

Seminar on WTO Accessions Rules
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Quantitative Restrictions

Import/export quotas, licensing

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In this presentation:

1. Non-tariff measures in general
2. Quantitative restrictions (QRs)
3. When can QRs be maintained?
4. Import licensing procedures



1. Non-tariff barriers?



Can WTO Members “**protect**” their industries?

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Tariffs



NTMs
It depends...



The WTO has a preference for tariffs



The prohibition against quantitative restrictions is a reflection that **tariffs are GATT's border protection "of choice"**. Quantitative restrictions impose absolute limits on imports, while tariffs do not. In contrast to MFN tariffs which permit the most efficient competitor to supply imports, quantitative restrictions usually have a trade distorting effect, their allocation can be problematic and their administration may not be transparent.

Turkey – Textiles (1999), para paras. 9.63



When do **measures** become **barriers**?



1. Lack of transparency
2. Discriminatory treatment (MFN or NT)
3. More restrictive than necessary

Are they a disguised form of protectionism?



What can be done about NTBs?



Prohibit



Regulate
(to minimize
impact on trade)



2. What is a “quantitative restriction” (QR)?



Accessions?

Member: Afghanistan


- Quantitative import restrictions, including prohibitions, quotas and licensing systems

109. The representative of Afghanistan confirmed that from the date of accession Afghanistan would eliminate and **would not introduce, re-introduce or apply quantitative restrictions or other non-tariff measures on imports, such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements, and other restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreement.** In this regard, Afghanistan would eliminate its import prohibition on cotton seeds, table salt, powdered salt, gypsum, anhydride, and plasters prior to accession to the WTO. If balance-of-payments measures were necessary, Afghanistan would impose them in a manner consistent with the relevant WTO provisions, including Article XII and Article XVIII of the General Agreement on Tariffs and Trade 1994 and the Understanding on Balance-of-Payments Provisions of the GATT 1994. He further confirmed that the legal authority of the Government of Afghanistan to ban, prohibit, or suspend imports and exports or to apply licensing requirements that could be used to ban, prohibit, suspend or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO including as provided for in Afghanistan's Protocol of Accession. The Working Party took note of these commitments.

Accessions?

Member: Cambodia

082. The representative of Cambodia confirmed that from the date of accession, his Government **would not introduce, re-introduce or apply other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreements**. If balance-of-payment measures were necessary, Cambodia would impose them in a manner consistent with the relevant WTO provisions, including Article XVIII of the GATT and the Understanding on Balance-of-Payments Provisions of the GATT 1994. He further confirmed that any discretionary authority permitting the Government of Cambodia to suspend imports or licensing requirements that could suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO. The Working Party took note of these commitments.



Article XI:1 of the GATT 1994

“General Elimination of Quantitative Restrictions”

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



Ad Notes to 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**.



Article XI:1 is very broad

- **GATT 1947:**

The wording of Article XI:1 is comprehensive. It applies to all measures instituted or maintained by a Member prohibiting or restricting the importation, exportation or sale for export of products other than measures that take the form of duties, taxes or other charges

Japan – Semi-Conductors (1988), GATT BISD 35S/116, para. 104.

- **WTO:**

Panels and the AB have taken a similar view. *e.g. confirmed by India – Quantitative Restrictions (1999) and India – Autos (2002).*



What is a “quota”?



Tariffs



Quotas



Tariff
rate
quotas
(TRQs)



What is a “prohibition”?

- There is **no ambiguity** as to what “prohibitions” on importation means: Members shall not forbid the importation of any product of any other Member into their markets. *Panel report in Brazil – Retreaded Tyres (2007), para. 7.11*
- The term “prohibition” is defined as a **“legal on ban on trade or importation of a specified commodity.** *Appellate Body Report, China – Raw Materials (2011), para. 319*



What is a “restriction”?

- The scope of the term ‘restriction’ is also broad: ‘a limitation on actions, a limiting condition or regulation’
Panel Report, India – Quantitative Restrictions (1999), para. 5.128
- A ‘restriction’ need not be a blanket prohibition or a precise numerical limit. It cannot mean merely “prohibitions” on importation, because Article XI covers both “prohibition or restriction”. Thus, it is necessary to identify not merely a “condition” placed on importation, but **a condition that has a limiting effect.**
Panel Report, India – Autos (2002), para. 7.269-7.270
- Prohibits both de jure and de facto prohibitions and restrictions
Panel Report, Argentina – Hides and Leather (2001), para. 11.17



Prohibition vs. Restriction



Prohibition
i.e. cannot import

Restriction
i.e. it is difficult to
import

“whether **made effective through** quotas, import or export licences or other measures”



Are these quantitative restrictions? (1)

- **Trade balancing requirements?**

- *India Autos (2001), WT/DS146/R, paras. 7.318-7.322*

- **Requirement that only “actual users” can import?**

- *India – Quantitative Restrictions, WT/DS90/R, para. 5.143*

- **Restrictions on ports of entry?**

- *Colombia – Ports of Entry (2009), WT/DS366/R, paras. 7.219-7.223 and 7.273*



3. Which provisions authorize the use of QRs?



Which provisions authorize QRs?

1. “Carve outs” in Article XI:2 of the GATT
2. General Exceptions
3. Security exceptions
4. Other provisions that allow QRs
5. Waivers



1.1 Carve-outs



1. Carve-outs

Article XI:2 of the GATT 1994:

The provisions of XI:1 “shall not extend to the following”:

- a) temporarily applied to prevent or relieve **critical shortages** of foodstuffs or other essential products -> **AoA Art. 12**
- b) 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 necessary to enforce certain types of government measures, to the extent some conditions are met.

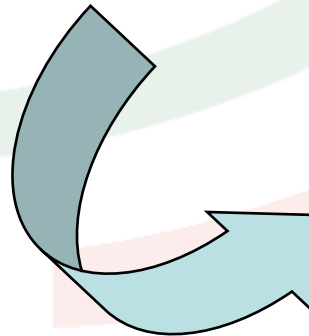


1.2 Article XX (General exceptions)



Article XX: Two-Step Analysis

1
Does it satisfy
the specific
exception being
claimed?



2
Conformity
under Chapeau



The sequence of steps ... reflects not inadvertence or random choice, but rather the fundamental structure and logic of Article XX
Panel report, US – Shrimp



2. Article XX: specific exceptions

- (a) **necessary** to protect public morals;
- (b) **necessary** to protect human, animal or plant life or health;
- (c) **relating to** the importations or exportations of gold or silver;
- (d) **necessary** to secure compliance with laws or regulations which are not inconsistent with GATT provisions;
- (e) **relating to** the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) **relating to** the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of an intergovernmental commodity agreement;



2. Article XX: specific exceptions



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- (i) involving restrictions on exports of domestic materials **necessary** to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; **Provided that** such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; **Provided that** any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this subparagraph not later than 30 June 1960.



2. Article XX: General Exceptions

Subject to the requirement that such measures are **not applied** in a manner which would constitute **a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail**, or **a disguised restriction on international trade**, **nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:**

“The chapeau”



Art. XX is invoked as an affirmative defence



Accessions?

Member: Seychelles

191. The representative of Seychelles confirmed that, from the date of accession, Seychelles **would not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreement.** The legal authority of the Government of ... would be applied from the date of accession in conformity with the relevant requirements of the WTO Agreement, **including Articles XI, XII, XIII, XVIII, XIX, XX and XXI of the GATT 1994; the Agreements on Agriculture, the Application of Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards, and Technical Barriers to Trade; and the Understanding on Balance-of-Payments provisions of the GATT 1994.** The Working Party took note of this commitment.

Accessions?

Member: Russian Federation

0668. The representative of the Russian Federation confirmed, that, from the date of accession, ... He also confirmed that, if the Russian Federation took recourse to Article XX(i) of the GATT 1994, with respect to any measures, whether applied by the Russian Federation or the competent bodies of the CU, restricting exports of domestic materials necessary to ensure essential quantities of such materials to a domestic or CU processing industry, such measures would not operate to increase the exports of or the protection of such industry. The Working Party took note of these commitments.



Accessions?

Member: Tajikistan

- State Ownership and Privatization; State-Trading Entities

051. The representative of Tajikistan confirmed that from the date of accession, **State-trading enterprises** (including State-owned and State-controlled enterprises, enterprises with special or exclusive privileges, and unitary enterprises) in Tajikistan would make any purchases or sales, which were not for the Government's own use or consumption, solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale. He further confirmed that these State trading enterprises would afford the enterprises of other Members adequate opportunity, in accordance with customary business practice, to compete for participation in purchases from or sales to Tajikistan's State enterprises. **He also confirmed that any restrictions on exports of materials to ensure essential quantities of such materials to a domestic processing industry would not operate to increase the exports of, or the protection of, such domestic industry.** Such restrictions would be regulated by the new Law "On Foreign Trade Activity". The Working Party took note of these commitments.



1.3 Article XXI (National security)



3. Article XXI: National Security

Nothing in this Agreement shall be construed

- (a) to require any contracting party to **furnish any information** the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from **taking any action which it considers necessary for the protection of its essential security interests**
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the **United Nations Charter** for the maintenance of international peace and security.



1.4 Other provisions that allow QRs



4. Other exceptions (indicative list)

Provision	Type
Article XII of the GATT <i>plus</i> UR Understanding	Balance of payments
Article XIX of the GATT <i>plus</i> UR Understanding	Emergency actions (safeguards)
Article XVIII of the GATT <i>plus</i> the Enabling Clause	Governmental assistance for economic development
Sanitary and Phytosanitary Measures (SPS)	
Technical Barriers to Trade (TBT)	



1.5 Waivers



5. Waivers

- Permission granted by WTO Members allowing a Member not to comply with normal commitments.
- Have to be justified.
- Subject to time limits and review.



4. Import licensing procedures



Definition of import licensing procedures (Article 1)

1. Administrative procedures
2. For IL regimes
3. Require the submission of an application
4. To the relevant administrative body
5. Prior to importation

Admin. procedures other than those for customs purposes:
... include technical visas, surveillance systems, minimum price arrangements, and other administrative reviews effected as a prior condition for entry of imports (See Annex to G/LIC/3)

Can import licensing procedures become an obstacle to trade?



4. General provisions (Art. 1) (*all ILPs*)

- administered in conformity with GATT 1994 and in a fair and equitable manner
- Publish all rules and information at least 21 days prior to the effective date of requirement
- allow sufficient time for comments from Members and give due consideration thereto
- Application and renewal **forms** and **procedures** as simple as possible



4. General provisions (Art. 1) (*all* ILP)

- Applications **shall not be refused** for:
 - Minor documentation errors
 - Minor variations in value, quantity or weight from the amount designated
- Foreign exchange available to license holders on the same basis as to importers of goods not requiring import licenses
- The provisions of Article XXI of GATT/94 apply
- Members are not required to disclose confidential information



5. Types of IL procedures

There are two types of ILP, both of which are subject to different rules:

- **Automatic** (Article 2)
- **Non-automatic** (Article 3)



Automatic ILP (Article 2)

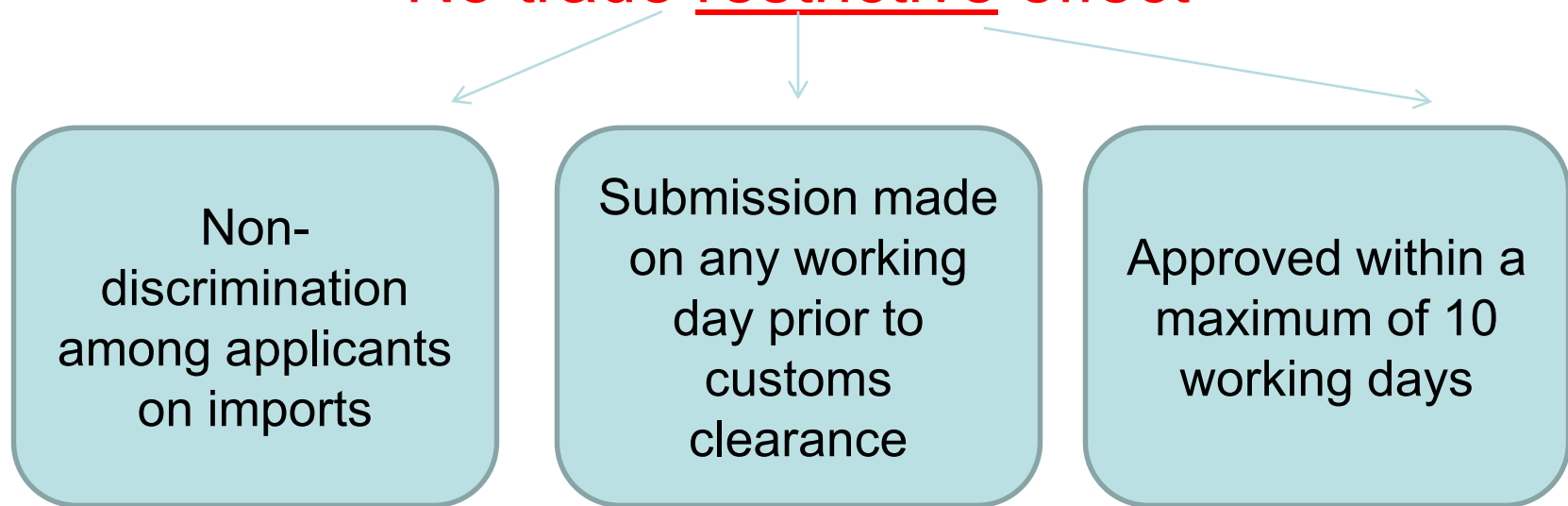
Licensing procedures where the **approval is granted in all cases***

e.g. Collection of statistical information



Automatic ILP (Article 2) (cont')

Administered in such a way so as to have
No trade restrictive effect



Otherwise.....

It becomes subject to the rules for non-automatic



Non-automatic ILP (Article 3)

Non-automatic import licensing procedures are those that **do not fall within the definition** contained in Article 2.

Normally used to administer trade restrictions, e.g. quotas or tariff rate quotas (TRQs)



Special rules for NALP, including (Article 3.5)

- e) No discrimination among applicants to be eligible to apply or be considered for a licence
- f) Time-limit for processing applications: **30** days for “first come first served” or **60** days if all considered together
- g) License duration shall be reasonable and allow for imports from distant sources
- j) Reasonable distribution of licenses to “new importers” (particularly from Developing countries) and special consideration should be given to importers importing goods from developing countries



Are these quantitative restrictions?

- **Automatic licensing procedures?**
 - ✓ *EEC – Minimum Import Prices (1978), BISD 25S/68*

- **Non-automatic or discretionary import licensing procedures?**
 - ✓ *India – Quantitative restrictions (1999), WT/DS90/R*
 - ✓ *China – Raw Materials (2012), WT/DS394/R*



Thank you!

