



TRADE & INDUSTRIAL POLICY STRATEGIES

WORKING PAPER

**PERSPECTIVES ON THE
CURRENT WTO AGRICULTURE
NEGOTIATIONS ON EXPORT RESTRICTIONS**

Dr Noncedo Vutula

FEBRUARY 2021

Trade & Industrial
Policy Strategies
(TIPS) is a research
organisation that
facilitates policy
development and
dialogue across three
focus areas: trade
and industrial policy,
inequality and
economic inclusion,
and sustainable
growth

info@tips.org.za

+27 12 433 9340

www.tips.org.za

CONTENTS

Abbreviations and Acronyms	3
Abstract	4
1. Introduction	5
2. Existing WTO law on export restrictions.....	6
3. Current WTO negotiations on export restrictions.....	8
3.1 Recent and current proposals on export restrictions	8
3.2 Arguments in support for enhancing regulations on export restrictions.	11
3.3 Arguments against transparency provisions on export restriction and WFP exemptions to export restrictions	12
4. Observations	14
5. Conclusion.....	15
References	16
Annexure.....	19

ABBREVIATIONS AND ACRONYMS

AoA	Agreement on Agriculture
CTG	Council for Trade in Goods
CoASS	Committee on Agriculture in Special Session
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GC	General Council
NAMA	Non-Agricultural Market Access
NTBs	Non-Tariff Barriers
QRs	Quantitative Restrictions
PSH	Public Stockholding for Food Security Purposes
SDG	Sustainable Development Goals of the United Nations
S&DT	Special and Differential Treatment
UK	United Kingdom
UN	United Nations
US	United States
WFP	World Food Programme
WTO	World Trade Organization

ABSTRACT

The outbreak of the COVID-19 pandemic has underscored the limitations in the World Trade Organization (WTO) rules on export restrictions. Consequently, the affected parties have identified the WTO rules on export restrictions as an area that needs further augmenting. As a result of the COVID-19 outbreak, efforts to strengthen the WTO rules on export restrictions have increased. These efforts are demonstrated by an increased number of proposals and submissions on export restrictions. The focus of the recent proposals and submissions on export restrictions is mainly in two areas. Although the focus of the WTO agriculture negotiations covers all issues that are currently being negotiated, export restrictions are portrayed as a low hanging fruit, where immediate outcomes are possible. This area is earmarked as a possibility for an outcome in the next WTO Ministerial Meeting in 2021.

Even though an outcome in this area will assist in advancing the WTO agriculture negotiations, this falls short in addressing the developmental needs of the developing countries. Endeavours for an outcome in agriculture should focus on all areas, especially those that have the greatest developmental impact for developing countries. The first area of focus is the transparency provisions on export restrictions. The second area is the exemption of World Food Programme (WFP) food purchases for non-commercial humanitarian purposes from export restrictions. Although the current focus is on these areas, there are ongoing attempts for a complete ban of export restrictions.

This paper provides an analysis of the two elements that are addressed in the recent export restrictions proposals. It gives insights into the current debates on export restrictions in the WTO agriculture negotiations. An overview of the previous discussions on export restrictions is presented in an effort to draw similarities between the previous discussions and the current discussions. This paper also offers some observations on the possibility of an outcome on export restrictions in the next WTO Ministerial Meeting. Last, this paper gives some insights on the implications of the draft General Council decision, which would constitute an outcome on export restrictions in the next WTO Ministerial meeting. While the focus of the WTO discussions on export restrictions covers both agricultural and non-agricultural export restrictions, this paper has a particular bias towards the agricultural export restrictions.

1. INTRODUCTION

The outbreak of the COVID-19 pandemic has placed the WTO disciplines on export restrictions under public scrutiny. Similar incidents such as global food price increases and natural disasters have in the past underscored the prevailing loopholes in the WTO rules on export restrictions. These are essential policy instruments used by developing countries for economic development, food security and economic diversifications. In the past, enforceability of the WTO rules on export restrictions have proved to be a challenge. This has propelled WTO members to make efforts to strengthen the existing rules on export restrictions. The WTO law on export restrictions does not restrict members from imposing export restrictions. Some scholars have highlighted a number of loopholes in the WTO law on export restrictions. Qin (2012) argues that the WTO law on export restrictions is under-regulated.¹ Korinek and Bartos (2012) further elaborate that this under-regulation of export restrictions has created many grey areas. Moreover, the WTO rules and obligations on export restrictions are usually subject to different interpretations. Crosby (2008) states that the weak rules on export restrictions in WTO agreements was either an omission or an intentionally reserved policy space.

The provisions on export restrictions are established in the General Agreement on Tariffs and Trade (GATT) (GATT, 1994) and the WTO Agreement on Agriculture (AoA) (WTO, 1994). Although there are provisions on the general prohibition of quantitative export restrictions, these provisions are often ambiguous (Korinek and Bartos,2012). The ambiguity in this area has generated debate in WTO agriculture negotiations in the recent past (JOB/AG/101; JOB/AG/191). This debate is further compounded by the upcoming WTO Ministerial meeting, scheduled for 2021. In preparation for the 2021 WTO Ministerial Conference, WTO members are gearing up for outcomes in the various areas of negotiations. Agriculture is one of the areas with high expectations for an outcome. Consequently, the topic of export restrictions is high on the agenda of the WTO agriculture negotiations. It is important to note that there are other issues that are prioritized in the WTO agriculture negotiations. These are disciplines on trade distorting domestic subsidies, cotton, public stockholding for food security purposes, special safeguard mechanism, market access and export competition. A substantial number of WTO members consider an outcome on export restrictions as a low hanging fruit (JOB/AG/191). The COVID-19 outbreak further raised the prominence of an outcome on export restrictions, particularly the transparency provisions as well as the exemptions of WFP food purchases for humanitarian purposes. However, it is important to highlight that some of the proposals in the WTO negotiations on export restrictions that have been circulated in the past go beyond disciplines on the transparency provisions and WFP exemptions. These proposals seek to completely ban the use of export restrictions in agriculture.

The current drive for improved disciplines on export restrictions is not new. During the Doha negotiations (between 2001 and 2003) a number of proposals were circulated with the

¹ Export restriction measures can be divided into quantitative restrictions (QRs) on exports, which restrict the volume of exports, and export taxes, which levy a tax on exports. Quantitative restrictions include export quotas and export bans. Export quotas define a maximum volume of exports, while export bans prohibit exports of a certain product completely. Governments can restrict exports by simply refusing to approve new licences or by forbidding the signing of new export contracts (Dollive, 2008).

intention of disciplining export restrictions. Japan circulated a proposal on export restrictions which sought to introduce tariffication of all export prohibitions by replacing them with export taxes. The Japan proposal also suggested binding all the export taxes (G/AG/NG/W/91). A proposal by Switzerland (G/AG/NG/W/94) suggested a complete eliminating of all export restrictions and binding export taxes at zero. The Swiss proposal allowed some flexibilities for Least Developed Countries. Korea circulated a proposal (G/AG/NG/W/98) which further envisaged prohibiting export restrictions and export taxes, with a view of binding export taxes at zero. The Cairns Group further circulated a proposal (G/AG/NG/W/93) which sought to improve disciplines on export restrictions and taxes. The Cairns Group proposal equally sought to preserve Article 12 of the AoA. Furthermore, it made provisions for Special and Differential Treatment (S&DT). The US proposal (G/AG/NG/W/15) called for substantially strengthening WTO disciplines on export restrictions to increase the reliability of global food supply. The aim of the aforementioned proposal was to prohibit the use of export taxes, including differential export taxes, used for competitive advantage or supply management purposes. According to Kim (2010) and Mitra and Josling (2009), the Non-Agricultural Market Access (NAMA) also negotiated disciplines on export restrictions. The European Commission submitted a proposal to remove all export restrictions on raw materials in the NAMA negotiations (Job (07)/43; Deese and Reader, 2007).

Efforts to discipline or completely eliminate export restrictions represent a dominant view both now and in the past. It is important to highlight that there are different opinions on the current disciplines on export restrictions. Some WTO members are resolute on preserving the policy space on export restrictions. Export restrictions are viewed as a necessary tool for economic development in many developing countries. A complete elimination of export restrictions would have negative consequences for developing countries, especially those that use export restrictions for national imperatives such as food security, economic diversification and infant industry protection. In addition, a complete ban on export restrictions would promote dependency on trade and world markets for food security. It would also reduce the focus on enhancing domestic food production (Kwa et al, 2020).

The tabling of the draft decision on export restrictions transpired at a time when the pace of negotiations was slow, due to the delays created by COVID-19 in the negotiations as well as the delays in concluding the appointment of the WTO Director-General (Third World Network, 2020a). As a result, the sponsors of the draft decision have presented it as a confidence-building mechanism, which would demonstrate the capability of the WTO to deliver tangible outcomes. While delivery of tangible outcomes by the WTO is vital, it is important to highlight that numerous equally important negotiating issues need to be prioritised as a confidence-building mechanism (JOB/AG/191).

2. EXISTING WTO LAW ON EXPORT RESTRICTIONS

The provisions on export restrictions are set out in the GATT (Article XI) and in the Agreement on Agriculture (Part VI, Article 12). The GATT (Article XI) states that “no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party” (GATT, 1994). The Agreement on Agriculture (Part VI, Article 12)

states that countries imposing quantitative bans shall notify the WTO and affected importing countries (WTO, 1994). There are exceptions to the provisions that are applicable under GATT (Article XI) and the AoA (Part VI, Article 12).

Exceptions to GATT Article XI stipulate conditions under which exceptions are allowed. One area where exceptions are allowed is when there is a need to meet shortages in the domestic supply of the commodity in question. GATT Article XI:2(a) allows for exceptions on grounds of shortage of food or other vital substance. GATT Article XI:2(c) allows for exceptions for export restrictions on agricultural and fisheries products. Article 12 of the Agreement on Agriculture contains the obligation of notification when GATT Article XI:2(a) (critical shortage of food or other vital substance) is applied, and an obligation to act considerately towards importing countries (GATT, 1994) and (WTO,1994). GATT Article XX allows for general exceptions, which include measures for conservation of limited natural resources, measures to guarantee the availability of vital raw materials for domestic processing industries, and measures for the acquisition or allocation of commodities that are in short supply (GATT, 1994).

These provisions on export restrictions, as outlined in GATT (Article XI) and in the Agreement on Agriculture (Part VI, Article 12), show that the WTO law on export restrictions does not restrict members from imposing duties, taxes or other charges on exports. This illustrates contradictions in the WTO law on export restrictions and the application of the law. These contradictions result in the prevailing ambiguity in the interpretation of the WTO law on export restrictions. This argument is supported by some scholars, such as Crosby (2008), who argues that the WTO rules on export restrictions are inadequate. As a result, the interest from some members of the WTO to strengthen disciplines in this area is huge. This interest is confirmed by an increase in the number of proposals that seek to expand transparency and monitoring mechanisms on export restrictions, with a view of strengthening the rules in this area. The effort to improve transparency and monitoring mechanisms on export restrictions disciplines has generated objections from some WTO members, especially developing countries in Africa and Asia. Some of these objections show that developing countries may find the additional transparency obligations too onerous for them (Africa Group Statement to CoASS, 2017).

Other scholars have attributed the under-regulation of export restrictions during the Uruguay Round, which took place between 1986 and 1993 to two factors. Bouet, Estrades and Laborde, (2014) argue that one of the factors is that during the Uruguay Round, the main position in the negotiations was that profitable trading yields positive benefits. Consequently, more stringent rules on export restrictions would diminish both the profitability of trading and the positive benefits from trading. The other factor, as stated by Anania (2013), is that when the Uruguay Round was launched, commodity prices were low and stocks were high. As a result, agricultural prices were not considered as a domain of great concern at that time. These factors have changed in the past couple of years, leading to a shift in focus to export restrictions (Bouët and Laborde 2016).

3. CURRENT WTO NEGOTIATIONS ON EXPORT RESTRICTIONS

Strengthening rules on export restrictions has been in the agenda of the WTO for over twenty years, without any tangible outcomes. A number of proposals on export restrictions were circulated during the Doha Round of WTO negotiations, without an outcome (G/AG/NG/W/91). During the food price increases of 2008/2009 similar proposals on export restrictions were circulated, without results (G/AG/NG/W/93).

Negotiations on export restrictions gained momentum before the eleventh Ministerial Conference in 2017, when a number of food importing countries tabled proposals that sought to strengthen rules and enhance transparency provisions on export restrictions (JOB/AG/101). Efforts to strengthen the rules on export restrictions continued from 2018 onwards. The outbreak of COVID-19 highlighted the need to strengthen rules on export restrictions. A number of proposals that suggest amendment or revision to some of the provision of WTO agreement are examined below.

3.1 Recent and current proposals on export restrictions

In 2017, Singapore and a number of co-sponsors circulated a proposal on export restrictions, which sought to enhance transparency in export prohibitions and restrictions (JOB/AG/101).

Additionally, between 2017 and 2020, a number of members circulated various iterations of proposals soliciting to strengthen transparency provisions in export restrictions. The fundamental intention of these proposals is to enforce prior notifications to the WTO by those who are imposing export restrictions (JOB/AG/191) as well as an exemption of foodstuff purchases by the World Food Programme for humanitarian purposes from export restrictions (JOB/AG/191). Singapore also circulated a submission which provides more detailed information on the impact of export restrictions to the work of the WFP (WT/GC/W/810).

More recently, in December 2020, some members of the WTO, led by Canada and Singapore, drafted a General Council decision on export prohibitions and restrictions. The sponsors of the aforementioned General Council decision on export prohibitions and restrictions include the United States (US), the European Union, Japan, Australia, New Zealand, Iceland, Canada, Norway, Switzerland, the United Kingdom (UK) and Liechtenstein and developing countries such as Albania, Angola, Chile, Colombia, Ecuador, Grenada, Guyana, Indonesia, Israel, Korea, Malawi, Malaysia, Mali, Mexico, Moldova, Mongolia, Montenegro, Myanmar, Paraguay, Peru, Qatar, Samoa, Saudi Arabia, Singapore, the Solomon Islands, and Chinese Taipei. The draft decision was meant to be adopted by the General Council of the WTO (WT/GC/W/810/Rev.3 – TN/AG/46/Rev.3). The draft decision states that “Members shall not impose export prohibitions and restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Program” (WT/GC/W/810/Rev.3 – TN/AG/46/Rev.3).

It is worth noting that the portrayed intentions of draft decision are noble. However, the scope and focus of the draft decision are a great concern to many developing countries with food security challenges. The role of the WFP is to provide humanitarian assistance such as food aid during emergencies. The WFP acknowledges a need to work closely with governments in executing its duties. Provision of domestic food security is a primary responsibility of the states. This responsibility is supported by various national, regional and international forums (Vyas, 2000). The draft decision on WFP exemptions is silent on the

co-operation between the WFP and national governments. It is also silent on the preservation of food security concerns during the execution of the WFP exemptions from export restrictions. It suggests that the sovereign responsibility of the state to provide domestic food security will be relinquished to the WFP. It is vital to indicate that the sovereign responsibility of states cannot be delegated to external entities. Doing so would compromise national security of states.

Prior to the tabling of the draft decision to the General Council meeting, the G90² made efforts to include developing countries concerns in this draft decision. The G90 circulated an unofficial draft decision among themselves, which stipulates that “With the understanding that the World Food Programme always takes procurement decisions on the basis of its principles to do no harm to the supplying member and promote local and regional food procurement” (G90, 2020). The G90 text further incorporates that “Members shall not impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme” (G90, 2020). Some members of the G90 insisted on the inclusion of the language, “Recalling and reaffirming Article 12 of the Agreement on Agriculture and Article XI of GATT 1994” (G90, 2020). Other members, particularly Tanzania, insisted that the text should include “if the purchase does not compromise national food security” (G90, 2020). In addition, other members insisted on the following wording: language “... It is understood that Members’ food security shall not be jeopardised as a result of these purchases” (G90 unofficial document, 15 December 2020). The G90 proposal could not be circulated as an official document due to lack of willingness from the sponsors to accommodate other views as well as differing opinions within the G90. Consequently, the G90 did not reach consensus on its proposal.

Other developing countries made efforts to have a balanced text, which would include the following: “food security concerns of the supplying member” in the draft General Council decision. The sponsors of the draft decision refused to accommodate the concerns of the developing countries as part of the main content of the draft decision. As an alternative, the sponsors proposed to accommodate these concerns in the preamble of the draft decision (Third World Network, 2020a). The lack of flexibility from the sponsors of the draft General Council decision isolated those who advocated for the amendments to the text, as their genuine concerns were not considered. The rigidity of the sponsors of the draft General Council decision reveal their lack of preparedness to accommodate contrasting views. This stance further reduced the possibility of getting an outcome on export restrictions at the next WTO Ministerial Meeting. It also alienated developing countries. As a result, a handful of WTO members objected to the draft decision. These members are India, Pakistan, and the Africa Group. In addition to supporting the Africa Group statement, Tanzania delivered its own verbal submission during the General Council meeting, to demonstrate the significance that it attaches to this matter. This submission emphasised the importance of preserving export restrictions for food security purposes (Third World Network, 2020a).

The WTO initiative on WFP exemptions from export restrictions is aligned to other multilateral initiatives that are intended to attain global food security. These initiatives include Sustainable Development Goal (SDG) 1 and 2 of the United Nations and the Zero Hunger

² An alliance between the poorest and smallest developing countries, many of which are part of the WTO.

initiative of the Food and Agriculture Organization (FAO) and WFP. The WTO heeded a call to eliminate hunger and attain food security in 2013, through the Bali Interim Solution on Public Stockholding for food security purposes. According to the Bali Interim Solution, a permanent solution on Public Stockholding for Food Security Purposes (PSH) was to be concluded by the Eleventh Ministerial Conference (MC11) (WTO, 2013.)

The rationale of the proposal from the developing countries to include “food security concerns of the supplying member “is based on ongoing initiatives of other multilateral institutions to solve global food insecurity and hunger. The main purpose of these initiatives is to attain food security. The rejection of the proposal to include food security concerns of the supplying member in the draft General Council decision is inconsistent with what is outlined as the purpose of the draft decision. As a result of the inconsistencies, the intention of the draft decision is questioned. Additionally, it raises questions about the commitment of the WTO to deliver on the Ministerial mandate on food security, which is encompassed in the Bali Interim solution on PSH (India Statement to the WTO General Council, 2020).

As a result of the discussions that have transpired about the food security concerns of the developing countries, developing countries have drawn similarities between this draft decision and the 2017 PSH proposal that was circulated by Norway and Singapore. This proposal states that “any developing Member seeking coverage of PSH programmes shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members” (JOB/AG/125). Of interest to the current debate on WFP exemptions is the footnote in JOB/AG/125 which states that “this provision shall not apply to food purchases by the World Food Programme for non-commercial humanitarian purposes” (JOB/AG/125). The inclusion of the WFP exemptions on PSH programmes agitated the beneficiaries of PSH programmes. This linkage is viewed as threatening developing countries’ access to the Bali interim solution of PSH. In the recent discussion on the draft General Council decision on WFP exemptions, similar food security concerns for developing countries were raised. Even after these concerns were raised, the draft General Council decision on WFP exemptions is silent on the protection of the access of developing countries to the Bali “peace clause” when the WFP purchases are facilitated through PSH food stocks (India Statement to the General Council, 2020).

The precursor to the Singapore proposal of December 2020 was the decision taken by the G20 Agriculture Ministers in April 2020 in response to the outbreak of COVID-19 pandemic.³ The meeting undertook to “ensure that any emergency trade measures designed to tackle COVID-19, including export restrictions on vital medical supplies and equipment and other essential goods and services, if deemed necessary, are targeted, proportionate, transparent, temporary, strive to protect the most vulnerable, do not create unnecessary barriers to trade or disruption to global supply chains, and are consistent with WTO rules” (G20, 2020.)

³ The members of the G20 are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, the US and the EU.

The G20 Ministers also agreed to “refrain from introducing export restrictions on agricultural products, including on products purchased for non-commercial humanitarian purposes, and avoid unnecessary food-stockpiling, without prejudice to domestic food security, consistent with national requirements” (G20, 2020). In addition, they agreed to “consider exempting humanitarian aid related to COVID-19 from any export restrictions on exports of essential medical supplies, medical equipment and personal protective equipment, consistent with national requirements” (G20, 2020).

3.2 Arguments in support of enhancing regulations on export restrictions

Several reasons that have been put forward by the supporters of the draft General Council decision on WFP exemptions from export restrictions. The existing evidence suggests that imposing export restrictions on goods that are designated for humanitarian purposes restrict the work of WFP (WFP presentation to CoASS, 10 November 2020). The sponsors of this decision emphasised that the adoption of this would assist in facilitating the WFP work of providing critical humanitarian support. The importance of the work of the WFP is underscored by the COVID-19 pandemic as well as other economic crises and natural disasters. During the General Council meeting where the draft decision was tabled for adoption, the significance of humanitarian food aid by the WFP received overwhelming support. However, there were conflicting opinions on the method of addressing the impact of export restrictions on vulnerable populations. While the adoption of the decision would constitute a breakthrough on export restrictions, which has been a subject of discussion in the Doha agriculture negotiations for the past 20 years, it is important to highlight that there are many, equally important issues in the Doha agriculture negotiations that have also been the subject of discussion for the past 20 years (JOB/AG/191). One of the issues of interest for the developing countries is the ongoing negotiations on public stockholding for food security purposes, which has also been on the table for more than 20 years. The non-proponents underscored the need to treat all agricultural negotiating issues equally. Developing countries emphasised a need to finalise negotiations on the amended Bali “peace clause”, in order to have a permanent solution on PSH (Third World Network, 2020b). Other issues raised by the non-proponents are the striking differences on the pressure and effort put towards getting a decision on export prohibitions, and efforts made towards reaching an outcome on public stockholding programmes for food security as well as other major issues of the Doha work programme.

Furthermore, the draft decision stimulated a number of questions from the non-proponents. These include whether the WFP draft decision will incorporate the provision of exports to the WFP from PSH stocks of a supplying member. This can happen in two ways. It can happen through the WFP sourcing from the PSH stocks of a supplying member. Alternatively, it can happen when the supplying member relinquishes some of its PSH stock for humanitarian procurement without compromising its own domestic food security.

Moreover, there was also a demand for the draft decision to include bilateral, non-commercial, humanitarian food assistance afforded by a supplying country to its neighbouring countries and region from the PSH stocks (India Statement to the General Council, 2020).

The proponents of the decision consider it a confidence-building measure in the absence of an agreement in other negotiations such as fisheries subsidies (Third World Network, 2020b).

The general effect of imposing export restrictions on particular commodities is that this measure reduces global export supplies in the global markets. When export restrictions are imposed by several exporters concurrently, this results in uncertainty and price volatility in world markets (Fung and Korinek, 2013). The use of export restrictions also affects trade between neighbouring countries and traditional trading partners. This happens because when export restrictions are imposed, the affected trading partners are often left to scramble for alternative suppliers. This impacts on the importers' ability to source food products from surplus areas and creates uncertainty to food security. This has a negative effect on the reputation of international markets as a reliable source of food supplies such as grain. Consequently, importing countries are compelled to use alternative policy options such as increasing their own production capacity (FAO, 2017).

With the Singapore et al draft decision on export restrictions, the most immediate benefit is that the adoption of this decision would assist the WFP in achieving its goal of reducing hunger. At present the export bans and restrictions on the procurement of humanitarian food aid could minimise the ability of the affected countries to meet the UN's SDGs, particularly the "zero hunger" commitment set out under SDG 2 (WFP briefing to the WTO, 10 November 2020).

Export prohibitions or restrictions imposed by any country on non-commercial humanitarian food aid can delay delivery of foodstuffs to recipient countries affected by hunger. The imposition of export restrictions in one country could compel the WFP to acquire the commodities outside the region. This leads to increases in procurement costs and transport costs. It also leads to delays in the delivery time. Other related costs include damage to the consignment as a result of the lengthy time in transit before the consignment reaches its destination. This reduces the quantity of the consignment and therefore fewer people benefit from the WFP offers (WFP briefing to the WTO, 10 November 2020).

The draft decision on export restrictions (WT/GC/W/810/Rev.2 – TN/AG/46/Rev.2) received support from many developed and developing countries. Other developing countries showed an interest in the adoption of the decision, on condition that there is some trade-off. (Third World Network, 2020a).

3.3 Arguments against transparency provisions on export restrictions and WFP exemptions to export restrictions

A number of reasons have been sighted in opposition to strengthening the rules on export restrictions. With regards to enhancing transparency provisions on export restrictions, one of the reasons sighted is that additional notification requirements may be too burdensome for developing countries. Moreover, suggestions for prior notification before applying export prohibitions or restrictions can lead to price speculation, which could affect food prices (JOB/CTG/15). Some developing countries have raised a concern that prior notification on export restrictions could create panic buying and stockpiling food during times of economic crisis or natural disasters. This could worsen supply shortages (FAO, 2020). In addition, export restrictions are used as a policy tool to improve food availability on domestic markets during times of food shortage. Export restrictions could also be used to lower the costs of farm inputs used for value addition in other domestic industries (South Centre, 2006). Such dependency makes commodity-dependent developing countries vulnerable to commodity price

fluctuations and to the stimulus provided by commodity trade to economic growth and development.

Furthermore, there are several channels through which export restrictions impact economic development positively. Developing countries use the policy space provided by export restrictions to promote industrialisation and diversification for economic development (Africa Group Statement to CoASS, 2017). Proposals that seek to enhance transparency provisions on export restrictions as well as prohibit the use of export restrictions disregard this justification for export restrictions. Adopting the above proposals would further restrict the policy space available to developing countries to attain their developmental objectives. Moreover, a complete prohibition of export restrictions would limit the policy space for using this policy tool to develop the economies of many developing countries. To that extent, prohibition of export restrictions should be perceived similarly to other restrictive WTO rules, such as the trade distortive domestic subsidies that are available to farmers in developed countries. Domestic subsidies are detrimental to poor resourced farmers in developing countries. This should be seen as an additional policy constraint, similarly to other restrictive WTO rules. Acceding to more stringent rules on the export restrictions policy instrument does not assist developing countries in achieving their developmental objectives of building their economies and integrating their economies in the multilateral trading system (South Centre, 2006).

Export restrictions are also imposed to guarantee domestic food security when major economic upsets or natural disasters occur. In addition, this is also applicable during times of seasonal shortages, especially when there are significant time lapses between successive harvests. In such situations, export restrictions are imposed to ensure that domestic consumption needs are met between crop seasons. Moreover, the use of export restrictions assists to prevent depletion of the national food stocks. It also prevents potential food shortages when supplies cannot be increased in good time through harvests (Mitra and Josling, 2009).

There are economic reasons that support the use of export restrictions. These reasons include incidents such as sudden import surges caused by the sharp appreciation of the importer's currency or devaluation of the exporter's currency, which divert producers from domestic markets. Export restrictions are frequently imposed to avert sudden scarcity of food due to exchange rates fluctuations. Export restrictions are also imposed for the purposes of financing government expenditures. Another economic motive for export restrictions is to stimulate the development of agri-business through processing. Agro-processing is an important element for economic development in developing and least developing countries. Many agricultural products are consumed in their processed form. The motive for export restrictions on some raw agricultural products is to boost the domestic economy through increased income generated from higher export value of the processed products (Sanago, 2014). The provision of additional goods and processed products contributes positively towards the GDP. The backward linkage to primary agriculture, reduction of uneven income distribution and rural-urban migration contributes to income generation and employment creation in the rural areas. Agro-processing also generates a source of exports and foreign exchange (Sanago, 2014).

4. OBSERVATIONS

Several observations are made about the WTO negotiations on export restrictions. First, the COVID-19 pandemic has exposed the ambiguities in the WTO rules on export restrictions. Concomitantly, during times of economic crisis and natural disasters, as these ambiguities get exposed, more export restrictions are imposed. Consequently, more efforts are made to strengthen the WTO rules on export restrictions. While these efforts are appreciated, it is important to highlight that there are several issues in the agriculture negotiations that would benefit from more vigorous efforts.

Second, the WTO law on export restrictions is relatively limited. It allows a lot of policy space for domestic policy considerations. It is against this background that the export restrictions policy space should be retained, to assist developing countries to realise their developmental goals.

Third, while some members argue that disciplines on export restrictions need to be strengthened, it is important to highlight that WTO law on export restrictions does not prohibit the use of export restrictions. GATT XI and Article 12 of the AoA do not prohibit members from imposing export restrictions. While both articles require members to eliminate all prohibitions and quantitative restrictions on exports, these articles also make provisions for the use of export restrictions when they are imposed on a temporary basis to curb and alleviate food shortages. In addition, export restrictions can also be used to allow time for the application of regulations such as classification and grading.

Fourth, current and past WTO negotiations on strengthening disciplines on export restrictions consist of three elements. These elements cover the enhancement of the transparency provisions, a complete ban on export restrictions, and WFP exemptions on consignments for humanitarian purposes. Discussions on the latter have gained momentum, resulting in a draft General Council decision (WT/GC/W/810/Rev.3). Adoption of this decision would lead to the decision becoming an outcome at the next WTO Ministerial Meeting in 2021.

Fifth, although the intention of the proposed draft decision is formidable, it is narrow in scope and focus. This has reduced the chances of receiving overwhelming support. This draft decision focuses on the exemptions of WFP non-commercial consignments destined for humanitarian efforts only. It does not give due consideration to the food security needs of the supplying countries. It suggests that, as long as export restrictions are not imposed on the WFP consignments destined for humanitarian efforts, the supplying countries need to consent to the WFP purchases, irrespective of their food security needs. Consequently, this would limit the use of the export restrictions policy space by developing countries for food security purposes. Although this draft decision is intended to advance provision food security by the WFP, the supplying countries could be left vulnerable to food insecurity.

Sixth, during the drafting of the General Council decision, the sponsors demonstrated insensitivity towards the needs of the developing countries. Proposals to include food security concerns of developing countries were dismissed by the sponsors. This attitude demonstrates that the sponsors of the draft decision have no genuine concern for food security in the developing countries.

Seventh, several issues are currently under discussion in the WTO agriculture negotiations. In the order of prioritisation of issues that are currently negotiated, all issues are equally important. For most developing countries the reduction of trade distorting domestic subsidies

constitutes the most important developmental outcome in these negotiations. Another equally important developmental outcome for developing countries is the permanent solution on PSH, which will address food security needs of developing countries. The adoption of the proposed draft General Council decision would limit the policy space to impose export restrictions for food security purposes.

Eighth, it is evident that much effort is targeted towards an outcome on export restrictions. It would be impartial to apply the same effort towards reaching outcomes on the other long outstanding issues in the WTO agriculture negotiations, including issues of interest for developing countries. In addition, efforts towards an outcome on export restrictions may be interpreted to suggest that this issue is more important than other issues that are negotiated.

5. CONCLUSION

While efforts are made to discipline WTO rules in this area, the current provisions on export restrictions as outlined under the GATT and AoA provisions (Art XI of GATT; Art 12 of the AoA) do not restrict members from imposing duties, taxes or other charges on exports. Preserving the current rules is beneficial for developing countries, particularly for the attainment of developmental goals such as food security, infant industry protection and economic diversification.

The scope of the provisions on export restriction under Art 12 of the AoA is limited to transparency provisions. Without amendments to Art 12 of the AoA, there is no mandate to have new disciplines that go beyond the scope of the AoA article. Some of the proposals that have been circulated recommend disciplines that go beyond the transparency provisions. These proposals suggest a complete ban on export restrictions. These suggestions would leave developing countries in a worse off position.

The outbreak of the COVID-19 global pandemic, similar to the global food price increases of 2008/2009, has escalated the negotiations on export restrictions. During the periods of the global financial crisis and the pandemic, negotiations on export restrictions intensified. As mentioned, the current negotiations on export restrictions endeavour to go beyond the transparency provisions as outlined in Article 12 of the AoA. During the previous rounds of the negotiations, suggestions for strengthening WTO rules on export restrictions recommended a complete ban on export restrictions.

Recent proposals for export restrictions disciplines include exempting WFP purchases for humanitarian reasons from export restrictions. While the debate on exemptions on WFP purchases for humanitarian reasons from export restrictions has merit, the most immediate concern is that the proposed exemptions may exacerbate domestic food shortages. In addition, it is important to highlight that domestic food security is the sole responsibility of the state. The current proposal on WFP exemptions suggests this responsibility of the state could be delegated to the WFP. This action could jeopardise the national security of states.

While gaps on export restriction disciplines have been used to increase the momentum of the ongoing negotiations in this area, it is important to note that gaps in the WTO rules are found in other areas of the agriculture negotiations. It is therefore important to have a holistic approach in dealing with the gaps in the WTO law. Dealing with issues that are accentuated during times of crises may be interpreted to insinuate that some issues are deemed to be more important than others.

REFERENCES

- Anania, G. 2013. Agricultural export restrictions and the WTO: What options do policy-makers have for promoting food security?. International Centre for Trade and Sustainable Development (ICTSD). Geneva. Available at: <http://ictsd.org/i/publications/179103/>.
- Bouët, A. and Laborde, D., 2016. Food Crisis and Export Taxation: Revisiting the Adverse Effects of Non-cooperative Aspect of Trade Policies. In Kalkuhl, M., Von Braun, J. and Torero, M. (eds.) *Food Price Volatility and Its Implications for Food Security and Policy*. Springer International Publishing.
- Bouët, A., Estrades, C. and, Laborde, D. 2014. Differential Export Taxes along the Oilseeds Value Chain. In *American Journal of Agricultural Economics*, 96(3): 924–938.
- Crosby, D. 2008. WTO Legal Status and Evolving Practice of Export Taxes. International Centre for Trade and Sustainable Development (ICTSD) *Bridges*, Vol. 12, No. 5.
- Deese, W. and Reeder, J. 2007. Export Taxes on Agricultural Products: Recent History and Economic Modeling of Soybean Export Taxes in Argentina. US International Trade Commission, Washington.
- Dollive, K. 2008. The Impact of Export Restraints on Rising Grain Prices. US International Trade Commission, Washington.
- FAO, 2017. Trade Policy Brief No.27. October 2017. Food and Agriculture Organization.
- FAO. 2020. Agri-food markets and trade in the time of COVID-19. Policy Brief. 2 April 2020. Food and Agriculture Organization. Rome. Available at: <https://doi.org/10.4060/ca8446en>
- Fung, K. and J. Korine. 2013. Economics of Export Restrictions as Applied to Industrial Raw Materials. OECD Trade Policy Papers, No. 155. OECD Publishing. Paris. Available at: <http://dx.doi.org/10.1787/5k46j0r5xvh-d-en>.
- GATT. 1994. General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).
- G20. 2020. _G20 Extraordinary Agriculture Ministers Meeting. Ministerial Statement of COVID-19. Virtual Meeting. 21 April 2020. Available at: http://www.g20.utoronto.ca/2020/G20_Agriculture_Ministers_Meeting_Statement_EN.pdf.
- G90. 2020. Proposal on Agriculture Export Prohibitions or Restrictions Relating to the World Food Programme. Unofficial Document. 15 December 2020.
- Kim, J., 2010. Recent Trends in Export Restrictions. OECD Trade Policy Papers, No. 101. OECD Publishing. Paris.
- Korinek, J. and J. Bartos. (2012). Multilateralising Regionalism: Disciplines on Export Restrictions in Regional Trade Agreements. OECD Trade Policy Papers, No. 139. OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/5k962hf7hfnr-en>
- Kwa, A., Rosales, F. and Lunenburg, P. (2020). COVID-19 and WTO: Debunking Developed Countries' Narratives on Trade Measures. South Centre Policy Brief No.77. May 2020.

Mitra, S. and Josling, T. 2009., *Agricultural Export Restrictions: Welfare Implications and Trade Disciplines*, Agricultural and Rural Development Policy Series, International Food and Agricultural Trade Policy Council, Washington.

Qin, J.Ya. 2012. Reforming WTO Discipline on Export Duties: Sovereignty over Natural Resources, Economic Development and Environmental Protection. In *Journal of World Trade* 46, No. 5 (2012): 1147–1190.

Sanago, I. 2014. Going continental: Opportunities and challenges for free trade across Africa. In *Bridges Africa*. Volume 3, Number 9. October 2014.

South Centre. 2006. Some Reasons not to Negotiate Export Taxes and Restrictions in the WTO NAMA Negotiations. Analysis SC/AN/TDP/MA/6. May 2006. Geneva, Switzerland.

Third World Network. 2020a. Questions raised on exempting WFP purchases from export restrictions. TWN Info Service on WTO and Trade Issues (Dec20/21). 21 December 2020.

Third World Network. 2020b. Proponents of proposal on export restrictions suffer major setback. TWN Info Service on WTO and Trade Issues (Dec20/23). 22 December 2020.

Vyas, V.S. 2000. Ensuring Food Security: The State, Market and Civil Society. In *Economic and Political Weekly*. Vol. 35, No. 50. (Dec. 9-15, 2000). pp. 4402-4407.

WTO. 1994. Agreement on Agriculture. 15 April 1994. Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 410.

WTO. 2013. Ninth World Trade Organization Ministerial Conference. Ministerial Decision WT/MIN (13)/37 or WT/L/912. Available at <https://mc9.wto.org/>.

ADDITIONAL SOURCES

Articles

- Art. XI General Elimination of Quantitative Restrictions, GATT, 1994
- Art. XI: 2(a), GATT, 1994
- Art. XX General expectations, GATT, 1994
- Art. XXI Security expectations, GATT, 1994
- Art. 12 Disciplines on export prohibition and restrictions, AoA

Proposals

- Singapore and Norway proposal to WTO (JOB/AG/125)
- Switzerland proposal to WTO (G/AG/NG/W/94)
- Japan proposal to WTO (G/AG/NG/W/91)
- United states proposal to WTO (G/AG/NG/W/15)
- The republic of Korea proposal to WTO (G/AG/NG/W/98)
- The Cairns Group Proposal to WTO (G/AG/NG/W/93)
- European Communities Proposal on NTBs to NAMA: WTO Agreement on Export Taxes. 2 April 2007. (Job (07)/43)

- Singapore et al Proposal to WTO (JOB/AG/101)
- JOB/AG/191
- Singapore et al Proposal to the WTO (WT/GC/W/810/Rev.2 – TN/AG/46/Rev.2).
- Africa Group, Cuba and India Proposal to the WTO (JOB/CTG/15)
- WFP presentation to CoASS, 10 November 2020

Reports

Report by Ambassador Gloria Abraham Peralta, Chair of the Committee on Agriculture in Special Session, to the informal TNC and HODs Meeting of the WTO(JOB/AG/191),14 December 2020.

Statements by member states and groups

Africa Group Statement to CoASS. November 2017

India Statement to the General Council. December 2020

Internet sources

SDG Knowledge Hub. 2020. WTO Members Mull Easing Restrictions on Humanitarian Food Aid. Policy Brief. 20 November 2020. International Institute for Sustainable Development. Available at: <https://sdg.iisd.org/commentary/policy-briefs/wto-members-mull-easing-restrictions-on-humanitarian-food-aid/>.

G20 Extraordinary Agriculture Ministers Meeting: Ministerial Statement on COVID-19, Virtual Meeting – April 21, 2020. Available: at <http://www.reliefweb.int/report/>
G20 Extraordinary Agriculture Ministers Meeting: Ministerial Statement on COVID -19

ANNEXURE

Table 1. Provisions on export restrictions in GATT and Agreement on Agriculture

<p>Article XI GATT (1994)</p> <ol style="list-style-type: none">1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.2. The provisions of paragraph 1 of this Article shall not extend to the following:<ol style="list-style-type: none">1. a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party.2. b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.
<p>Agreement on Agriculture (1994)</p> <p>Part VI: Article 12</p> <p>Disciplines on Export Prohibitions and Restrictions</p> <ol style="list-style-type: none">1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:<ol style="list-style-type: none">1. The Member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing Members' food security;2. Before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information. <p>The provisions of this Article shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.</p>