

**UNCTAD GLOBAL COMMODITIES FORUM
13-14 April 2015**

**Designing coherent and equitable WTO disciplines
on export restrictions**

By

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The views expressed are those of the author and do not necessarily reflect
the views of UNCTAD.

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Introduction

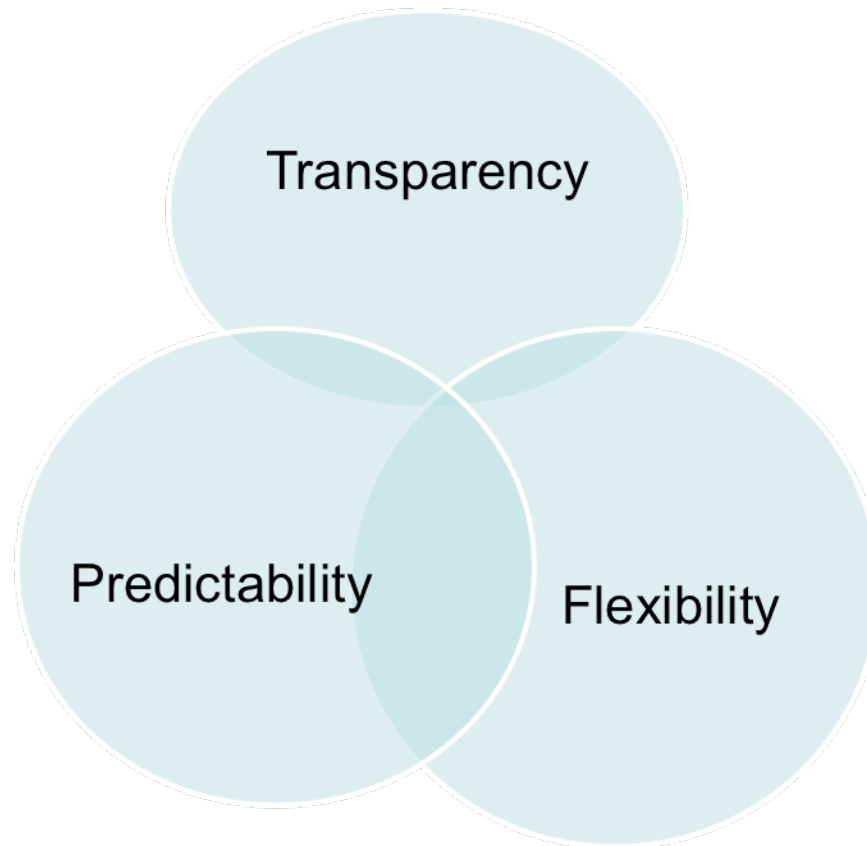
- **Proliferation of export restrictions**
 - Export duties or taxes
 - Export bans
 - Export quotas
- **Large suppliers are using them**
 - Availability of supply
 - World prices
- ***China – Raw Materials and China – Rare Earths***
 - Revival of industrial policy
 - Accent on sustainable development 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

- 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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