Designing coherent and equitable WTO disciplines on export restrictions

By

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Introduction

• Proliferation of export restrictions
  – Export duties or taxes
  – Export bans
  – Export quotas

• Large suppliers are using them
  – Availability of supply
  – World prices

• China – Raw Materials and China – Rare Earths
  – Revival of industrial policy
  – Accent on sustainable development and sovereignty over natural resources
Problem/opportunity

3 core objectives:

– **Transparency** – ensure that WTO Members are fully informed of measures taken by any other Member that may influence trade

– **Predictability** – ensure that WTO Members can reasonably expect what measures any other Member may impose that influence trade

– **Flexibility** – ensure that WTO Members, and developing countries in particular, may use export restrictions under legitimate situations
Responses

Transparency

Predictability

Flexibility
Transparency

• Article X GATT on transparency does not include specific notification requirements
• 1993 Uruguay Round Ministerial Decision on Notification Procedures – ‘little, if any, practical effect on Members’ level of transparency’
• 1995 Council for Trade in Goods Decision on Notification Procedures for QRs – revised in 2012 because of modest implementation
• Agreement on Trade Facilitation may represent an advancement
Predictability

- Art. XI:1 GATT prohibits any types of quantitative restrictions (prohibitions, quotas, ...) but not export duties
- No explicit mechanism on scheduling and binding export duty concessions à la Art. II:1 (b) GATT
- Members left free to do so as per Article II:1 (a) and Article XXVIII (bis) GATT
- Overall paucity of commitments: Australia (narrowly tailored), Russian Federation (in the context of accession, Part V of GATT schedule)
Flexibility

- Rigidity of export duty commitments incorporated into the GATT framework
  - Import-specific GATT adjustment procedures and exceptions include Article XII, Article XVIII (b), Article XVIII (c), Article XIX
- Rigidity of WTO-plus obligations on export duties assumed under accession protocol provisions
  - Not incorporated into GATT schedules, technically not export duty concessions (e.g. Art. XXVIII does not apply)
  - Conditional applicability of GATT general exceptions (see China – Rare Earths)
Transparency

• Strengthened notification and documentation requirements
  – Models: Understanding on the Interpretation of Article XVII GATT, Article 7 Proposed WTO Agreement on Export Taxes

• Specific consultation procedures, ideally administered by a specific Committee on Export Restrictions
  – Model: BoP Committee

• May be done by a Ministerial or General Council Decision, on a priority basis and independently of the outcome of negotiations on predictability and flexibility

• Flexibilities for small vulnerable WTO Members may be envisaged
System-wide disciplines on export taxes

- Multilateral negotiations of export duty concessions on a product-by-product basis
  - Scheduling and binding export duty concessions into Part V of GATT schedules (Russian model)
  - Incorporation of existing WTO-plus commitments into respective Members’ GATT schedules
  - Specific flexibilities for LDCs and small vulnerable economies

- No formal amendment required

- GATT-specific adjustment procedures and exceptions would automatically apply across-the-board

- Request-offer or sectoral approach (ITA-type of agreement also possible)
Additional Flexibilities

- Applicability of relevant import-specific GATT economic exceptions could be confirmed
  - Article XII, Article XVIII, Article XV…

- An export safeguard mechanism based on price and/or quantity triggers could be envisaged
  - Thresholds could be diversified based on specific criteria (development stage, size of exports, ….)

- Availability of additional flexibilities could be conditioned upon scheduling and binding in the spirit of privileging export taxes

- A new Agreement on Export taxes would have to be concluded
Conclusions

• Many factors could contribute rebuilding momentum for reform
  – Proliferation of export restrictions, especially in the mineral sector
  – Interpretative outcome in *China – Raw Materials* and *China – Rare Earths*
  – Accession negotiations of several resource-rich countries to the WTO

• The solutions are there but need to be balanced out more carefully to address conflicting needs

• Developing countries should take the lead
Thank you!
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