

COMMUNICATION FROM JAPAN

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"EXCEPTIONS AND BALANCE-OF-PAYMENTS SAFEGUARDS"

I. INTRODUCTION

1. Non-discrimination represents one of the most important principles in WTO rules. It prohibits Members to take discriminatory treatment with regard to measures disciplined by the WTO agreements. However, the WTO agreements have some areas where the principle of non-discrimination does not apply, when it is truly necessary. Paragraph 22 of the Doha Ministerial Declaration clearly states that "exceptions and balance-of-payments safeguards" are one of the elements which should be included in consideration toward an investment framework.

2. This paper comprises two sections. Section A examines exceptions, while Section B covers balance-of-payments safeguards.

A. EXCEPTIONS

1. Analytical framework

3. WTO rules are designed to liberalize trade and to minimize negative influences of the various trade-related measures on trade. These rules do not call for blanket elimination of all trade-obstructing measures under their coverage, but allow for exceptions if necessary. Introducing exceptions means exceptionally establishing areas where the rules do not apply. Accordingly, how to stipulate exceptions becomes an important element which substantially influences the level of effective disciplines provided by the various types of rules.

4. There are various approaches to exceptions¹, which can be divided into the following three categories. In all cases, exceptions are literally exceptions to the principles and need to be strictly interpreted.

¹ UNCTAD provides for three categories: (1) general exceptions, comprising (a) health and public order and (b) security; (2) subject-specific exceptions (e.g., taxes, regional exceptions, etc.); and (3) country-specific exceptions (e.g., exceptions reflecting the particular circumstances of each country, as seen in GATS, etc.). (UNCTAD, Most-Favoured-Nation Treatment, UNCTAD/ITE/IIT/10 (Vol. III), Dec. 1998, pp. 15-27, and UNCTAD National Treatment, UNCTAD/ITE/IIT/11 (Vol. IV), Dec. 1998, p. 12.).

(a) General exceptions

5. It is valuable to pursue rules which enhances economic welfare through trade promotion and economic growth, achieved by trade liberalization and elimination of trade-related measures obstructing free trade. General exceptions are based on the idea that various social values, which are different from values pursuing liberalization, also need to be recognized, and measures necessary to realize these values, such as measures related to public morals, need to be accepted.

(b) Security exceptions

6. Measures necessary for the protection of national security and for the maintenance of international peace and security are regarded as "security exceptions".

(c) Other exceptions

7. Other possible exceptions reflect national or regional circumstances—for example, regional agreement exceptions and a Member's reservations on liberalization in particular sectors.

8. The third group of exceptions("other exceptions") has been analyzed in the context of national treatment (NT) and most-favoured-nation (MFN) and is referred to in Japan's written contribution submitted to the July meeting, namely "Non-discrimination "(WT/WGTI/W/124) and "Modalities for Pre-establishment Commitments"(WT/WGTI/W/125). Therefore, it will be excluded from the scope of this paper. This paper will look into (1) general exceptions and (2) security exceptions.

9. It would also seem necessary to examine how the "development provisions" discussed at the July meeting will fit into the context of "exceptions." Incorporation of a development element is essential to create flexible rules which enable an appropriate response to the different circumstances of member states, taking into account the various differences in terms of development stage, economic structure, and policy priorities which exist among countries, notably developing countries. However, the development issue should be regarded on a country-specific basis based on each Member's situation. Country-specific considerations should be distinguished from general exceptions, and discussed instead in the context of reservations from liberalization commitments.

2. Examples of exceptions in existing WTO rules

10. We undertook an analysis of the exception provisions within existing WTO rules with reference to the GATT and GATS.

(a) General exception provisions

11. The scope of general exception provisions is set out in GATT Article XX and GATS Article IV, which list the following specific items²:

(i) *Common items in GATT Article XX and GATS Article XIV*

– Protection of public morals

² Further, the GATS Annex on Financial Services provides in "2. Domestic Regulation" that "Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons ...". These "prudential measures" could be regarded as general exceptions in the area of financial services.

- Protection of life or health
- Measures related to compliance with laws or regulations which are not inconsistent with the provisions of the agreement

(ii) *Items only in GATT Article XX*

- Exports and imports of gold or silver
- Products of prison labour
- Protection of national treasures
- Conservation of exhaustible national resources
- Inter-governmental commodity agreement
- Restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry
- Acquisition or distribution of product in general or local short supply

(iii) *Items only in GATS Article XIV*

- Maintenance of public order
- Fair and efficient direct taxation
- Agreement on the avoidance of double taxation

(b) Security exceptions

12. The scope of security provisions is set out in GATT Article XXI and GATS Article XIV.2, which list the following specific items:

- Measures regarding the provision of information contrary to a country's essential security interests
- Measures necessary to protect a country's essential security interests (relating to fissionable and fusionable materials; traffic in arms, ammunition and implements of war; or taken in time of war or other emergency in international relations)
- Measures taken in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security.

3. Approach to exceptions in an investment context and points of discussion

13. Based on the disciplines for general exceptions and security exceptions in existing WTO rules which were demonstrated above, this paragraph considers the kind of exceptions which need to be built into WTO investment rules.

(a) Discussion points in considering exceptions

14. As with other WTO rules, exceptions will of course be necessary for investment rules. Three points need to be borne in mind when considering rules on exceptions. Firstly, the universality of the exception. Secondly, the balance between disciplines and exceptions. Thirdly, the balance between exceptions to the investment rules and those to other WTO rules.

(i) *Universality of exception*

15. Exceptions which should be incorporated as elements of rules should not reflect country-specific circumstances. Rather, exceptions set out in the rules should have certain universality, that is they have to be applicable to all countries.

16. In other words, as discussed at the previous WG meeting, exceptions which should be considered on a country-specific or subject-specific basis— for example, exceptions to liberalization commitments for NT, or exceptions to MFN—should not be included as general exceptions or security exceptions. That is, exceptions for development policy reasons, regional agreement exceptions and other such exceptions are not of a nature to be outside the scope of rules from the outset. Rather, the application of liberalization reservations should be determined based on rational reasons based on each Member's particular circumstance when country-specific commitments are considered.

(ii) *Balance between disciplines and exceptions*

17. In establishing exceptions, it will be vital to ensure that individual exceptions do not undermine the required level of discipline. As well as considering the many merits to national economies brought by trade liberalization, we also need to accurately identify and highlight the various elements which are not evaluated along the value axis of liberalization merits. The importance of public morals and health protection is easy to grasp from this perspective. However, while such elements serve as the axis for different value systems, over-expansion of the scope of exceptions could dilute the effect of the discipline, and full consideration must be given to the need for each specific exception.

18. Further, it would be inappropriate if the application of these exceptions were too loose, or arbitrary and discriminatory and it negatively affected the investment disciplines and the direction of liberalization. For example, general exceptions must not be used to avoid paying compensation in cases of expropriation.³

(iii) *Balance with other rules*

19. The importance of the adequate balance between exceptions to the investment rules and those to other WTO rules is self-evident. Exceptions should be considered along a different value axis from that concerning the positive economic effects of trade liberalization, etc. Accordingly, with considering the different nature of each WTO rule, it is desirable to avoid the major differences with regard to items included as exceptions in those rules more than is necessary.

(b) *Basic exception elements in investment rules*

20. Given the above points, an appropriate starting point in discussing exceptions in the context of investment rules would be to consider (1) general exceptions and (2) security exceptions, as in the case of existing WTO rules. Naturally, further consideration would be required as to whether any special exceptions are needed for investment which fall beyond the scope of exceptions under the GATT, GATS or other existing rules, or, conversely, whether some of the exceptions in existing rules would be inappropriate for investment.

21. However, given that investment in the services area is already substantively covered in mode 3 under GATS and no particular problems are presented by the exceptions provisions in the current GATS, it would be possible to have those exceptions under the GATS as a base of the discussion on exceptions in investment rules. Moreover, as investment has an influence on goods trade, it would be

³ Both GATT (Article XX) and GATS (Article XIV) clearly state that these exceptions shall not be applied in a manner which would constitute a means of unjustifiable discrimination or a disguised restriction on international trade and trade in services. "2. Domestic Regulations" in the GATS Annex on Financial Services mentioned above adds that prudential measures "shall not be used as a means of avoiding the Member's commitments or obligations".

also possible to elaborate the discussion with considering exceptions under the GATT. it would also be feasible to apply these exceptions as exceptions in investment rules.

22. In the context of security exceptions, it seems unlikely at this moment that any pressure will arise for a major review of specific elements. Where necessary, consideration could be given as to what should be included in the security exceptions during the future negotiation process, taking into account the current discussions based on GATT and GATS.

B. BALANCE-OF-PAYMENTS SAFEGUARDS

1. Basic approach

23. Generally, "safeguard measures" mean temporary and exceptional emergency measures under certain circumstances. Under safeguard measures, in order to protect other priority interests, member governments are permitted to be exempted from obligations under international agreements. Above all, safeguard measures for the purpose of protecting a country's balance of payments are necessary devices to avoid the situation in which balance-of-payments problems would leave a country with no means of making external payments, and cause trade shrinkage which could force a country to be kept out from the international trading order.

24. Balance-of-payments safeguards are stipulated in both the GATT and the GATS; for example, GATS Article XII notes that in order to protect the balance of payments, a Member may adopt restrictions on trade in services on which it has undertaken specific commitments, on the condition that the restrictions meet certain requirements such as non-discrimination..⁴

25. It is true that safeguards are just temporary and exceptional emergency measures, and it should be noted that these measures do not solve structural balance-of-payments problems. However, particularly for developing countries, which tend to experience balance-of-payments problems in the course of their economic development, such emergency measures would become a more valuable economic policy tool when policy options are limited.

2. Specific examples of balance-of-payments safeguards in existing WTO rules

26. Approaches to balance-of-payments safeguards in existing WTO rules in the context of the GATS are outlined below.

27. Firstly, five points are indicated as requirements in instituting restrictions.

(i) *Non-discrimination*

(ii) *Consistency with the IMF Agreement (consistency with the Articles in the Agreement of the International Monetary Fund)*

(iii) *Avoidance of unnecessary damage to the interests of other members (avoidance of unnecessary damage to the commercial, economic and financial interests of any other member)*

(iv) *Suitability of extent of restrictions (not exceeding the level necessary to deal with the balance-of-payments difficulties)*

⁴ This paper discusses not the general safeguard measures such as those under GATS Article X (Emergency Safeguard Measures), but the rules for balance-of-payments protection such as those of GATS Article XII (Restrictions to Safeguard the Balance of Payments).

(v) *Temporary nature of restrictions (temporary, and to be phased out progressively).*

28. Secondly, the following two procedural requirements are placed on the country implementing the restrictions.

(i) *Notification requirement (adoption of or changes to restrictions notified to the General Council)*

(ii) *Consultation requirement (Consultation with Committee on Balance-of-Payments to ensure the appropriateness of restrictions).*

29. Thirdly, clear consideration is given to developing countries. More specifically, the GATS recognizes that a Member may need to impose restrictions to ensure the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition.

3. Issues regarding balance-of-payments safeguards in the context of investment

(a) Significance of balance-of-payments safeguards in investment

30. Here we consider the significance of balance-of-payments safeguards in investment rules given the approach to these safeguards in existing WTO rules as described above. There are three key points: first, the different nature between goods and services, and investment in terms of the balance of payments; second, the relation to post-establishment investment activities; and third, dealing with investment outflow.

(i) *Investment vs. goods and services*

31. In the case of goods, where import restrictions are recognized as exceptions to the GATT principle of general elimination of quantitative restrictions, it is obvious that the trade balance would improve within a short period of time. With regard to services, imposing restrictions on service imports would also clearly improve the service account. In both cases, import restrictions lead to the ultimate improvement of the current account balance, and are thus consistent with the goal of protecting the balance of payments.

32. However, the effect of restricting investment itself—namely, restricting pre-establishment investment—differs from that of restricting goods and services. Stopping the flow of investment would conversely cause deterioration of the capital account, which comprises investments and other capital transactions. Even from the perspective of short-term balance-of-payments protection, encouraging investment inflow surely becomes an essential policy.

33. Furthermore, given the long-term nature of investment⁵, restricting investment inflow could also have a substantial negative effect on the host country. Because foreign investment-based production activities in the host country create the employment necessary for production and spur procurement for that production, restricting investment inflow is very likely to have negative effect on the medium- to long-term economic growth of the host countries. The long-term economic policy direction of host countries should, therefore, be to improve the investment environment in order to allow rational investment decisions, and to promote the introduction of foreign investment, which will contribute to structural improvement of the balance of payments.

⁵ This paper discusses only the long-term cross-border investment referred to in Paragraph 20 of the Doha Ministerial Declaration.

(ii) *Relation to post-establishment investment activities*

34. Restrictions on the post-establishment activities of investors from a balance-of-payments perspective could conceivably take various forms. Some of the cases will not necessarily be balance-of-payments safeguards based on investment rules. For example, import restrictions for investors who import raw materials would correspond to balance-of-payments safeguards for goods, and as such, GATT disciplines would be applied.

35. One case where the relation to the structure of investment rules should be considered would be restrictions on international transfer and payments for the purpose of protecting the balance of payments. GATS contains disciplines on payments and capital movement (Article 11), stipulating that restrictions shall not be applied to international transfers and payments for current transactions relating to specific commitments. However, restrictions for the purpose of balance-of-payments protection are permitted. When we discuss an investment rule, the idea of liberalization of the international transfer and payments and permission for restrictions on those for the purpose of safeguarding the balance of payments would serve as a reference.

36. Investment host countries should consider that even for the purposes of balance-of-payments protection, the frequent use of such restrictions does not create a favorable environment for investors, nor does it contribute positively to the actual inflow of investment. Ideally, obviously, Members should not rely on balance-of-payments protection measures for emergency risk-avoidance at the border, but to pursue measures for structural balance-of-payments improvement.

(iii) *Dealing with investment outflow*

37. In regard to investment outflow, in the case of direct investment, outflow can occur when industries in a country relocate their business overseas or when existing foreign investment withdraws from host countries. When a country has balance-of-payments problems, the additional burden of investment outflow can provoke further balance-of-payments deterioration, and could also theoretically result in the restriction of withdrawal for the purposes of balance-of-payments protection.

38. For example, one possible scenario is capital flight in response to a so-called "economic crisis". In fact, given that direct investment remained stable even during the financial crisis triggered in 1997⁶, it seems reasonable to think that investment conversely helped to prevent balance-of-payments deterioration. However, it is understandable that developing countries hosting investment are concerned over the possible withdrawal of foreign investment, and that could be one ground why balance-of-payments safeguards are required in investment rules.

39. Naturally, imposing restrictions on individual cases, such as decisions of withdrawal for low profitability could lead the host country to maintain and sustain inefficient businesses with no prospect of profitability. It should be noted whether such restrictions would benefit the economy of the host country, for example, from the standpoint of the effective utilisation of labour and other domestic resources.

⁶ Foreign Direct Investment and the Balance of Payment (WT/WGTI/W/95), Feb. 2001.

(b) Perspectives in further considerations

40. Given the above points, we need to consider how balance-of-payments safeguards can be incorporated as an element of the investment framework with a view to creating a type of safety-valve and securing structural flexibility in that framework. Further consideration will also be needed from the following perspectives, including the effect and significance of balance-of-payments safeguards in the stage of pre-establishment investment.

(i) *Relation between investment activities and balance of payments*

41. Direct investment, capital goods imports accompanying investment, economic activities such as product imports and exports resulting from investment need to be considered, as well as the social and economic impact where restrictions are imposed on these. In other words, we need to evaluate (i) the short-term impact on the balance of payments and (ii) the long-term impact on aspects such as production and employment.

42. A rule structure is certainly required which will allow emergency-avoidance measures for the purpose of protecting the balance of payments. At the same time, given that investment is an economic activity undertaken over the long term, the long-term impact of these measures must also be taken into consideration, when the host country actually exercises balance-of-payments safeguards.

(ii) *Concrete rules for exercising balance-of-payments safeguards*

43. Given that balance-of-payments safeguards are emergency-avoidance measures deviating from the original purpose of WTO rules, these measures must only be taken in instances of true necessity, and promptly eliminated once that necessity has gone. Balance of payments improvement usually manifests as a result of economic structural improvement achieved through an integrated package of fiscal, financial and other macroeconomic policies, and should not be clearly sought through border measures in the form of balance-of-payments safeguards.

44. GATS Article XII notes five requirements in implementing restrictions, namely, restrictions (i) shall not discriminate against other members; (ii) shall be consistent with the IMF Agreement; (iii) shall avoid unnecessary damage to the interests of other members; (iv) shall be of an appropriate extent; and (v) shall be temporary. These provisions in existing rules should provide a valuable reference.

(iii) *Need for consideration of developing countries*

45. Given that the main investment hosts are developing countries, consideration must also be given to the need for special provisions for developing countries, as also found in the GATT and GATS.

II. CONCLUSION

- Exceptions and balance-of-payments safeguards will be important elements in a future investment framework.
- With regard to exceptions, we need to start our considerations with the elements composing general exceptions and security exceptions, referring to the exceptions in the existing WTO rules. Investment-specific elements, if any, should be appropriately reflected in the consideration.
- When considering exceptions, we must be careful that exceptions do not lead to undermine the level of discipline sought by investment rules.

- It would also be appropriate to include balance-of-payments safeguards in the investment framework, referring to the disciplines in the existing WTO rules and reflecting investment-specific elements, if any.
- At the same time, given that such measures are primarily designed for emergencies cases, we need to seriously consider the specific requirements for their actual implementation, referring to the existing rules.
- Consideration for developing countries will be essential in both exceptions and balance-of-payments safeguards.

ANNEX 1

Exception provisions in existing agreements

I. REGIONAL AGREEMENTS

A. NAFTA

- (a) Application of GATT Article XX (General Exceptions) in Part Two (Trade in Goods) and Part Three (Technical Barriers to Trade)
- (b) Measures necessary to secure compliance with laws or regulations which are not inconsistent with NAFTA (including measures related to health, safety and consumer protection) in Part Two, Part Three, Chapter Twelve (Cross-Border Trade in Services) and Chapter Thirteen (Telecommunications)
- (c) Measures necessary for the protection of essential security interests (measures related to arms, ammunition, implements of war, and military facilities, measures taken in time of war or other emergency in international relations, and measures related to the non-proliferation of nuclear weapons)
- (d) Measures attendant on obligations under the United Nations Charter for the maintenance of international peace and security.

B. FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA (AIA)

- (a) Measures necessary to protect national security and public morals
- (b) Measures necessary to protect human, animal or plant life or health
- (c) Measures necessary to secure compliance with laws or regulations which are not inconsistent with provisions of the AIA, including those relating to (i) the prevention of deceptive or fraudulent practices or to deal with the effects of a default on investment agreement; (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and (iii) safety.
- (d) Measures aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of investments or investors of Member States.

II. BILATERAL TREATIES

A. JAPAN-ROK INVESTMENT TREATY

Each Contracting Party may:

- (a) take any measure which it considers necessary for the protection of its essential security interests;
 - (i) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or

- (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;
- (b) take any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security;
- (c) take any measure necessary to protect human, animal or plant life or health; or
- (d) take any measure necessary for the maintenance of public order. (The public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.)

B. JAPAN-SINGAPORE ECONOMIC PARTNERSHIP AGREEMENT FOR A NEW AGE

Parties able to adopt or enforce those measures:

- (a) necessary to protect public morals or to maintain public order (The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.);
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;
 - (ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts;
 - (iii) safety;
- (d) relating to prison labour;
- (e) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (f) to conserve exhaustible natural resources (if such measures are made effective in conjunction with restrictions on domestic production or consumption).

ANNEX 2

Balance-of-payment safeguard provisions in existing agreements

I. REGIONAL AGREEMENTS

A. NAFTA

NAFTA allows each Party to impose or maintain restrictions on capital movement in cases where the Party experiences "serious balance of payments difficulties, or the threat thereof". The following requirements apply in instituting these restrictions:

- (a) Measures shall avoid unnecessary damage to the interests of another Party.
- (b) Measures shall be kept to the minimum necessary.
- (c) Measures shall be temporary and phased out progressively.
- (d) Measures shall be consistent with the IMF Agreement.
- (e) Measures shall be non-discriminatory.

Moreover, in terms of procedures, Parties are obliged to consult with the IMF on economic adjustment measures to address the economic difficulties and adopt or maintain economic policies consistent with such consultations.

B. FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA (AIA)

The AIA contains provisions on balance-of-payments safeguards similar to those in GATT Article XII. More specifically, in the event of "serious balance of payments and external financial difficulties or the threat thereof, a Member State may adopt or maintain restrictions on investments on which it has undertaken specific commitments" (including on payments or transfers for transactions related to such commitments). Requirements in regard to imposing such restrictions are as follows:

- (a) Measures shall be non-discriminatory.
- (b) Measures shall be consistent with the IMF Agreement.
- (c) Measures shall avoid unnecessary damage to the interests of any other Member State.
- (d) Measures shall not exceed those necessary.
- (e) Measures shall be temporary and phased out progressively.

It is also recognized that pressures on the balance of payments of developing countries in the process of economic development may necessitate the use of restrictions. In terms of procedures, Member States are obliged to give notice of measures taken to the AIA Council within 14 days from the date the measures are taken, and to commence consultations with the AIA Council and other Member States within 90 days from the date of notification.

II. BILATERAL TREATIES

A. JAPAN-ROK INVESTMENT TREATY

Pursuant to Article 17, a Contracting Party may adopt measures not conforming with its national treatment and freedom of remittance obligations in regard to cross-border capital transactions "in the event of serious balance-of-payments and external financial difficulties or threat thereof; or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies." Imposition requirements are as follows:

- (a) Measures shall be consistent with the IMF Agreement.
- (b) Measures shall not exceed those necessary.
- (c) Measures shall be temporary and shall be eliminated as soon as conditions permit.
- (d) Measures shall be promptly notified to the other Contracting Party.

B. JAPAN-SINGAPORE ECONOMIC PARTNERSHIP AGREEMENT FOR A NEW AGE

Article 84 provides that a Party may "adopt or maintain measures inconsistent with its national treatment and freedom of remittance obligations in regard to cross-border capital transactions in the event of serious balance-of-payments or external financial difficulties or threat thereof; or where, in exceptional circumstances, movements of capital result in serious economic and financial disturbance in the Party concerned." Imposition requirements are as follows:

- (a) Measures shall be consistent with the IMF Agreement.
- (b) Measures shall not exceed those necessary.
- (c) Measures shall be temporary and shall be eliminated as soon as conditions permit.
- (d) Measures shall be promptly notified to the other Contracting Party.
- (e) Measures shall not discriminate between the Parties.
- (f) Measures shall ensure that the other Party is treated as favorably as any non-Party.
- (g) Measures shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party.

ANNEX 3

Balance-of-Payments safeguards provisions in GATT and GATS

	GATT Article XII	GATS Article XII
Substantive provisions	<ul style="list-style-type: none"> • Avoidance of unnecessary damage to the interests of any other contracting party ("to avoid unnecessary damage to the commercial or economic interests of any other contracting party") • Suitability of extent of restrictions (restrictions shall not exceed those necessary to forestall "a serious decline in monetary reserves") • Temporary imposition of restrictions (measures to be temporary and progressively relaxed) • Restrictions impairing regular channels of trade by unreasonably preventing minimum imports prohibited (no restrictions "unreasonably preventing the importation of any description of goods in minimum commercial quantities") • Restrictions preventing imports of commercial samples or preventing compliance with patent, trade mark, copyright, or similar procedures prohibited (no restrictions which would "prevent the importations of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures") 	<ul style="list-style-type: none"> • Non-discrimination (Restrictions "shall not discriminate among Members") • Consistency with IMF Agreement ("consistent with the Articles of Agreement of the International Monetary Fund") • Avoidance of unnecessary damage to interests of any other Member ("shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member") • Suitability of extent of restrictions ("shall not exceed those necessary to deal with balance-of-payments difficulties") • Temporary ("shall be temporary and phased out progressively")
Procedural provisions	<ul style="list-style-type: none"> • Consultation obligation (regular consultations with the Contracting Parties on restrictions; consultations based on requests from Contracting Parties subject to restrictions) 	<ul style="list-style-type: none"> • Notification obligation ("Any restrictions adopted or any changes therein shall be promptly notified to the General Council.") • Consultation obligation (Consultations with Committee on Balance-of-Payments Restrictions to ensure suitability of restrictions)

	GATT Article XII	GATS Article XII
Developing country provisions	<ul style="list-style-type: none"> Requirements on restriction imposition and procedural requirements relaxed for developing countries ("contracting parties, the economies of which can only support low standards of living and are in the early stages of development"), recognizing that these countries "tend, when they are in rapid process of development, to experience balance-of-payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade". (GATT Article XVIII(b)). 	<ul style="list-style-type: none"> Recognize that a Member in the process of economic development or economic transition may need to use restrictions to ensure "maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition."
