

system. It would not be reasonable to seek to waive the GATT/WTO rights of non-parties in order to enforce an IEA against them (or to confirm, for greater certainty, the waiving of GATT/WTO rights of parties to an IEA), if parties were not prepared to enforce the IEA amongst themselves, under effective terms established in the IEA itself.

- ▶ The trade provisions in the IEA also would need to be set out clearly, including with respect to measures to be taken at the national level. In the absence of a reasonable indication of the trade measures involved (e.g., how and when they might apply), it would not be possible to know what was being accommodated.
- ▶ In terms of timing, as the above points suggest, the procedure would need to be triggered after the development of the substantive provisions of the IEA, but before any challenge of trade measures taken at the national level. It would, therefore, be an ex-ante approach.

For GATT-inconsistent trade restrictions in qualifying IEAs, special exceptions would then be available:

- ▶ In the waiver scenario, the basic voting procedure would apply, but a longer time-frame for a waiver could be provided, with less stringent review requirements. These elements could even be determined on a case-by-case basis, once again being tailored to the specific IEA.
- ▶ In the Article XX scenario, similar flexibility could be built in. Indeed, it would be open for consideration whether the trade provisions of listed IEAs could enjoy an indefinite exception, perhaps subject to periodic review.
- ▶ In either approach, we would need to consider limiting GATT/WTO non-violation dispute settlement rights of a non-party to the IEA in cases where the trade restrictions in question represent sanctions aimed at obtaining their participation (thereby limiting the prospect of compensation for the nullification of trade benefits otherwise accruing to the non-party). Presumably, it would be counterproductive to apply trade restrictions designed to impose economic pressure and then to offset the impact of the restrictions by allowing for compensation. However, developing countries in particular could resist this element.

