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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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PART II:

PRELIMINARY ANALYSIS:
WOULD AN ABSOLUTE PROHIBITION
ON CHINA'S EXPORT DUTIES
CONSTRAIN THE COUNTY'S
CAPACITY TO PROTECT THE
ENVIRONMENT?

4 | An Absolute Ban on Export Duties Would Prevent a Country from Protecting the Environment Under Certain Circumstances

The previous chapter presents a popular view which appears to suggest that an absolute ban on export duties would not prevent a country from protecting the environment. According to this view, on the one hand, targeting exports tends to be less effective than directly regulating the production that causes local or global pollution, for which reason the duties should be generally replaced with such traditional environmental measures as pollution taxes. On the other hand, even if it may sometimes be meaningful to target exports, countries could use quantitative export restrictions, such as quotas. Thus an absolute ban on China's export duties would not prevent China from protecting the environment because it could still impose quantitative export restrictions in a manner consistent with WTO law.

The above perception is, however, rather arbitrary because it ignores the practice of WTO members in two respects. First, although export resections can hardly be the best option to protect the environment, they are certainly not rarely used for that purpose. Section 4.1 provides a survey of this kind of practice in the period from 2009 to 2016 based on the WTO's environmental database.²⁰⁷ Furthermore, the same survey reveals the preference of countries for export duties over quantitative restrictions, owing to some major drawbacks of the latter option compared with export duties. The actual examples of country practices to use export duties to reduce local or global pollution are also discussed.

The second type of ignorance is in the field of the practice to regulate export restrictions. Section 4.2 shows that environmental regulatory autonomy of countries is always protected in the regulation of such export restrictions as duties or quotas at both the multilateral and regional levels by incorporating general or specific exceptions. This observation is based on a survey provided in Section 4.3 of the provisions or proposals limiting the use of export restrictions in WTO agreements and 50 select regional trade agreements (RTAs) that have entered into force in the period from 2012 to 2016. The same survey also illustrates the regulatory preference of WTO members for export duties over quantitative restrictions.

207 It contains all environment-related notifications submitted by WTO members as well as environmental measures and policies mentioned in the Trade Policy Reviews of WTO members.

4.1 PRACTICE OF WTO MEMBERS TO RESTRICT EXPORTS FOR ENVIRONMENTAL PURPOSES IN THE PERIOD FROM 2009 TO 2016

Based on a survey of the practice of WTO members to impose export restrictions as a means to achieve environmental goals in the period from 2009 to 2016, this section offers two observations. First, it is fair to claim that export restrictions are widely used to fulfil the requirements under multilateral environmental agreements (MEAs). Second, compared with the practice to achieve MEA-related goals, the use of export restrictions to address non-MEA-related issues is less frequent but certainly not unusual. Third, when it comes to using export restrictions to tackle non-MEA-related problems, WTO members prefer duties over quantitative export restrictions. This section discusses these observations and offers actual examples of country practices to use export duties to reduce local or global pollution.

4.1.1 General observations and actual examples of country practices to use export duties to reduce local or global pollution

Regarding the first observation of the practice to use export restrictions to implement MEAs, the WTO Trade Policy Reviews (TPRs) data show that such restrictive measures as export bans are widely used to achieve the goals under two major MEAs, namely the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The former one is designed to protect the ozone layer by phasing out the consumption and production of numerous substances that are responsible for ozone depletion, whereas the latter one is an agreement calling for international cooperation to safeguard certain species from over-exploitation, in order to preserve limited natural resources.

The wide use of export restrictions especially export bans to achieve the objectives of the Montreal Protocol and the CITES can be explained by the fact that these treaties explicitly authorize the participant countries to impose export restrictions on certain targeted products. The Montreal Protocol, for instance, requires contracting parties to not only ban the import of controlled substances from non-parties but also restrict the exports of controlled substances to non-parties.²⁰⁸ The CITES also includes such import and export restrictions with non-parties in order to prevent them from functioning as transit countries for illegal trade in certain species.²⁰⁹

208 Article 4 of the Montreal Protocol.

209 OECD, 'Trade Measures in Multilateral Environmental Agreements', 9 February 2000, https://www.oecd-ilibrary.org/trade/trade-measures-in-multilateral-environmental-agreements_9789264180611-en.jsessionid=SnsDsvs6SiUMXGCjZWliMkLV.ip-10-240-5-115 (visited on 1 January 2019), at 174.

One major reason for requiring countries to restrict exports under these treaties is to prevent trade from exacerbating the existing problems. For instance, at the 2013 meeting of the Conference of the Parties to CITES, the large exports of whale products from Iceland to Japan and Norway under their respective reservations to the convention raised the concern that the increased trade in whale products would risk undermining the global efforts to protect endangered whales.²¹⁰ Thus Iceland was recommended to remove its reservation and then to restrict the exports of whale products.²¹¹ Moreover, export restrictions may also induce behaviour change. For instance, part of the rationale behind the obligations to restrict exports under the Montreal Protocol is to 'maximizing participation in the protocol'.²¹² The reasoning is that, compared with the situation of losing access to the controlled substances entirely, non-party countries would prefer joining the Protocol which only limits their consumption of the controlled substances.²¹³

This above observation shows that export restrictions could contribute to treaty-based environmental objectives though, as mentioned above, those restrictions are mostly adopted in the form of ban. In contrast, when it comes to protecting non-treaty-based environmental values, WTO members prefer such comparatively mild restrictions as duties over embargos. One possible reason could be that, unlike the substances that are responsible for ozone depletion, most of the targeted products for non-treaty-based environmental purposes are not required to be completely eliminated (Table 1). According to the survey of the use of export restrictive measures to achieve non-MEA-related goals, WTO members (nearly 18% of all members)²¹⁴ had restricted the exports of various products ranging from raw materials to finished product in the period from 2009 to 2016 (Table 1). The following part offers actual examples of country practices to use export duties to reduce local or global pollution.

For instance, Sri Lanka, a country with an abundance of quartz deposits, once adopted export duties on quartz minerals in order to reduce the pollution associated with the mining activities.²¹⁵ These activities are known to cause such local environmental problems as surface water pollution, soil

210 AWI, 'AWI Comments on Iceland's Commercial Whaling and Trade in Whale Products', <https://awionline.org/sites/default/files/uploads/documents/AWICommentsonIcelandRev9-15-14.pdf>, (visited 28 May 2018).

211 Ibid.

212 UNEP Ozone Secretariat, 'Briefing Note on Non-Party Trade Provisions', April 2016, http://conf.montreal-protocol.org/meeting/oewg/oewg-37/presession/Background_documents/Briefing_note_on_non-party_trade.pdf (visited on 1 January 2019).

213 OECD (2000), above n 208, at 176.

214 The WTO currently has 164 members.

215 WT/TPR/S/237/Rev.1, para 110.

erosion, or groundwater pollution.²¹⁶ Thus when the Supreme Court of Sri Lanka in 2007 stopped the mining activities of a quartz production company on environmental grounds, this decision was praised for achieving a major victory for environmental justice.²¹⁷

A critical view of the above example may suggest that the proclaimed environmental concerns could be used as a pretext for providing quartz processing companies in Sri Lanka with a favourable access to the industrial inputs. This line of thought, however, could hardly apply to the case of Bangladesh in which its government once imposed export duties on bricks to protect the environment.²¹⁸ It is difficult to discern any industrial purpose in these duties which, on the contrary, have very strong environmental grounds. According to a Pulitzer Center report, entitled 'Bangladesh's Air Pollution Problem Grows, Brick by Brick', the brickmaking businesses in Bangladesh should be blamed for the serious air pollution in that country.²¹⁹ Its capital city Dhaka was ranked by the World Health Organization (WHO) as the top 50 cities with the highest annual PM_{2.5} pollution.²²⁰ Moreover, brick manufacturing would also cause soil degradation and thus threaten the sustainable agriculture in Bangladesh.²²¹ These environmental problems, however, was once exacerbated by an increase in exports of bricks to India. These increasing exports are believed to be caused by an environmental campaign in India to reduce carbon emissions which includes a restriction on domestic brickmaking industry and a duty-free treatment on brick imports from Bangladesh.²²² This may explain why the Bangladesh government believed that the use of export duties on bricks would 'discourage production of these products'.²²³

216 Environmental Justice Atlas, 'Dambulla Quartz Mining Case, Sri Lanka', <https://www.ejatlas.org/print/dambulla-quartz-mining-case> (visited 15 June 2019).

217 Ibid. 'Specifically, the court appealed to Article 12(1) of the constitution claiming the right to a clean environment and the principle of inter-generational equity with respect to the protection and preservation of the environment that in this case was under threat for quarry mining'.

218 WT/TPR/S/270, at 49. 'ceramic building bricks (25%) in order to discourage production of these products'.

219 'The kiln operations alone — while representing just 1 percent of the country's GDP — generate nearly 60 percent of the particulate pollution in Dhaka'. See Sohara Mehroze Shachi and Larry C. Price, 'Bangladesh's Air Pollution Problem Grows, Brick by Brick', Pulitzer Center, 5 September 2018, <https://pulitzercenter.org/reporting/bangladeshs-air-pollution-problem-grows-brick-brick> (visited 15 June 2019).

220 Ibid.

221 Debashish Biswas, 'The Drivers and Impacts of Selling Soil for Brick Making in Bangladesh', 62(4) *Environmental Management* (2018).

222 Kongkon Karmaker, 'Brick exports: brisk business, but eco-worries mount', *The Daily Star*, 12 April 2011, <https://www.thedailystar.net/news-detail-181387> (visited 15 June 2019).

223 WT/TPR/S/270/Rev.1, para 74.

An interesting aspect of the Bangladesh example is that the export duties at issue could contribute to reduce both the local pollution such as PM_{2.5} and the global carbon emissions. Similarly, China also once claimed to have adopted export duties on such so-called 'highly polluting and high-energy-consuming products' as aluminum, coal, chemical products, and fertilizers in order to address both local and global environmental problems.²²⁴ Although some of the duties were clearly WTO-inconsistent, no dispute was raised, possibly for the reason that these duties could not potentially provide Chinese industry with advantages compared with those disputed in *China – Raw Materials* and *China – Rare Earths*. Moreover, these duties were applauded by some commentators, who see their potential to reduce carbon emissions in China as the largest emitter and exporter of carbon dioxide emissions,²²⁵ though a critical view suggests that China should target more energy-intensive products including such higher value-added ones as electronics, machinery, metal products, and textiles in order to make these duties a credible climate policy tool.²²⁶ A detailed discussion is presented in Chapter 6.

The above actual examples of country practices show that export duties would contribute to reducing local or global pollution under certain circumstances, possibly because the theoretically best environmental policies are not always feasible in financial or practical terms. Instructive in this context is a 2003 research study suggesting that if the implementation of pollution taxes is too 'costly' to get public support in the MERCOSUR countries, they could apply export duties as an alternative to improve environmental quality.²²⁷ Similarly, a 2005 International Monetary Fund (IMF) study recommended that Liberia impose an export duty as part of environmental policy until the country has sufficient tax 'administration capacity' to regulate production.²²⁸ Thus, as will be discussed in Section 4.2, the environmental

224 WT/TPR/S/230, at 44. 'From time to time, China has been revising its export tax rates or adjusting the list of commodities subject to export taxes, or levying special export taxes, with a view to curtailing exports of certain products, including restricting exports of highly polluting and high-energy-consuming products; promoting environmental protection; improving sustainable economic development; and conserving natural resources'.

225 For instance, China's export duties may be reinterpreted as an indirect carbon-pricing system which is similar to the EU-ETS at the time. See Tancrede Voituriez, Xin Wang, 'Can Unilateral Trade Measures Significantly Reduce Leakage and Competitiveness Pressures on EU-ETS-Constrained Industries? The Case of China Export Taxes and VAT Rebates', *Climate Strategies Working Paper* (2009).

226 Susanne Dröge, 'Tackling Leakage in a World of Unequal Carbon Prices', *Climate Strategies Working Paper* (2009), at 67.

227 Carlos M. Gómez G. and Carlos E. Gómez C, 'Could the Desire for a Better Environment Lead to Political Options Against Free Trade? Insights from MERCOSUR', (2003), at 3, available at <http://www3.uah.es/econ/Papers/TradeEnvGomezG03.pdf>, (visited 18 June 2017).

228 Arnim Schwidrowski and Saji Thomas, 'Forestry taxation in Africa: the case of Liberia', *International Monetary Fund Publications* (2005), at 3.

regulatory autonomy with respect to export duties is always preserved for WTO members at both the multilateral and regional levels, except for the absolute ban on China's export duties.

4.1.2 Preference for export duties over quantitative export restrictions in practice

One may argue that the environmental regulatory autonomy with respect to China's export duties is still there because China could simply adopt such quantitative restrictions as quotas which 'fall simply under Article XI:1 of the GATT 1994 and benefit from exceptions under Article XX'.²²⁹ Indeed, export quotas could in theory replace duties in order to achieve the same purpose of limiting exports. In practice, however, WTO members expresses a strong preference for duties over quotas. Thus the former-mentioned survey shows that 17 WTO members (59%) in the period from 2009 to 2016 chose to use export duties compared with the fact that only 2 members (7%) preferred export quotas to pursue non-treaty-based environmental purposes. Such preference could be explained in the following three respects.

First, compared with export duties, export quotas have to be allocated to various exporting firms, which thus have a great incentive to obtain the privilege to trade, for such quotas often make a product's world market price higher than the domestic price. As a result, exporting firms may waste additional resources in rent-seeking activities.²³⁰ In other words, export quotas are not as economically efficient as export duties.

Second, rent-seeking activities may also increase the risk of corruption and the attendant welfare losses. Ukraine's export quotas on grain in 2006, for example, raised such concerns, with a Working Paper from the World Bank suggesting that the export quotas should be replaced with export duties.²³¹ Indeed, when it comes to ensure food security, the EU chose to impose export duties rather than export quotas on cereals as 'a precautionary measure to avoid an overheating of the EU cereals market'.²³² As another example, in 2004, as part of its efforts to protect the environment, the Chinese government imposed export quotas on coke that resulted in the doubling of the world market price for this commodity; as a consequence,

229 Ehring (2013), above n 16, at 361.

230 Shantayanan Devarajan, Delfin Go, Maurice Schiff, and Sethaput Suthiwart-Narueput, 'The Whys and Why Nots of Export Taxation', No.1684 World Bank Policy Research Working Paper Series (1996), at 10.

231 Stephan v. Cramon and Martin Raiser, 'The quotas on grain exports in Ukraine: ineffective, inefficient, and non-transparent', No. 38596 World Bank Working Paper (2006), at 10.

232 European Commission, 'Export tax on cereals', IP/97/408, 14 May 1997. Available at http://europa.eu/rapid/press-release_IP-97-408_en.pdf (visited on 8 July 2018).

many Chinese firms bribed officials in order to obtain the export quotas and thus reap the benefits of the higher international price.²³³ In the aftermath, many experts suggested that the Chinese government should replace export quotas with export duties.²³⁴

Third, export quotas may also result in a greater loss of government revenue.²³⁵ When a government imposes export duties, it enjoys the benefits of the tax; but it cannot always acquire the quota rent from export quotas, even when they are auctioned.²³⁶ Therefore, if a country replaces export duties with export quotas, it stands to lose a large amount of tax revenue, money that could have been used to protect the environment. Thus, for example, China once imposed export duties on textile products and used the revenue to reduce the environmental damage caused by textile industry.²³⁷

Aside from the three major drawbacks just detailed—the loss of resources through rent-seeking activities, the risk of corruption, and the loss of government revenue—the replacement of export duties with export quotas would entail losses for import countries. Export quotas, almost by definition, do not allow for a supply response to an increase in demand, and as a result they create larger welfare losses than export duties when the targeted products are inelastic staple goods, such as industrial raw materials.²³⁸ It is for this reason that there was no strong objection to China's export duties on rare earths, while global markets responded strongly when the export quotas were subsequently introduced on these goods.²³⁹ Therefore, if a country replaces export duties with export quotas, its trading partners may find it more difficult to obtain industrial inputs that are necessary for manufacturing supply chains.

Thus, any argument for the replacement of export duties with quantitative restrictions would be inconsistent with the general economic rationales and common practice of WTO members. Indeed, considering all the disadvantages of quantitative restrictions, an OECD Trade Policy Paper even suggested that RTAs 'could be used as a regulatory tool in order to favour the use of export taxes in situations where export restraint is desirable,

233 EEO, 'Corruption Scandals Concerning Export Quotas on Coke in Shanxi', 2007.

234 Xinhuanet, 'The Adjustment of China's Export Quotas on Rare Earths Products', 7 November 2013.

235 K.C. Fung and Jane Korinek, 'Economics of Export Restrictions as Applied to Industrial Raw Materials', No. 155 OECD Trade Policy Papers (2013), at 18.

236 *Ibid.*, at 18.

237 CCICED, '2006 Annual Report', http://www.china.com.cn/tech/zhuanti/wyh/2008-02/13/content_9734281_5.htm.

238 Siddhartha Mitra, Tim Josling, 'Agricultural Export Restrictions: Welfare Implications and Trade Disciplines', IPC Position Paper (2009), at 9.

239 Fung and Korinek (2013), above n 234, at 32.

rather than quantitative export restrictions'.²⁴⁰ The regulatory preference for export duties over quantitative restrictions on exports is discussed in the next section.

4.2 ENVIRONMENTAL REGULATORY AUTONOMY AND REGULATORY PREFERENCE AT BOTH THE MULTILATERAL AND REGIONAL LEVELS

Based on the WTO's environmental database, the above survey provides two important observations of country practices to use export duties. First, export duties could be useful to reduce local or global pollution under certain circumstances. Second, WTO members generally prefer export duties over quantitative restrictions, owing to some major drawbacks of the latter option compared with duties. These findings are also echoed in a survey of the WTO members' practice to regulate export restrictions at both the multilateral and regional levels. A detailed discussion follows.

4.2.1 Environmental regulatory autonomy with respect to export restrictions

The environmental regulatory autonomy with respect to both export quantitative restrictions and export duties is generally preserved for WTO members at the multilateral level. With respect to quantitative restrictions, although they are generally prohibited under GATT Article XI, Article XX(b) and (g) permit WTO members to impose quantitative restrictions on exports for various environmental purposes. The former one could be used to address such local pollution problems as those threatening 'human, animal or plant life or health', whereas the latter one is more suitable for tackling such global environmental problems as climate change.²⁴¹

Similarly, the founding members of the WTO also have the environmental regulatory autonomy with respect to export duties since duties are generally available to them, except for Australia which committed to refraining from export duties on certain mineral products in the Goods Schedules annexed to the GATT 1994. But these duties could be justified for environmental purposes under Articles XX(b) or XX(g).

In the context of acceded members, 17 of them have committed to restrict the use of export duties in their accession protocols which, unlike other standard WTO agreements, do not have any exception clause (Table 2). According to the criteria set out in *China – Raw Materials* and *China – Rare Earths* decisions, 11 of those members can justify the use of export duties

240 Ibid.

241 For further discussion, see Chapter 8.

under Article XX(b) or (g), whereas the other six seem to have implicitly negotiated away their environmental regulatory autonomy with respect to export duties.²⁴²

One might wonder whether those countries would ever have agreed to give up such autonomy if this issue was explicitly raised during the accession negotiations. Or perhaps, reputational-wise, no one would ever ask a sovereign state to give way its right to protect the environment, especially in such imbalanced negotiations as those for access to the WTO, for not being perceived to be unjust or immoral. Indeed, one could hardly do so even in a more balanced multilateral negotiation as, for instance, the EU's proposal generally prohibiting the use of export duties did recognize the environmental regulatory autonomy of WTO members by incorporating Article XX.²⁴³ Interestingly, this proposal was rejected by several countries including China.²⁴⁴ About three years later, the EU launched the *China – Raw Materials* case and claimed that China had silently signed away its right to protect the environment under Article XX, as part of the 'entry fee' to the WTO.²⁴⁵ If China would have been informed of this hidden cost earlier, it might have acted differently towards the EU's proposal.

These observations of the environmental regulatory autonomy are also echoed at the regional level. Based on WTO databases, this thesis examines the provisions limiting the use of export restrictions in 50 select RTAs that have entered into force in the period from 2012 to 2016.²⁴⁶ Thirty-nine out of the them directly incorporate GATT Article XX as the general exception clause. Although Article XX is not fully incorporated in 11 of the RTAs (22%), these latter agreements include general exceptions that are similar to Article XX(a) to XX(h). In other words, all 50 RTAs in this survey either fully incorporate Article XX(b) and (g) or include environmental exceptions that are similar to the former provision (Table 3 and 4). Thus the environmental regulatory autonomy with respect to both export duties and quantitative restrictions are preserved for all contracting parties at the regional level.

Furthermore, two EU RTAs, namely EU-Cameroon (2014) and EU-Côte d'Ivoire (2016), specifically permit the other parties to use export duties on a temporary basis to protect the environment under certain circumstances. On the one hand, the EU appears to have recognized the usefulness of export duties as an environmental measure. On the other hand, there seems

242 China, Mongolia, Latvia, Saudi Arabia, Montenegro, and Tajikistan.

243 Crosby (2008), above n 49.

244 Ibid.

245 Panel Report, *China – Raw Materials*, para 7.112.

246 There are 61 RTAs that have entered into force in the period from 2012 to 2016, of which 50 RTAs provide texts in English according to WTO databases.

to be a regulatory preference for export duties over other export restrictive measures. A detailed discussion of such regulatory preference is presented in the following subsection.

4.2.2 Regulatory preference for export duties over quantitative restrictions

There is a clear regulatory preference for export duties over quantitative restrictions at the multilateral level. As introduced above, the latter ones are generally prohibited under the GATT 1994, whereas only 18 members have committed to restrict the use of export duties. In the period before 2011, WTO-plus provisions on export duties were incorporated into the accession protocols of six acceded members, including WTO-Mongolia (1996),²⁴⁷ WTO-Latvia (1998),²⁴⁸ WTO-China (2001),²⁴⁹ WTO-Saudi Arabia (2005),²⁵⁰ WTO-Vietnam (2006),²⁵¹ and WTO-Ukraine (2008).²⁵² Like the commitments made by Australia, most of these WTO-plus provisions provide a list of products that are not to be subject to export duties ('positive list').²⁵³ Unusually, China's Protocol of Accession provides a negative list that allows the imposition of export duties on only 84 specific products with a maximum level ('negative list').²⁵⁴

247 WTO-Mongolia (1996): Protocol for the Accession of Mongolia to the Marrakesh Agreement Establishing the World Trade Organization, 25 July 1996, WT/ACC/MNG/11; Report of the Working Party on the Accession of Mongolia, 27 June 1996, WT/ACC/MNG/9, para 24.

248 WTO-Latvia (1998): Protocol of Accession of Latvia to the Marrakesh Agreement Establishing the World Trade Organization, 23 October 1998, WT/ACC/LVA/35; Report of the Working Party on the Accession of Latvia to the World Trade Organization, 30 September 1998, WT/ACC/LVA/32, paras 67-69.

249 WTO-China (2001): Protocol on the Accession of the People's Republic of China, 23 November 2001, WT/L/432, para 11.3; Report of the Working Party on the Accession of the People's Republic of China, 1 October 2001, WT/ACC/CHN/49, paras 155-156.

250 WTO-Saudi Arabia (2005): Protocol on the Accession of the Kingdom of Saudi Arabia, November 2005, WT/L/627 11; Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization, 1 November 2005, WT/ACC/SAU/61, para 184.

251 WTO-Vietnam (2006): Protocol on the Accession of the Socialist Republic of Viet Nam, 15 November 2006, WT/L/662; Report of the Working Party on the Accession of Viet Nam, 27 October 2006, WT/ACC/VNM/48, paras 256-260.

252 WTO-Ukraine (2008): Protocol on the Accession of Ukraine, 13 February 2008, WT/L/718; Report of the Working Party on the Accession of Ukraine to the World Trade Organization, 25 January 2008, WT/ACC/UKR/152, paras 228-240.

253 This term was borrowed from the use of 'positive' and 'negative' lists in the context of trade in services and investment. See European Commission, 'Services and investment in EU trade deals Using 'positive' and 'negative' lists', April 2016.

254 Ibid.

By contrast, the 11 that concluded after 2011 reflect a tough approach to export duties, in that 5 of them, namely WTO-Russia (2011),²⁵⁵ WTO-Montenegro (2011),²⁵⁶ WTO-Tajikistan (2012),²⁵⁷ WTO-Kazakhstan (2015),²⁵⁸ and WTO-Afghanistan (2015),²⁵⁹ include provisions regulating export duties (Table 2). In these provisions, the earlier practice of providing a positive list that prohibits countries from imposing export duties on certain products has been gradually replaced by a negative list that specifies the products on which countries are permitted to impose export duties. However, compared with the general prohibition on quantitative export restrictions under GATT Article XI, the limits on export duties in accession protocols are still much less stringent which appears to reflect the regulatory preference for duties over quantitative restrictions.²⁶⁰

Similarly, at the regional level, this regulatory preference is found in the select 50 RTAs that have entered into force in the period from 2012 to 2016 in two respects.²⁶¹ First, regarding the limits on the scope of products subject to export restrictions, most RTAs (82%) generally prohibit contracting parties from using quantitative export restrictions by directly incorporating GATT Article XI. In contrast, less than half RTAs (44%) have a general prohi-

255 WTO–Russia (2011): Protocol on the Accession of the Russian Federation, 17 December 2011, WT/MIN(11)/24; WT/L/839; Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization, 17 November 2011, WT/ACC/RUS/70; WT/MIN(11)/2, paras 621-638.

256 WTO–Montenegro (2011): Protocol on the Accession of Montenegro, 17 December 2011, WT/MIN(11)/28; WT/L/841; Report of the Working Party on the Accession of Montenegro to the World Trade Organization, 5 December 2011, WT/ACC/CGR/38; WT/MIN(11)/7, paras 130-132.

257 WTO–Tajikistan (2012): Protocol on the Accession of the Republic of Tajikistan, 11 December 2012, WT/L/872; Report of the Working Party on the Accession of Tajikistan to the World Trade Organization, 6 November 2012, WT/ACC/TJK/30, paras 166-169.

258 WTO–Kazakhstan (2015): Protocol on the Accession of the Republic of Kazakhstan, 30 July 2015, WT/L/957; Report of the Working Party on the Accession of the Republic of Kazakhstan to the World Trade Organization, 23 June 2015, WT/ACC/KAZ/93, paras 528-540.

259 WTO–Afghanistan (2015): Protocol on the Accession of the Islamic Republic of Afghanistan, 21 December 2015, WT/MIN(15)/39; WT/L/974; Report of the Working Party on the Accession of the Islamic Republic of Afghanistan to the World Trade Organization, 13 November 2015, WT/ACC/AFG/36; WT/MIN(15)/6, paras 140-145.

260 Exceptionally, according to Paragraph 132 of its Working Party Report, Montenegro committed not to apply or reintroduce any export duty as from the date of accession. See Report of the Working Party on the Accession of Montenegro to the World Trade Organization, WT/ACC/CGR/38, 5 December 2011.

261 There are 61 RTAs that have entered into force in the period from 2012 to 2016, of which 50 RTAs provide texts in English according to WTO database.

bition on export duties.²⁶² Moreover, another 15 RTAs lack any provision for restricting the use of export duties.²⁶³

It is noteworthy that, all the RTAs involving China does not limit the use of export duties,²⁶⁴ whereas those involving the EU requires the contracting parties to either stop imposing export duties on any products²⁶⁵ or provide a negative list.²⁶⁶ This striking contrast between their attitudes towards the regulation of export duties may have developed into a series of confrontations between the EU and China in front of the WTO. However, even a party like the EU with enthusiasm for banning export duties, it provides contracting parties with the policy space to use duties for environmental purposes in all the RTAs. Furthermore, when export restraint is desirable for its trading partners to achieve certain objectives such as environmental protection, the EU prefers the use of duties over quantitative restrictions by incorporating specific exception clauses in some RTAs.

These specific exceptions that are tailor-made for the use of export duties represent the second type of regulatory preference at the regional level. Indeed, compared with WTO law, 24% of RTAs choose to restrict or exclude the use of the WTO specific exception to quantitative export restrictions, namely GATT Article XI:2(a), whereas 32% of RTAs actively create new specific exception to export duties which include three RTAs involving the EU. Thus, under EU-Cameroon (2014), Cameroon could impose export duties in the event of ‘serious public finance problem’ or ‘the need for greater environmental protection’. Likewise, EU-Côte d’Ivoire (2016) permits Côte d’Ivoire to impose export duties on a temporary basis for ‘income, protection for infant industry or environmental protection’. More-

262 2012: Japan–Peru, Korea–United States, United State–Colombia, United States–Panama; 2013: Canada–Panama, EU–Central America, EU–Colombia and Peru, EU–Serbia, Korea–Turkey, Turkey–Mauritius; 2014: Canada–Honduras, EU–Georgia, EU–Moldova, Korea–Australia, Singapore–Chinese Taipei; 2015: Canada–Korea, EU–Bosnia and Herzegovina, EAEU, Japan–Australia, Korea–New Zealand, SADC–Accession of Seychelles; 2016: Turkey–Moldova.

263 Most of the RTAs that do not limit export duties involve at least one party from Asia, including Chile–Malaysia (2012), GCC–Singapore (2013), Malaysia–Australia (2013), New Zealand–Chinese Taipei (2013), Chile–Viet Nam (2014), Hong Kong–Chile (2014), Iceland–China (2014), Switzerland–China (2014), Association of Southeast Asian Nations (ASEAN)–India (2015), Australia–China (2015), Korea–Viet Nam (2015), Turkey–Malaysia (2015), and Japan–Mongolia (2016).

264 Iceland–China (2014), Switzerland–China (2014), Australia–China (2015), and China–Korea (2015).

265 It is noteworthy that 6 of 10 RTAs involving the EU, namely EU–Central America (2013), EU–Colombia and Peru (2013), EU–Serbia (2013), EU–Georgia (2014), EU–Moldova (2014), and EU–Bosnia and Herzegovina (2015), generally prohibit export duties.

266 EU–ESA (2012), EU–Cameroon (2014), EU–Ukraine (2014), and EU–Côte d’Ivoire (2016).

over, EU-Ukraine (2014) in a more general sense allows Ukraine to apply a safeguard measure in the form of a surcharge to the export duty on certain products when the cumulative volume of the exports of these products exceeds a trigger level.²⁶⁷

In fact, these regulatory preferences as observed above have existed for a long time. For instance, an OECD Trade Policy Paper in 2012 examined 93 RTAs, which have been concluded before 2010, and found some of the agreements clearly show contracting parties' preference for export duties over quantitative restrictions by allowing the former one to be imposed on a wider range of products than the latter one.²⁶⁸ The same paper thus suggests that this type of practice 'could be used as a regulatory tool in order to favour the use of export taxes in situations where export restraint is desirable, rather than quantitative export restrictions'.²⁶⁹ Such a policy recommendation is likely to be motivated by the advantages of export duties compared with quantitative restrictions as discussed in the previous section.

4.3 CONCLUSIONS

From an environmental perspective, this chapter shows that any arguments in favour of an absolute ban on export duties are inconsistent with the practice of WTO members in two respects. First, the actual examples of country practices show that export duties could be useful to reduce local or global pollution under certain circumstances, because the theoretically best environmental policies are not always feasible in financial or practical terms. Thus the environmental regulatory autonomy with respect to export duties is always preserved for WTO members at both the multilateral and regional levels,²⁷⁰ except for the controversial ban on China's export duties. In this sense, it is one thing to propose strictly scrutinizing any environmental reasoning behind export duties, but quite another to ban these duties without any reasoning. The arbitrary nature of the latter one is apparent.

267 Annex I – D of EU–Ukraine (2014).

268 Jane Korinek and Jessica Bartos, 'Multilateralising Regionalism: Disciplines on Export Restrictions in Regional Trade Agreements', No. 139 OECD Trade Policy Papers (2012), at 36.

269 Ibid.

270 This conclusion is based on the surveys of WTO members' practice in the period from 2009 to 2016 and the provisions limiting the use of export restrictions in 50 select RTAs that have entered into force in the period from 2012 to 2016. For further information, see Sections 4.1 and 4.2.

Second, the suggestion that export duties should be substituted by export quotas seems to lack any sound theoretical basis. In sharp contrast, an OECD Trade Policy Paper actually suggested the contrary,²⁷¹ possibly owing to the major disadvantages of quantitative restrictions compared with duties: (i) the loss of resources through rent-seeking activities, (ii) the risk of corruption, and (iii) the loss of government revenue. Moreover, quantitative restrictions also create additional challenges for importing countries that need access to such inelastic staple goods as raw materials. The OECD opinion is echoed by the practice of WTO members which show a clear preference for export duties over quantitative restrictions.

To conclude this chapter, both the practice and rationales suggest that export duties would remain meaningful for countries to reduce local or global pollution under certain circumstances. Thus, at least in theory, an absolute ban on export duties could prevent China from enacting important environmental protections. Relevant to these considerations is the issue of China's actual motive for seeking to impose export duties, which is taken up in the following chapter.

Table 1: Practice of WTO Members: export restrictive measures to protect the environment (non-international obligations)

No.	Members	Export Restrictions	Products	Environmental Purposes
2009				
1	Brazil	'prior authorization'	'a relatively large number of products'	'environmental reasons' ²⁷²
2	Fiji	export bans	'round logs'	'environmental reasons' ²⁷³
3	Guatemala	export bans	'logs of more than 11 cm in diameter'	'environmental reasons' ²⁷⁴
4	Maldives	export bans	'certain marine species'	'environmental reasons' ²⁷⁵
5	Solomon Islands	export duties	timber, fish and other raw materials	'help protect the environment' ²⁷⁶

271 Korinek and Bartos (2012), above n 267.

272 WT/TPR/S/212, at 60. 'Prior authorization is required from various agencies for exports of a relatively large number of products, generally for safety, health, security or environmental reasons, or when they are subject to export quotas'.

273 WT/TPR/S/213, at 67. 'Exports of round logs are banned for environmental reasons and to promote downstream processing, which provides an implicit subsidy to processors at the expense of forest owners, by lowering the domestic price'.

274 WT/TPR/S/210, at 53-54. 'Export prohibitions are mainly imposed for reasons of national security, protection of Guatemala's heritage or for environmental reasons'.

275 WT/TPR/S/221, at 28. 'Exports of certain marine species are prohibited for environmental reasons'.

276 WT/TPR/S/215, at 35. 'The authorities indicate that export taxes are a practical and cost-efficient means of raising revenue and that they encourage downstream domestic processing and help protect the environment'.

2010				
6	Benin	export bans	'unprocessed teak wood and charcoal'	'protect natural resources' ²⁷⁷
7	China	export duties	'highly polluting and high-energy-consuming products'	'promoting environmental protection; improving sustainable economic development; and conserving natural resources' ²⁷⁸
8	Malaysia	export duties	'timber, live animals, ash and residues, precious metals, copper, and ferrous waste and scrap'	'conserve the environment' ²⁷⁹
9	Sri Lanka	export duties	quartz	'protect the environment' ²⁸⁰
10	United States	'export control'	crude oil	energy conservation ²⁸¹
2011				
11	Australia	'export control'	'wood and wood chips'	'protecting environmental and heritage values' ²⁸²
12	Cambodia	export duties	'certain unprocessed raw materials and products'	'protect human health' ²⁸³
		export quotas	'certain wood products'	'preserve exhaustible natural resources' ²⁸⁴

277 WT/TPR/S/236/BEN, at 111. 'Following a shortage on the domestic market and in order to protect natural resources, since 1997 exports of unprocessed teak wood and charcoal have been banned'.

278 WT/TPR/S/230, at 44. 'From time to time, China has been revising its export tax rates or adjusting the list of commodities subject to export taxes, or levying special export taxes, with a view to curtailing exports of certain products, including restricting exports of highly polluting and high-energy-consuming products; promoting environmental protection; improving sustainable economic development; and conserving natural resources'.

279 WT/TPR/S/225, at 35. 'According to the authorities, the main objective of these taxes is to promote the use of locally produced commodities in domestic downstream industries as well as to conserve the environment. The authorities are of the view that export taxes on timber allow them to better manage sustainable development of Malaysian forest'.

280 WT/TPR/S/237/Rev.1, para 110. 'Sri Lanka's legislation allows the use of export duties and cesses to ensure the availability of raw materials for higher-value-added industries and to promote further processing of local materials; finance export promotion activities; and protect national security, archaeological items, and the environment'.

281 WT/TPR/S/235, at 50. 'the Bureau of Industry and Security is responsible for the administration of export controls under the Energy Policy and Conservation Act, the Mineral Leasing Act, the Naval Petroleum Reserves Production Act, and the Outer Continental Shelf Lands Act'.

282 WT/TPR/S/244, at 60. 'Export controls on wood and woodchips are for the purpose of protecting environmental and heritage values'.

283 WT/TPR/S/253, at 44. 'Cambodia levies export taxes on certain unprocessed raw materials and products to encourage local processing, encourage exports of finished products, and protect human health'.

284 Ibid. 'According to the authorities, these procedures conform to GATT Article XX(g), which allows trade measures to be taken to preserve exhaustible natural resources, when such measures complement domestic conservation policies'.

13	Congo	export duties	'certain types of timber'	'forest species to be promoted' ²⁸⁵
14	India	export duties	'various raw materials'	'preserve natural resources' ²⁸⁶
15	Nepal	export bans	various products	'protection of wildlife, human health, and to conserve the biodiversity and environment' ²⁸⁷
		'export permission'	'some timber products and forest resources'	'biodiversity and environment conservation' ²⁸⁸
		export duties	'mainly vegetables, maize, rice, wheat, oil cake, sand and stones, and some wood'	'protect environment (discourage environment degradation)' ²⁸⁹
16	Papua New Guinea	export bans	'certain trees (balsa, blackbean, cordial, ebony, rose wood, teak and all conifers)'	'environmental reasons' ²⁹⁰
		export duties	skins	'conservation reasons' ²⁹¹
17	Paraguay	export bans	'unprocessed or semi processed wood (roundwood or logs) of any species'	'environmental reasons' ²⁹²
18	Thailand	export licensing	a few items of animal products and raw materials	'animal preservation, public health, forest conservation, and conserve exhaustible natural resources'

285 WT/TPR/S/240, at 42. 'The export of certain types of timber (forest species to be promoted) are subject to a charge of 2 per cent of the Ex-Works (EWK) value per cubic metre of raw timber exported, which goes to the Ministry of the Environment'.

286 WT/TPR/S/249, at 76. 'Export taxes are used as a policy instrument to, *inter alia*, ensure domestic supply of raw materials for higher-value-added industries, promote further processing of natural resources, ensure an "adequate" domestic price, and preserve natural resources'.

287 WT/TPR/S/257, at 39. 'Nepal bans the export of certain products for various reasons (Table III.7)'.

288 Ibid. at 40.

289 Ibid. 'According to the authorities, they are levied to protect environment (discourage environment degradation), ensure food security, and discourage trade diversion to neighbouring countries (such as India)'. 'The authorities state that export tax on wood is needed to protect the environment'.

290 WT/TPR/S/239, at 48. 'Exports of certain trees (balsa, blackbean, cordial, ebony, rosewood, teak and all conifers) are prohibited for environmental reasons'.

291 Ibid. 'Exports of skins are taxed for conservation reasons'.

292 WT/TPR/S/245, at 68. 'Some other restrictions are for both environmental purposes and the development of a domestic industry, with the resulting increase in the value added of production. For example, under Law No. 515/94 of 9 December 1994, as amended by Law No. 2.848/05, the export of all unprocessed or semi processed wood (roundwood or logs) of any species is banned'.

19	Zimbabwe	export duties	'live wildlife specimens and fertile eggs'	conservation reasons ²⁹³
		'export permit'	'indigenous plants and wildlife'	conservation reasons ²⁹⁴
2012				
20	Turkey	export bans	various agricultural goods	'environmental, health or cultural reasons' ²⁹⁵
21	Philippines	export duties	'plantation (non-native) logs'	'sustainable supply of domestic timber' ²⁹⁶
22	China	export bans	various products	'domestic considerations regarding environmental and human health protection, and preservation of natural resources' ²⁹⁷
		export quotas	raw materials including coal and rare earths	'help conserve natural resources or protect the environment' ²⁹⁸
23	Côte d'Ivoire	export duties	'wood in log form'	'forest conservation and development' ²⁹⁹
		export 'prior authorization' or bans	certain goods such as ivory and some species of logs	'protect the fauna and flora' ³⁰⁰
24	Korea	export bans	'uncut pieces of natural granite stones'	'preserve natural resources' ³⁰¹
25	Bangladesh	export duties	bricks	'brick production is not environmentally friendly' ³⁰²

293 WT/TPR/S/252, at 44. 'Exports of live wildlife specimens and fertile eggs are reportedly subject to an ad valorem levy of 20%, collected by the National Parks and Wild Life Management Authority'.

294 Ibid. The Authority administers the permit system governing the movement of all wildlife within Zimbabwe and across its borders (sections (2)(vi) and (3)(iii)).

295 WT/TPR/S/259, at 53. 'Turkey prohibits exports of 12 items (by broad category, mostly agricultural goods) for environmental, health or cultural reasons (Table III.14)'.

296 WT/TPR/S/261, at 50. 'Only plantation (non-native) logs are subject to an export tax (20% of f.o.b.)'.

297 WT/TPR/S/264, at 59-60. 'mainly because of China's international obligations and domestic considerations regarding environmental and human health protection, and preservation of natural resources'.

298 Ibid. 'The authorities believe that these export restrictions could help conserve natural resources or protect the environment'.

299 WT/TPR/S/266/CIV, at 127. 'Exports of wood in log form are subject to a reforestation tax of 2 per cent of the reference value used as the basis for the DUS; the Customs Administration collects this tax on behalf of the Treasury. In addition, Ivorian logs exported or sold on the domestic market are subject to a felling tax and a special forest conservation and development tax'.

300 Ibid., at 129. 'The exportation of certain goods requires prior authorization; there are also prohibitions in place, chiefly to protect the fauna and flora (Table III.9)'.

301 WT/TPR/S/268, at 81. 'The negative list of banned exports ... and preserve natural resources (uncut pieces of natural granite stones)'.

302 WT/TPR/S/270, at 49. 'ceramic building bricks (25%) in order to discourage production of these products'.

2013				
26	Costa Rica	export 'authorization'	'coffee, bulk sugar, fish, molluscs and crustaceans'	'public health, environmental protection' ³⁰³
27	Indonesia	export bans	'sand, soil and top soil'	'protection of the environment and ecology' ³⁰⁴
		export 'authorization'	'oil and gas'	'sustainable and efficient management of oil and gas as non-renewable natural resources; prevention of excessive exploitation and environmental damage' ³⁰⁵
		export duties	'leather and wood; crude palm oil; raw cocoa; and mineral ore products'	'safeguard the environment' ³⁰⁶
2014				
28	Malaysia	export duties	'timber, live animals, ash and residues, crude petroleum, precious metals, nickel, copper, and ferrous waste and scrap'	'conserve the environment'; 'better manage sustainable development of the Malaysian forest' ³⁰⁷
29	Myanmar	export duties	'gems, gas, crude oil, teak and conversions, and timber and conversions'	'preserve natural resources' ³⁰⁸
30	Tonga	'export restriction'	'out-of-season exports of sea cucumber'	'conservation purposes' ³⁰⁹
2015				
31	Madagascar	export duties	forestry products	'These levies are paid into the National Forestry Fund, whose aim is sustainable exploitation of this subsector'. ³¹⁰
32	Thailand	export duties	'certain sawn wood and hides'	'conserving the environment' ³¹¹

303 WT/TPR/S/286, at 9. 'Certain exports (such as coffee, bulk sugar, fish, molluscs and crustaceans) are subject to authorization for reasons of public health, environmental protection or quality assurance. The exportation of various species of wood logs is prohibited'.

304 WT/TPR/S/278, at 55.

305 Ibid., at 56.

306 Ibid., at 58.

307 WT/TPR/S/292, at 59. 'According to the authorities, the main objective of these taxes is to promote the use of locally produced commodities in domestic downstream industries as well as to conserve the environment; export taxes on timber allow them to better manage sustainable development of the Malaysian forest'.

308 WT/TPR/S/293, at 42. 'according to the authorities, this is to preserve natural resources'.

309 WT/TPR/S/291, at 34.

310 WT/TPR/S/318, at 88.

311 WT/TPR/S/326, at 64. 'the authorities had indicated that export taxes are primarily for the purpose of conserving the environment, are applied in a non-discriminatory manner and are not intended to be protection for domestic industries nor trade barriers'.

2016				
33	Fiji	export bans	'round logs'	'environmental reasons' ³¹²
34	Sri Lanka	export duties	'cashew nuts (fresh and in shells), raw vein quartz and semi-finished products of iron or non-alloy steel'	'protecting the environment' ³¹³
35	Solomon Islands	export duties	various goods including logs, fish, and timber	'a practical and cost-efficient means of protect the environment' ³¹⁴

Table 2: *WTO limits on export duties*

No.	(1994-2011)	Export Duties		
		Scope	Specific Exception	General Exception
1	GATT 1994	Allow		
2	GATT Australia Goods Schedules	Positive list	No	GATT Article XX
3	WTO-Mongolia (1996)	Positive list	No	No
4	WTO-Latvia (1998)	Positive list	No	No
5	WTO-China (2001)	Negative list	Yes	No
6	WTO-Saudi Arabia (2005)	Positive list	No	No
7	WTO-Vietnam (2006)	Positive list	No	GATT Article XX
8	WTO-Ukraine (2008)	Positive list	No	GATT Article XX
9	WTO-Russia (2011)	Positive list	No	GATT Article XX
10	WTO-Montenegro (2011)	Ban	No	No
11	WTO-Tajikistan (2012)	Negative list	No	No
12	WTO-Kazakhstan (2015)	Negative list	No	GATT Article XX
13	WTO-Afghanistan (2015)	Negative list	Yes	GATT Article XX

312 WT/TPR/S/330, at 42. 'Exports of round logs are banned for environmental reasons and to promote downstream processing, which provides an implicit subsidy to processors at the expense of forest owners, by lowering the domestic price'.

313 WT/TPR/S/347, at 57. 'With a view to ensuring the availability of raw materials, promoting further processing of local materials, financing export promotion activities, protecting national security, and protecting the environment, Sri Lanka applies both export duties and a cess on certain goods'.

314 WT/TPR/S/349, at 34. 'The authorities consider export taxes a practical and cost-efficient means of raising revenue that could also encourage downstream domestic processing and help protect the environment'.

Table 3: RTAs limits on quantitative export restrictions

No.	RTAs	Quantitative Export Restrictions		
		Scope	Specific Exception	General Exceptions
2012				
1	Canada-Jordan ³¹⁵	General ban	GATT XI:2(a)	GATT XX
2	Chile-Malaysia ³¹⁶	General ban	GATT XI:2(a)	GATT XX
3	EFTA-Hong Kong ³¹⁷	General ban	GATT XI:2(a)	GATT XX
4	EFTA-Montenegro ³¹⁸	General ban	GATT XI:2(a)	GATT XX
5	EFTA-Ukraine ³¹⁹	General ban	GATT XI:2(a)	GATT XX
6	EU-ESA ³²⁰	Negative list	No	Yes
7	Japan-Peru ³²¹	Negative list	GATT XI:2(a)	GATT XX
8	Korea-United States ³²²	General ban	GATT XI:2(a)	GATT XX
9	CIS ³²³	General ban	GATT XI:2(a)	GATT XX
10	United State-Colombia ³²⁴	General ban	GATT XI:2(a)	GATT XX
11	United States-Panama ³²⁵	General ban	GATT XI:2(a)	GATT XX
2013				
12	Canada-Panama ³²⁶	Negative list	GATT XI:2(a)	GATT XX
13	Costa Rica-Singapore ³²⁷	General ban	GATT XI:2(a)	GATT XX
14	EU-Central America ³²⁸	General ban	GATT XI:2(a)	GATT XX

- 315 Canada-Jordan (2012): Free trade agreement between Canada and Jordan, 1 October 2012, WT/REG335.
- 316 Chile-Malaysia (2012): Free trade agreement between Chile and Malaysia, 25 February 2012, W/REG330.
- 317 EFTA-Hong Kong (2012): Free trade agreement between Hong Kong, China and the EFTA States, 1 October 2012, WT/REG322.
- 318 EFTA-Montenegro (2012): Free trade agreement Montenegro and the EFTA states, 1 September 2012, WT/REG323.
- 319 EFTA-Ukraine (2012): Free trade agreement between Ukraine and the EFTA States, 1 June 2012, WT/REG315.
- 320 EU-ESA (2012): Interim economic partnership agreement between the European Union and the ESA states (Madagascar, Mauritius, Seychelles and Zimbabwe), 14 May 2012, WT/REG307.
- 321 Japan-Peru (2012): Free trade agreement between Japan and Peru, 1 May 2012, WT/REG309.
- 322 Korea-United States (2012): Free trade agreement between the United States and the Republic of Korea, 15 March 2012, WT/REG311.
- 323 CIS (2012): Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS), 20 September 2012, WT/REG343.
- 324 United State-Colombia (2012): Free trade agreement between the United States and Colombia, 15 May 2012, WT/REG314.
- 325 United States-Panama (2012): Free trade agreement between the United States and Panama, 31 October 2012, WT/REG324.
- 326 Canada-Panama (2013): Free trade agreement between Canada and Panama, 1 April 2012, WT/REG334.
- 327 Costa Rica-Singapore (2013): Free trade agreement between Costa Rica and Peru, 1 June 2013, WT/REG342.
- 328 EU-Central America (2013): Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, 1 August 2013, WT/REG332.

15	EU-Colombia and Peru ³²⁹	General ban	GATT XI:2(a)	Yes
16	EU-Serbia ³³⁰	General ban	No	Yes
17	GCC-Singapore ³³¹	General ban	Restricted	Yes
18	Korea-Turkey ³³²	General ban	GATT XI:2(a)	Yes
19	Malaysia-Australia ³³³	General ban	GATT XI:2(a)	Yes
20	New Zealand-Chinese Taipei ³³⁴	General ban	GATT XI:2(a)	GATT XX
21	Turkey-Mauritius ³³⁵	General ban	GATT XI:2(a)	Yes
22	Ukraine-Montenegro ³³⁶	Negative list	GATT XI:2(a)	Yes
2014				
23	Canada-Honduras ³³⁷	Negative list	GATT XI:2(a)	GATT XX
24	Chile-Viet Nam ³³⁸	Negative list	GATT XI:2(a)	GATT XX
25	EFTA-Central America ³³⁹	General ban	No	GATT XX
26	EU-Cameroon ³⁴⁰	General ban	No	Yes
27	EU-Georgia ³⁴¹	General ban	GATT XI:2(a)	GATT XX
28	EU-Moldova ³⁴²	General ban	GATT XI:2(a)	Yes

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- 329 EU-Colombia and Peru (2013): Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, 1 March 2013, WT/REG333.
- 330 EU-Serbia (2013): Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, 1 September 2013, WT/REG285.
- 331 GCC-Singapore (2013): Agreement between the Gulf Cooperation Council (GCC) and the Republic of Singapore, 1 September 2013, WT/COMTD/N/45/Rev.1.
- 332 Korea-Turkey (2013): Free trade agreement between the Republic of Korea and Turkey, 1 May 2013, WT/REG339.
- 333 Malaysia-Australia (2013): Free trade agreement between Australia and Malaysia, 1 January 2013, WT/REG340.
- 334 New Zealand-Chinese Taipei (2013): Agreement between New Zealand and The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on economic cooperation, 1 December 2013, WT/REG348.
- 335 Turkey-Mauritius (2013): Free trade agreement between Turkey and Mauritius, 1 June 2013, WT/REG341.
- 336 Ukraine-Montenegro (2013): Free trade agreement between Ukraine and Montenegro, 1 January 2013, WT/REG338.
- 337 Canada-Honduras (2014): Free trade agreement between Canada and Honduras, 1 October 2014, WT/REG364.
- 338 Chile-Viet Nam (2014): Free trade agreement between Viet Nam and Chile, 1 January 2014, WT/REG365.
- 339 EFTA-Central America (2014): Free trade agreement between the EFTA states and Central America - Costa Rica and Panama, 19 August 2014, WT/REG357.
- 340 EU-Cameroon (2014): Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part - Protocol, 4 August 2014, WT/REG274.
- 341 EU-Georgia (2014): Deep and comprehensive free trade area concluded as a part of the association agreement between the European Union and Georgia, 1 September 2014, WT/REG354.
- 342 EU-Moldova (2014): Deep and comprehensive free trade area concluded as a part of the association agreement between the European Union and the Republic of Moldova, 1 September 2014, WT/REG352.

29	EU-Ukraine ³⁴³	General ban	GATT XI:2(a)	GATT XX
30	Hong Kong-Chile ³⁴⁴	General ban	GATT XI:2(a)	GATT XX
31	Iceland-China ³⁴⁵	General ban	GATT XI:2(a)	GATT XX
32	Korea-Australia ³⁴⁶	General ban	Restricted	GATT XX
33	Singapore-Chinese Taipei ³⁴⁷	General ban	GATT XI:2(a)	GATT XX
34	Switzerland-China ³⁴⁸	General ban	GATT XI:2(a)	GATT XX
2015				
35	ASEAN-India ³⁴⁹	General ban	GATT XI:2(a)	GATT XX
36	Australia-China ³⁵⁰	General ban	GATT XI:2(a)	Yes
37	Canada-Korea ³⁵¹	Negative list	GATT XI:2(a)	GATT XX
38	China-Korea ³⁵²	General ban	GATT XI:2(a)	GATT XX
39	EFTA-Bosnia and Herzegovina ³⁵³	Positive list	GATT XI:2(a)	GATT XX
40	EU-Bosnia and Herzegovina ³⁵⁴	General ban	No	Yes
41	EAEU ³⁵⁵	General ban	No	Yes
42	Japan-Australia ³⁵⁶	General ban	Restricted	GATT XX
43	Korea-New Zealand ³⁵⁷	General ban	Restricted	GATT XX

- 343 EU-Ukraine (2014): Deep and comprehensive free trade area concluded as a part of the association agreement between the European Union and Ukraine, 23 April 2014, WT/REG353.
- 344 Hong Kong-Chile (2014): Free trade agreement between Hong Kong, China and Chile, 9 October 2014, WT/REG356.
- 345 Iceland-China (2014): Free trade agreement between Iceland and China, 1 July 2014, WT/REG355.
- 346 Korea-Australia (2014): Free trade agreement between the Republic of Korea and Australia, 12 December 2014, WT/REG359.
- 347 Singapore-Chinese Taipei (2014): Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on economic partnership, 19 April 2014, WT/REG350.
- 348 Switzerland-China (2014): Free trade agreement between Switzerland and China, 1 July 2014, WT/REG351.
- 349 ASEAN-India (2015): Framework Agreement on Comprehensive Economic Cooperation Between the Republic of India and the Association of Southeast Asian Nations, 1 July 2015, WT/REG372.
- 350 Australia-China (2015): Free trade agreement between Australia and China, 20 December 2015, WT/REG369.
- 351 Canada-Korea (2015): Free trade agreement between Canada and the Republic of Korea, 1 January 2015, WT/REG362.
- 352 China-Korea (2015): Free trade agreement between China and the Republic of Korea, 20 December 2015, WT/REG370.
- 353 EFTA-Bosnia and Herzegovina (2015): Free trade agreement between the EFTA States and Bosnia and Herzegovina, 1 January 2015, WT/REG360.
- 354 EU-Bosnia and Herzegovina (2015): The Stabilisation and Association Agreement between the European Union and Bosnia and Herzegovina, 1 July 2015, WT/REG242.
- 355 EAEU (2015): Treaty on the Eurasian Economic Union, 1 January 2015, WT/REG358.
- 356 Japan-Australia (2015): Economic partnership agreement between Japan and Australia, 15 January 2015, WT/REG361.
- 357 Korea-New Zealand (2015): Free trade agreement between the Republic of Korea and New Zealand, 20 December 2015, WT/REG367.

44	Korea-Viet Nam ³⁵⁸	General ban	GATT XI:2(a)	GATT XX
45	SADC-Accession of Seychelles ³⁵⁹	General ban	No	Yes
46	Turkey-Malaysia ³⁶⁰	General ban	GATT XI:2(a)	GATT XX
2016				
47	EU-Côte d'Ivoire ³⁶¹	General ban	No	Yes
48	Japan-Mongolia ³⁶²	General ban	GATT XI:2(a)	GATT XX
49	Korea-Colombia ³⁶³	Negative list	GATT XI:2(a)	GATT XX
50	Turkey-Moldova ³⁶⁴	General ban	GATT XI:2(a)	GATT XX

Table 4: RTAs limits on export duties

No.	RTAs	Export Duties		
		Scope	Specific Exception	General Exception
2012				
1	Canada-Jordan	Not mentioned		
2	Chile-Malaysia	Not mentioned		
3	EFTA-Hong Kong	Positive list	No	GATT Article XX
4	EFTA-Montenegro	Positive list	No	GATT Article XX
5	EFTA-Ukraine	Positive list	No	GATT Article XX
6	EU-ESA	Negative list	Yes	Yes
7	Japan-Peru	General ban	Yes	GATT Article XX
8	Korea-United States	General ban	Yes	GATT Article XX
9	CIS	Negative list	No	GATT Article XX
10	United State-Colombia	General ban	Yes	GATT Article XX
11	United States-Panama	General ban	Yes	GATT Article XX
2013				
12	Canada-Panama	General ban	Yes	GATT Article XX
13	Costa Rica-Singapore	Positive list	No	GATT Article XX
14	EU-Central America	General ban	No	GATT Article XX
15	EU-Colombia and Peru	General ban	No	Yes
16	EU-Serbia	General ban	No	Yes

358 Korea-Viet Nam (2015): Free trade agreement between The Republic of Korea and Viet Nam, 20 December 2015, WT/REG371.

359 SADC-Accession of Seychelles (2015): Accession of Seychelles to the Southern African Development Community Trade Protocol, 25 May 2015, REG368.

360 Turkey-Malaysia (2015): Free trade agreement between Turkey and Malaysia, 1 August 2015, WT/REG379.

361 EU-Côte d'Ivoire (2016): Economic partnership agreement between Côte d'Ivoire and the European Union, 3 September 2016, WT/REG258.

362 Japan-Mongolia (2016) has additional exception clauses that allow either party to consult with the other regarding the imposition of export restrictions for the purpose of stabilizing the prices of primary commodities or promoting a particular industry 'with a view to raising the general standard of living of its people'.

363 Korea-Colombia (2016): Free trade agreement between Colombia and the Republic of Korea, 15 July 2016, WT/REG375.

364 Turkey-Moldova (2016) has additional exception clauses that allow either party to impose export restrictions in accordance with procedures set out in the dispute settlement clause in circumstances in which compliance with the limits on export restrictions leads to a serious shortage of one of the exporting country's essential products.

17	GCC-Singapore	Not mentioned		
18	Korea-Turkey	General ban	Yes	Yes
19	Malaysia-Australia	Not mentioned		
20	New Zealand-Chinese Taipei	Not mentioned		
21	Turkey-Mauritius	General ban	No	Yes
22	Ukraine-Montenegro	Negative list	No	Yes
2014				
23	Canada-Honduras	General ban	Yes	GATT Article XX
24	Chile-Viet Nam	Not mentioned		
25	EFTA-Central America	Negative list	No	GATT Article XX
26	EU-Cameroon	Negative list	Yes	Yes
27	EU-Georgia	General ban	No	GATT Article XX
28	EU-Moldova	General ban	No	Yes
29	EU-Ukraine	Negative list	Yes	GATT Article XX
30	Hong Kong-Chile	Not mentioned		
31	Iceland-China	Not mentioned		
32	Korea-Australia	General ban	Yes	GATT Article XX
33	Singapore-Chinese Taipei	General ban	No	GATT Article XX
34	Switzerland-China	Not mentioned		
2015				
35	ASEAN-India	Not mentioned		
36	Australia-China	Not mentioned		
37	Canada-Korea	General ban	Yes	GATT Article XX
38	China-Korea	Not mentioned		
39	EFTA-Bosnia and Herzegovina	Positive list	No	GATT Article XX
40	EU-Bosnia and Herzegovina	General ban	No	Yes
41	EAEU	General ban	No	Yes
42	Japan-Australia	General ban	Yes	GATT Article XX
43	Korea-New Zealand	General ban	Yes	GATT Article XX
44	Korea-Viet Nam	Not mentioned		
45	SADC-Accession of Seychelles	General ban	No	Yes
46	Turkey-Malaysia	Not mentioned		
2016				
47	EU-Côte d'Ivoire	Negative list	Yes	Yes
48	Japan-Mongolia	Not mentioned		
49	Korea-Colombia	Negative list	Yes	GATT Article XX
50	Turkey-Moldova	General ban	No	GATT Article XX