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'Greening' the WTO Ban on China's Export Duties : Should WTO law allow China to use export duties to protect the environment and, if so, in what manner?

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According to the controversial *China—Raw Materials* and *China—Rare Earths* decisions, China is prohibited from using export duties to address any environmental problems, including those associated with climate change. This is unfortunate because a number of climate studies have suggested that export duties can be useful to tackle carbon leakage in China, being the largest emitter and exporter of carbon dioxide emissions.

This thesis argues that there is a need to consider 'greening' the absolute ban on China's export duties. It accordingly proposes that, export duties – solely restricting exports – should be prohibited outright, while 'export duties plus' – restricting both exports and domestic consumption – should be allowed in pursuit of environmental advantages. There are three most feasible ways to achieve this balanced outcome: (i) a waiver as a stopgap measure, (ii) a Ministerial Decision or Declaration as a more flexible alternative, and (iii) a legal interpretation for the Appellate Body to distinguish between export duties and 'export duties plus' as a judicial correction. With regard to the proposed judicial correction, even if the Appellate Body is no longer operational, it remains relevant for the purpose of injecting valuable flexibility into the WTO's precedent system.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School's research programme 'The progression of EU law: accommodating change and upholding values'.

'Greening' the WTO Ban on China's Export Duties

*Should WTO law allow China to use
export duties to protect the environment
and, if so, in what manner?*

FENGAN JIANG