, Australia, Switzerland and the United States have joined this consultation as third parties.