

<b>1 ARTICLE XI .....</b>	<b>1</b>
1.1 Text of Article XI .....	1
1.2 Text of note <i>ad</i> Article XI.....	2
1.3 Article XI:1 .....	2
1.3.1 Trade balancing requirements .....	2
1.3.2 Restrictions on circumstances of importation.....	3
1.3.3 "prohibitions or restrictions ... on the exportation or sale for export of any product" .....	3
1.4 Decision on notification procedures for quantitative restrictions.....	3
1.4.1 Scope of the 2012 Decision.....	3
1.4.2 Frequently notified measures and justifications used .....	4
1.4.3 Notification format.....	4
1.4.4 Exceptions to the general prohibition of quantitative restrictions.....	5
1.4.5 Information on notifications of quantitative restrictions .....	5

## **1 ARTICLE XI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

### **1.1 Text of Article XI**

#### **Article XI\***

##### *General Elimination of Quantitative Restrictions*

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

- (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
- (b) 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;
- (c) Import restrictions on any agricultural or fisheries product, imported in any form,\* necessary to the enforcement of governmental measures which operate:
  - (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or
  - (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly

substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

- (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to subparagraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors\* which may have affected or may be affecting the trade in the product concerned.

## 1.2 Text of note *ad* Article XI

### ***Ad Articles XI, XII, XIII, XIV and XVIII***

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations.

#### ***Ad Article XI***

##### *Paragraph 2 (c)*

The term "in any form" in this paragraph covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective.

##### *Paragraph 2, last subparagraph*

The term "special factors" includes changes in relative productive efficiency as between domestic and foreign producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Agreement.

## 1.3 Article XI:1

### 1.3.1 Trade balancing requirements

1. Paragraph 2 of the Annex to the Agreement on Trade-Related Investment Measures (TRIMS Agreement) provides that

"TRIMS which are inconsistent with the obligation of general elimination of quantitative restrictions provided for in [GATT Article XI:1]" include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

- (a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;
- (b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise"

### 1.3.2 Restrictions on circumstances of importation

#### 1.3.2.1 Trading rights

2. In recent years, Working Party Reports on the accession of new WTO Members have included commitments regarding the absence of restrictions on the right to trade. For instance, the Working Party Report on the Accession of the Kyrgyz Republic included the following paragraph:

"The representative of the Kyrgyz Republic confirmed that from the date of accession, the Kyrgyz Republic would ensure that all of its laws and regulations relating to the right to trade in goods, and all fees, charges or taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of these commitments."<sup>1</sup>

#### 1.3.3 "prohibitions or restrictions ... on the exportation or sale for export of any product"

3. Paragraph 2 of the Annex to the TRIMs Agreement provides that

"TRIMs which are inconsistent with the obligation of general elimination of quantitative restrictions provided for in [GATT Article XI:1]" include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict: ...

- (c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production."

### 1.4 Decision on notification procedures for quantitative restrictions

4. On 22 June 2012, the Council for Trade in Goods (CTG) adopted the "Decision on notification procedures for quantitative restrictions" (QR Decision)<sup>2</sup>, including a format for notifications. This Decision fully replaced the previous notification procedures, which were contained in the CTG Decision of 1 December 1995 ([G/L/59](#)) and the notification format in [G/MA/NTM/QR/2](#).

5. The QR Decision provides that Members shall make "complete" notifications of all quantitative restrictions in force beginning on 30 September 2012 and in two yearly intervals thereafter. Changes that take place between the complete notifications shall be notified "as soon as possible, but not later than six months from their entry into force". Members have also the right to make "reverse" notifications, which is when they notify that another Member is imposing, but has not notified, a quantitative restriction.<sup>3</sup>

6. Notifications received are circulated under the G/MA/QR/N document series and discussed in the Committee on Market Access. As required by paragraph 7 of the QR Decision, the Secretariat annually circulates a report on status of notifications.<sup>4</sup> In addition, the Secretariat regularly produces a report with factual information on the types of measures that have been notified.<sup>5</sup>

#### 1.4.1 Scope of the 2012 Decision

7. According to Article XI:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), quantitative restrictions refer to all "prohibitions or restrictions other than duties, taxes or other charges" applied by Members on imports or exports of goods, which can be "made

<sup>1</sup> [WT/ACC/KGZ/26](#), para. 30.

<sup>2</sup> [G/L/59/Rev.1](#).

<sup>3</sup> More information on the notifications procedures are provided in the note by the Secretariat "Notification of quantitative restrictions (QRs): a practical guide" ([JOB/MA/101/Rev.2](#)).

<sup>4</sup> Under document series [G/MA/QR/](#).

<sup>5</sup> Under document series [G/MA/W/114/Rev.](#)

effective through quotas, import or export licences or other measures". However, Article XI:1 of the GATT 1994 does not provide an exhaustive definition of what constitutes a "quantitative restriction". While prohibitions (i.e. import or exports bans) can be normally be identified, it is more difficult to define what a restriction "other than duties, taxes or other charges" is. Article XI:1 provides further that these measures can be made effective through quotas, licenses, and "other measures".

8. The QR Decision requires Members to notify *all* quantitative restrictions in force, including import and export related measures, as well as seasonal ones. Annex 2 of the QR Decision provides an indicative list of ten measures that are covered by the notification requirements<sup>6</sup>, including the symbols to be used to identify them. These are:

- Prohibitions,
- Prohibitions except under defined conditions,
- Global quotas,
- Global quotas allocated by country,
- Bilateral quotas (i.e. anything less than a global quota),
- Non-automatic licensing procedures,
- Quantitative restrictions made effective through state-trading operations,
- Mixing regulations,
- Minimum prices triggering a quantitative restriction, and
- "Voluntary" export restraints

9. The following measures are explicitly excluded from the quantitative restriction notification (QR notification) procedures: i) measures covered by the Agreement on Sanitary and Phytosanitary Measures, ii) measures covered by the Agreement on Technical Barriers to Trade, iii) automatic import licensing procedures, and iv) tariff rate quotas.

10. The QR Decision also requires Members to indicate the WTO provision that, in the opinion of the notifying Member, justifies introducing or maintaining the notified measures. It also recognizes that some of these measures may have been introduced pursuant to other non-WTO international commitments, in which case they should also be indicated. Moreover, it acknowledges that some of the relevant measures may have already been notified to other WTO Committees or bodies. To minimize duplication, the notification format allows for a cross-reference to notifications made pursuant to other WTO provisions, such as the Agreement on Agriculture, the Agreement on Balance of Payments, the Agreement on Safeguards, and the Agreement on Import Licensing Procedures.

#### **1.4.2 Frequently notified measures and justifications used**

11. The majority of quantitative restrictions notified by Members under the QR Decision consist of import measures and, to a lesser extent, export-related measures. The most frequently notified type of measures for both imports and exports include non-automatic licensing procedures and prohibitions. Quotas, either global or allocated by country, represent a small percentage of the notified measures. With respect to the legal justification provided, the GATT 1994 has been the most frequently cited WTO covered agreement, with a particular reference to the general exceptions under Article XX of the GATT 1994. In particular, most measures have been justified as being "necessary to protect human, animal or plant life or health", i.e. justified by Article XX(b) of the GATT 1994. Members have also referred to a lesser extent to other legal justifications, such as the "Kimberly Process" Waiver or the Agreement of the Trade-Related Aspects of Intellectual Property Rights.<sup>7</sup>

#### **1.4.3 Notification format**

12. All notifications of quantitative restrictions (i.e., complete, changes, and reserve) shall be made in accordance with the format in Annex 1 and submitted to the Secretariat in electronic form. Paragraph 2 of the QR Decision lists seven elements that shall be provided for each notified

---

<sup>6</sup> The QR Decision specifies that measures and symbols in Annex 2 are without prejudice to Members' rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, and that they are "not intended to define or harmonize the concept of quantitative restrictions under the WTO".

<sup>7</sup> See [G/MA/W/114](#) and its revisions.

measure. In general terms, these are: i) a general description of the measure in force; ii) the type of measure based on the symbols in Annex 2; iii) the tariff line codes of the products covered by the measure, including the relevant version of the Harmonized System used; iv) the detailed product descriptions that correspond the tariff lines; v) the WTO justification, including any relevant international commitment, where appropriate, and the precise WTO provisions which the Member cites as justification; vi) the law, regulation or administrative decision establishing the measure, including its date of entry into force and the date it ceases to be in force, if known; and vii) any other relevant comment or information on the administration of the restriction or modification of a previously notified restriction.

#### **1.4.4 Exceptions to the general prohibition of quantitative restrictions**

13. There are several provisions in the GATT 1994 and other WTO covered agreements that allow for the introduction or maintenance of quantitative restrictions as an exception.

14. Since practically all Members maintain some form of quantitative restrictions (e.g. prohibitions or restrictions relating to nuclear material, narcotic drugs, weapons, etc.), the QR Decision seeks to provide transparency on the policy reason that justifies them. Provisions under the GATT 1994 that may allow a Member to introduce or maintain a quantitative restriction include, *inter alia*: Article XI:2, Article XII (restrictions to safeguard the balance of payments), Article XVII (import or export restrictions made effective through State-trading operations), Article XVIII (governmental assistance for economic development through protective or other measures), Article XIX (safeguard actions), Article XX (general exceptions), and Article XXI (security exceptions). Article 12 and Annex 5 of the Agreement on Agriculture, the Understanding on Balance of Payments, and the Agreement on Safeguards may allow a Member to introduce or maintain a quantitative restriction.

15. Members have also adopted prohibitions or restrictions to trade as a result of international obligations undertaken outside the WTO framework. The vast majority of Members are signatories to a number of international conventions that regulate or restrict trade in certain goods, such as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. When a Member applies a quantitative restriction as a result of other international commitments, it shall also notify it under the QR Decision and indicate which WTO provision would justify it.

#### **1.4.5 Information on notifications of quantitative restrictions**

##### **1.4.5.1 The Committee on Market Access**

16. The Committee on Market Access has the mandate to conduct the updating and analysis of the documentation on quantitative restrictions and other non-tariff measures.<sup>8</sup> QR notifications are circulated under document symbol G/MA/QR/N/ and are automatically included in the agenda of the Committee for review. Information on these notifications can be found in several documents of this Committee, including the minutes of the meetings (G/MA/M/), the yearly reports on the status of notifications (G/MA/QR/ series), and in the factual report analyzing the content and information provided in the notifications received ([G/MA/W/114](#) and its revisions).

##### **1.4.5.2 Online database on quantitative restrictions**

17. Paragraph 4 of the QR Decision established a public WTO Database on Quantitative Restrictions, which will be released in 2020.

Current as of: March 2020

---

<sup>8</sup> Paragraph (d) of document [WT/L/47](#).