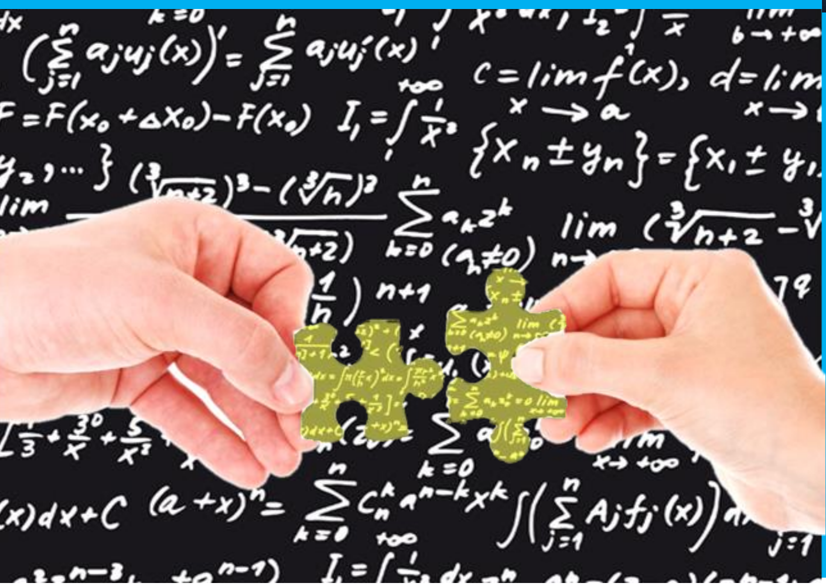
Export restrictions and policy space for sustainable development:

Lessons from trends in the regulation of export restrictions (2012-2016)



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WORKING PAPER

Export restrictions and policy space for sustainable development: Lessons from trends in the regulation of export restrictions (2012-2016)

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Abstract

The General Agreement on Tariffs and Trade 1994 (GATT 1994) generally prohibits the World Trade Organization (WTO) members from using export quotas and other quantitative restrictions with certain exceptions. By contrast, export duties are not regulated under the GATT 1994 though a few WTO members such as China commit to restricting the use of export duties in their WTO accession protocols. Given the plethora of regional trade agreements (RTAs) and the slow progress of the WTO Doha Round of multilateral trade negotiations, the incorporation of WTO-plus provisions into RTAs that regulate export restrictions in a more effective manner could contribute to a transparent and predictable trade regime. In a series of WTO cases about export restrictions, namely *China—Raw Materials (DS394/ DS395/ DS398)*, *China—Rare Earths (DS431/ DS432/ DS433)*, and most recently *China—Raw Materials II (DS508/ DS509)*, China claimed that its export restrictive measures on various industrial inputs were adopted for protecting the environment. Although China's arguments failed to convince the panel and the Appellate Body in the first two cases, these cases raise the question of how to effectively regulate export restrictions without constraining countries' policy space to pursue legitimate policy goals. This paper seeks an answer from the perspective of sustainable development as export restrictions could contribute to ensuring food security, reducing pollution, and conserving exhaustible natural resources when the better options are not financially or practically available. By examining 11 WTO accession protocols and 50 regional trade agreements that have entered into force in the period from 2012 to 2016, this paper reveals recent trends in the regulation of export restrictions and their implications on countries' policy space to achieve sustainable development goals. An analysis is offered of the major approaches to incorporating WTO-plus provisions, and better options to replace export restrictions for achieving sustainable development are also discussed.

Keywords: Export restrictions, Sustainable development, WTO, Regional trade agreements

JEL codes: K33, Q01

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1. Introduction

Export restrictions can be imposed either in the form of quantitative restrictions or through fiscal policies including taxes on exports. Typical quantitative restrictions include export bans or allowing a fixed quota of quantity for exports through export license requirements as well as minimum export prices with the intention to restrict and reduce the flow of exports of a given product. Fiscal restrictions involve customs duties on exports, often known as export duties, which reduce the volume of exports due to increased cost of export products since the value of the duties or taxes get included.

Governments have traditionally imposed export restrictions in the pursuance of economic goals; for many, export duties on raw materials are considered an important means of increasing revenue.[1] Another major economic objective of such restrictions is to increase the value-added content of exports. Thus, for instance, the government of Indonesia proposed a ban on unprocessed exports of raw minerals in 2014 with the aim of supporting that country's manufacturing sector.[2]

Until relatively recently, the frequently-cited policy objectives of export restrictions were extended to non-economic areas ranging from environmental protection to food security.[3] According to the WTO Trade Policy Reviews, countries commonly impose export restrictions on certain products in order to fulfill obligations under various multilateral environmental agreements, such as the Montreal Protocol on Substances that Deplete the Ozone Layer (the 'Montreal Protocol'). Governments also on occasion use export restrictions in a unilateral manner to protect the environment; thus at least six have claimed to have imposed export duties in order to conserve natural resources and reduce

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[1] Fung, K.C. and Jane Korinek, 2014. "Economics of Export Restrictions as Applied to Industrial Raw Materials" in *Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices* (p. 82), OECD Publications.
[2] Parisotto, L, Daniela García Santibáñez Godoy, and Adam Heal, 2016. "Adding value to Indonesian mining exports: Time to revisit export restrictions?", UN ESCAP Trade Insights, No. 19, August, p. 1.
[3] Fliess, B, Christine Arriola and Peter Liapis, 2014. "Recent Developments in the Use of Export Restrictions in Raw Materials Trade", in in *Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices* (pp. 40-41), OECD Publications.

pollution.[4] As for food security, it was cited as a motivation for imposing export restrictions, for example, during the rice crisis of 2008, when several countries acted to stem instability in and upward pressure on domestic prices.[5]

Stated policy objectives aside, economists have long argued that countries should replace export restrictions with alternative measures, citing two major reasons. First, such restrictions, because they distort prices, cause inefficiencies that reduce global welfare.[6] Second, even if the loss of global welfare could be justified in the legitimate use of export restrictions, export restrictive measures can be replaced by other policy instruments that are more effective in achieving the same goals.[7]

Against this background, several countries have proposed strengthening the controls over export restrictions in the WTO. Thus, for instance, the European Union (EU), in the course of non-agricultural market access negotiations under the Doha Development Agenda, has suggested negotiating a multilateral regime to regulate export duties that are not covered under WTO law, though this proposal was rejected by certain WTO member states that desired to preserve the policy space represented by export duties.[8]

Responding to the WTO's failure to strengthen the rules on export restrictions at the multilateral level, some WTO members have tried to incorporate WTO-plus provisions

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[4] Sri Lanka (WT/TPR/S/237), Angola (WT/TPR/S/278), Thailand (WT/TPR/S/191), China (WT/TPR/S/199/Rev.1 and WT/TPR/S/230), Indonesia (WT/TPR/S/278), and Gabon (UNEP, 'An Analysis of Economic Instruments in Sound Management of Chemicals', http://www.unep.org/chemicalsandwaste/chemicalsandwaste/UNEPsWork/Mainstreaming/UNEPLIRAGuidance/Background/DevelopmentofGuidanceonEconomicInstruments/tabid/79273/Default.aspx, at 26).

[5] Anania, G, 2013. "Agricultural export restrictions and the WTO: What options do policy-makers have for