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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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Propositions relating to the dissertation

'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?

by Fengan Jiang

1. Compared with an absolute ban on China's export duties, a win-win approach is to provide China with policy space under GATT Article XX to adopt 'export duties plus' that are imposed for environmental purposes in combination with supplementary restrictions on Chinese consumption.
2. While GATT Article XX would generally require 'export duties plus' to treat Chinese and foreign consumers in an identical manner, for the purpose of fighting climate change, differential 'export duties plus' based on objective criteria might be permitted because of the distinction between Annex I and non-Annex I parties of the UNFCCC.
3. There are three most feasible ways to 'greening' the WTO ban on China's export duties: (i) a waiver as a stopgap measure, (ii) a Ministerial Decision or Declaration as a more flexible alternative, and (iii) a legal interpretation that distinguishes between export duties and 'export duties plus' as a judicial correction.
4. The judicial correction of the WTO ban on China's export duties remains relevant even if the Appellate Body is no longer operational.
5. China's export duties can be useful to tackle carbon leakage, and there are good reasons for China to make those duties a credible climate policy tool.
6. The Ministerial Decisions or Declarations under Article IV:1 of the WTO Agreement might be a flexible political means to correct questionable judicial precedents.
7. The technique of distinguishing, which has been commonly used by international and regional tribunals, injects valuable flexibility into the WTO's precedent system.
8. Given the US concerns about WTO rulings having precedential value, US support for the judicial or political correction of the *China—Raw Materials* and *China—Rare Earths* decisions would serve as a good example to alter other questionable precedents that are more troubling for the US.
9. PhD research is a path of maturity because it requires constantly embracing complexity.

