



WTO OMC

**CAPACITY BUILDING WORKSHOP ON THE NOTIFICATION OF
QUANTITATIVE RESTRICTIONS**

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**Jurisprudence on the Scope and Meaning of the Obligation under GATT Article XI
(Quantitative Restrictions) and Justifications**

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Open-Ended Workshop (Room D)

DS	Case name	GATT Article(s)	Measure(s) at issue	Findings
WT/DS31/R	<i>Canada – Periodicals</i>	XI:1; XX(d)	Import prohibition (complete ban on certain periodicals)	The Panel determined that Canada's Tariff Code 9958, which prohibited the importation of certain periodicals, violated Article XI and was not justified under Article XX(d), because the measure could not be regarded as a measure to secure compliance with Canada's Income Tax Act. Canada did not appeal this finding.
WT/DS58/R	<i>US – Shrimp</i>	XI:1; XX(g)	Import prohibition (ban on shrimp and shrimp products harvested by vessels of foreign nations, where exporting countries had not been certified by U.S. authorities as using methods not leading to incidental killing of sea turtles at certain levels)	The Panel found that the United States conceded its prohibition on imported shrimp violated Article XI by not putting forward arguments in defence. The Panel found that, while the import ban was related to the conservation of natural resources and covered by Article XX(g), the ban ultimately constituted "arbitrary and unjustifiable" discrimination under the chapeau of Article XX because of the measure's inflexible application and lack of transparency and procedural fairness in the regulation's administration. The Appellate Body affirmed the Panel's conclusion.
WT/DS90/R	<i>India – Quantitative Restrictions</i>	XI:1; XVIII:11	Discretionary and non-automatic licensing scheme (import license scheme only available to "Actual Users" (i.e. persons who would employ the imported goods "for their own use"))	The Panel found that India's measures, including its discretionary import licensing system, were quantitative restrictions inconsistent with Article XI:1. India did not appeal this finding. The Panel, in a conclusion upheld by the Appellate Body, found that India's balance-of-payment measures did not justify the maintenance of the import restrictions under <i>Ad Article XVIII:11</i> .
WT/DS34/R	<i>Turkey – Textiles</i>	XI:1	Import restriction (quantitative import restrictions pursuant to the Turkey – European Communities customs union)	Turkey conceded that its import restrictions were quantitative restrictions, and the Panel found these measures were inconsistent with Article XI:1. Korea did not appeal this finding.
WT/DS161/R, WT/DS169/R	<i>Korea – Various Measures on Beef</i>	XI:1	Restrictions made effective through state-trading enterprises (Korea's state trading agency for beef was the sole administrator for beef imports, importing 30% of the beef import quota, through a tendering scheme and also had a distribution monopoly)	The Panel found that Korea's state trading agency for beef tender and discharge practices for beef led to import restrictions that were contrary to Article XI. Korea did not appeal this finding.
WT/DS58/RW	<i>US – Shrimp (Article 21.5 – Malaysia)</i>	XI:1; XX(g)	Import prohibition (ban on shrimp and shrimp products harvested by vessels of foreign nations, where such exporting countries had not been certified by U.S. authorities as using methods not leading to incidental killing of sea turtles at certain levels)	The Panel found, as in the original proceedings, that the United States' prohibition on imported shrimp violated Article XI. The Panel, in findings upheld by the Appellate Body, also found that the measure, implemented by revised guidelines, was now justified under Article XX(g), because it related to the exhaustion of natural resources and met the conditions of the chapeau.
WT/DS146/R, WT/DS175/R	<i>India – Autos</i>	XI:1	Trade-balancing requirements (import amount limited in relation to export commitment)	The Panel found that India's trade-balancing requirement constituted a restriction on importation under Article XI:1. India did not appeal these findings.

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WT/DS302/R	<i>Dominican Republic – Import and Sale of Cigarettes</i>	XI:1	Import restriction ("bond requirement" under which cigarette importers had to post bond to ensure payment of taxes)	In findings upheld by the Appellate Body, the Panel found that Honduras did not establish that the bond requirement operated as an import restriction, contrary to Article XI:1.
WT/DS332/R	<i>Brazil – Retreaded Tyres</i>	XI:1; XX(b) & (d)	Import prohibition (measures prohibiting the importation of used consumer goods and the importation of retreaded tyres)	The Panel concluded that Brazil's import prohibition on retreaded tyres and the fines imposed by Brazil on importation, marketing, transportation, storage, keeping, or warehousing of retreaded tyres were inconsistent with Art. XI:1. The Appellate Body upheld the Panel's conclusion that the import ban was not justified under Article XX(b) but reversed the Panel's findings related to the chapeau of Article XX. The Panel, in findings not appealed by Brazil, also found that the measures could not be justified under Article XX(d), because they did not fall within the scope of "laws or regulations that are not themselves inconsistent with" some provision of the GATT.
WT/DS366/R	<i>Colombia – Ports of Entry</i>	XI:1; XX(d)	Restriction on ports of entry (customs regulations that established use of indicative prices and restrictions on ports of entry)	The Panel found that the regulations prohibited the importation of textiles, footwear, and apparel from certain ports constituted a restriction on importation and were therefore inconsistent with Article XI:1. The Panel also found that Colombia failed to establish that the ports-of-entry measure was necessary to secure compliance with Colombian customs laws and regulations under Article XX(d). Colombia did not appeal the panel's findings.
WT/DS392/R	Panel Report, <i>US – Poultry (China)</i>	XI:1; XX(b)	Import prohibition (funds allocated to the U.S. Department of Agriculture could not be used to establish or implement a rule that would allow poultry products to be imported from China into the U.S.)	The Panel found that the United States' measure was inconsistent with Article XI because it imposed a prohibition on importation of poultry products from China. The Panel further determined that the measure was not justified under Article XX(b) of the GATT because the measure was inconsistent with several articles of the SPS Agreement. China did not appeal the Panel's findings.
WT/DS477/R, WT/DS478/R	<i>Indonesia - Import Licensing Regimes</i>	XI:1; XI:2(c); XX(a), (b) & (d)	Import licensing scheme (import licensing scheme for horticultural products and animals and animal products)	The Panel found that all 18 measures that comprised the import licensing scheme at issue were prohibitions on importation or restrictions having a limiting effect on importation and were therefore inconsistent with Article XI:1. The Panel also rejected Indonesia's defence under several subparagraphs of Article XX because Indonesia failed to show its measures were justified under each provision. The Panel also rejected Indonesia's reliance on Article XI:2(c), because this exemption was rendered inoperative by virtue of Article 4.2 of the Agreement on Agriculture. On appeal, the Appellate Body disagreed with Indonesia's interpretation on the relationship of Article 4.2 of the Agreement on Agriculture and Article XI of the GATT 1994, holding instead that Article 4.2 and Article XI apply cumulatively. Further, the Appellate Body declared certain of Indonesia's claims of error related to Article XX moot.

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WT/DS394/R, WT/DS395/R, WT/DS398/R	<i>China – Raw Materials</i>	XI:2(a); XI:1; XX(b) & (g)	Export quota; minimum export price requirements (export restraints imposed on the different raw materials: (i) export duties; (ii) export quotas; (iii) export quotas management (iv) minimum export price requirements; (v) export licensing requirements; and (vi) administration and publication of trade regulations)	The Panel found that China's measures, operating in concert, established export quotas that were inconsistent with Article XI:1, and the Appellate Body upheld these findings. Relatedly, in findings also upheld by the Appellate Body, the Panel concluded that China had not shown that its export quota on a certain raw materials was "temporarily applied" to prevent or relieve a "critical shortage" within the meaning of Article XI:2(a). However, the Panel did not agree with the complainants that the export licensing requirements were inconsistent with Article XI:1 because a licence requirement is applied to "goods subject to ... export restrictions." The Appellate Body found this claim to be outside the Panel's terms of reference and declared findings on these issues moot. The Panel also found that China's export restraints were not justified under either Articles XX(b) or (g). China did not appeal these findings.
WT/DS400/R, WT/DS401/R	<i>EC – Seal Products</i>	XI:1; XX(a)	Import prohibition ("EU Seal Regime" regulations generally prohibiting the importation and placing on the market of seal products, with certain exceptions)	The Panel rejected the complainants' claim that each of the three exceptions to the "EU Seal regime", rather than the regime as a whole, imposed quantitative restrictions that were inconsistent with Article XI:1. The Panel disagreed with the complainants that each exception, considered alone, imposes an import restriction, because "it is the EU Seal Regime as a whole, providing for specific exceptions to a ban, that results in a restrictive impact on the importation of products from certain sources." (Panel Report, para. 7.661.) The EU did not appeal this finding. In findings upheld by the Appellate Body, the Panel found that the EU Seal regime was "necessary to protect public morals" under Article XX(a); however, the Appellate Body, determining the Panel erred in applying the proper legal test under the chapeau, completed the analysis and found that the European Union did not show that the EU seal regime met the requirements of the chapeau.
WT/DS438/R, WT/DS444/R, WT/DS445/R	<i>Argentina – Import Measures</i>	XI:1	Import restrictions (trade-related requirements (TRRs) as a condition to import into Argentina or to obtain certain benefits and required procedures concerning an advance sworn import declaration for most imports of goods into Argentina)	The Panel found that the TRRs measure was inconsistent with Article XI:1 as a restriction on importation of goods and that the advance sworn import declaration constituted an import licence that operated as a prohibited import restriction under Article XI:1. The Appellate Body upheld these findings.
WT/DS484/R	<i>Indonesia – Chicken</i>	XI:1; XX(d)	Import ban (non-inclusion of certain chicken products in a list of products that could be imported into Indonesia)	The Panel found the non-inclusion of certain chicken products in the list of products eligible for importation into Indonesia constituted a "legal ban" that was inconsistent with Article XI. The Panel also found that the measure was not provisionally justified under Article XX(d), because the measure did not comply with the requirements of the "necessity" test. Indonesia did not appeal the Panel's findings.

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WT/DS453/R	<i>Argentina – Financial Services</i>	XI:1	Restrictive condition on importation and exportation (measure that imposed requirements, procedures, and charges to determine tax base for gains tax payable by Argentine taxpayers)	The Panel found that "measure 3" constituted a tool to determine the tax base for certain taxpayers and therefore was a fiscal measure not covered by Article XI. Argentina did not appeal this finding.
WT/DS155/R	<i>Argentina – Hides and Leathers</i>	XI:1	Export restriction (regulations by which Argentina representatives of the leather tanning industry were present during customs clearance process for bovine hides export)	The Panel found that the export procedures were not an export restriction prohibited under Article XI:1. Argentina did not appeal the Panel's findings.
WT/DS431/R, WT/DS432/R, WT/DS433/R	<i>China – Rare Earths</i>	XI:1; XX(g)	Export restrictions (export duties, export quotas, and certain limitations on the enterprises permitted to export rare earth products)	The Panel found that China's export quotas on rare earths were inconsistent with Article XI and also not justified under Article XX(g). China appealed certain aspects of the Panel's interpretation of Article XX(g), in connection with its findings that the export quotas were not "relating to" the conservation of exhaustible natural resources and were not "made effective in conjunction with" restrictions on domestic production or consumption. The Appellate Body agreed with the Panel's conclusion and reasoning.