

# Tackling Agriculture in the Post-Bali Context

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A collection of short essays

Edited by

Ricardo Meléndez-Ortiz

Christophe Bellmann

and Jonathan Hepburn



**October 2014**

ICTSD Programme  
on Agriculture Trade  
and Sustainable Development

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# Export Restrictions and Food Security<sup>1</sup>

By Giovanni Anania

## Introduction

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There are many, quite different, goals a country may try to achieve by restricting its exports. In this chapter, the focus of the analysis is limited to multilaterally agreed disciplines of export restrictions for agricultural goods, used on a temporary basis and justified by short-term food security concerns. Countries may decide to restrict exports to prevent domestic food prices from rising by limiting, or eliminating altogether, the transmission to domestic prices of an out-of-the-ordinary inflationary pressure in international markets. If the country deciding to restrict its exports is a "large country" on the world market – i.e. its exports constitute a significant share of the volume of that product traded internationally –, then its policy intervention is a beggar-thy-neighbour type of policy. While it limits the transmission to the domestic market of soaring international prices, it tends to push international prices further up, increasing food insecurity for the poor in other countries.

WTO law on export restrictions is considered an area of evident "under-regulation" or "regulatory deficiency", as it neither properly defines the circumstances under which quantitative restrictions can be used, nor regulates export taxes (Karapinar 2011 and 2012). Article XI of GATT 1994 states that imports and exports can be restricted or inhibited, but only by the means of duties and taxes, while the use of other export-reducing policy instruments, such as quotas or export licences, is forbidden (XI:1). The prohibition on using quantitative restrictions is lifted in the case of "export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party" (XI: 2a). Article 12 of the Agreement on Agriculture (AoA) on the other hand refers to consultation and notification obligations. These disciplines are unanimously considered ineffective in limiting export restrictions. First, a country can always decide to restrict its exports by the means of an export tax. These being unbound, a country can always ban exports, if it so wishes, by imposing a tax large enough to make them economically unviable. Second, the text used in Article XI of GATT is so vague as to make its enforcement practically impossible.

When the Uruguay Round was launched in 1986, prices of many commodities were at record lows and stocks were at a record high. Developed countries were routinely using export subsidies as a way to dispose of products in excess of what markets demanded; these surpluses were often generated by the generous support provided by their own policies. Hence, one explanation for the current under-regulation of export restrictions in the WTO is simply that countries did not feel at the time that there were good reasons to be concerned about the possibility of countries finding it convenient to restrict their exports. When the downward trend halted and prices started to rise slowly, some importers pointed to the need to introduce more stringent WTO rules for export restrictions, but it was not until the severe food price spike of 2007–08 that the issue gained visibility in the arena of multilateral negotiations. As countries responded to rapidly soaring

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<sup>1</sup> This chapter is partially based on Anania (2013).

international prices by reducing their exports to limit the transmission of high international prices to the domestic market, such restrictions further exacerbated the upward dynamic of prices in international markets. This in turn aggravated the already severe food security consequences of high prices for the poor in the developing world. In addition, a domino effect developed, with most countries subsequently intervening to avoid further increases in domestic prices, exporters by restricting exports and importers by lowering border protection to facilitate imports. These interventions partially offset each other, making it impossible for countries to reach the expected protection of domestic consumers they were trying to achieve. At this point, many realized that collectively coordinated action was perhaps a better solution for all.

From a historical perspective, price spikes similar to those observed in the past decade are not that frequent, yet they tend to occur with a certain regularity (Gilbert and Morgan 2010, Huchet-Bourdon 2011, Timmer 2010). As pointed out by Konandreas (2011), in the past 40 years or so, only six episodes of high food prices occurred – in 1974–76, 1980–82, 1988–90, 1995–97, 2007–08 and 2010–11 – each lasting for about two years, for a total of 12 years, which means that higher than usual prices were observed in about one out of three years. Hence, prices suddenly and rapidly moving upward away from their trends and then reverting to their "normal" levels or trends is something we should expect to happen again in the future. Things are further aggravated by changes in the climate, as they are expected to increase volatility in production and, as a result, in prices and to make the realization of extreme market events much more frequent.

A large literature exists on the causes of recent price crises. Overall export restrictions are not considered to be a "key driver" of the price spikes, but rather a factor that exacerbated the extent of the crisis by putting significant additional upward pressure on international prices, whose rise had been initially fuelled by other factors. These conclusions, however, do not extend to the rice market, where export restrictions imposed by many of the major exporters and large precautionary imports from some large importers have been indicated by many as a major factor in the severe price rise which occurred in 2007–08.

Many studies empirically assessed the market effects of the export restrictions countries introduced in 2007–08 and 2010–11, using a variety of simulation models, and all concluded that these effects were substantial (Anderson 2012, Anderson et al. 2013, Bouët and Laborde 2010, Headey 2011, Laborde et al. 2013, Martin and Anderson 2012, Rutten et al. 2013, Tanaka and Hosoe 2011, Thompson and Tallard 2010). Since export restrictions were effective in significantly reducing domestic upward price variability in the countries that applied them, symmetrically, they also made prices increase significantly in other countries, with a major additional negative effect on the food insecurity of their poor.

The recent food crises, the policy reactions by some of the main exporters, the implications of their decisions on the food insecurity of the poor in several net food-importing developing countries, and the negative effects of what happened on the reputation of international markets as a reliable source of food in national food security strategies, make for a different framework with respect to the one in place at the time of Uruguay Round negotiations. Equally different is the scenario of the distribution of negotiating power among developing and developed, net food-importing and exporting countries, which gives food security issues a more important place in multilateral negotiations and a chance to reform existing disciplines on export restrictions and reduce the

current asymmetry in WTO regulations between policy interventions aimed at reducing imports and exports.

## 1. Implications for the WTO negotiations

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The December 2008 version of the agricultural “modalities”<sup>2</sup> describes the status of the Doha Round negotiations on agriculture when they were de facto suspended. Export “prohibitions and restrictions” are dealt with at the very end of the document, under “Other Issues”. The text does not include square brackets, which means that, in the opinion of the Chair of the Negotiating Committee, there was a broad agreement on it. As a matter of fact, the provisions do not appear very ambitious. The text refers to export prohibitions and restrictions only, while export taxes are not mentioned. Essentially, it calls for modifying Article 12 of the AoA by restricting the export prohibitions and restrictions allowed under Article XI of GATT 1994 to being only temporary measures. “Existing export prohibitions and restrictions in foodstuffs and feeds under Article XI.2 (a) of GATT 1994 shall be eliminated by the end of the first year of implementation” and “any new export prohibitions or restrictions under Article XI.2 (a) of GATT 1994 should not normally be longer than 12 months, and shall only be longer than 18 months with the agreement of the affected importing Members”. The text also slightly strengthens the consultation and notification procedures, for example by having countries notify export restrictions within 90 days of their introduction. The December 2008 “modalities” includes provisions that are meant to prevent exporting State trading enterprises from acting in such a way as to circumvent export subsidy commitments, but no reference is made to disciplines to prevent them from acting to restrict imports. Finally, the document includes a proposal to reduce tariff escalation, but no parallel proposal to introduce a similar discipline on exporting countries using export taxes to pursue the analogous goal of protecting the domestic industry processing a domestically produced raw product.<sup>3</sup>

While a low-ambition attempt to prohibit export restrictions and export taxes on humanitarian purchases by the World Food Programme (WFP) seemed possible approaching the Ministerial Conference in 2011, no significant decision was finally taken, and Members could not avoid acknowledging the fact that Doha Development Agenda negotiations were at an impasse. The Chairman’s Concluding Statement mentions export restrictions in Part II, which provides a summary, prepared under his sole responsibility, of key issues raised in the discussion on which no consensus had emerged. Under the heading of “Food security”, the text reads: “Many Ministers urged WTO Members to commit to remove and not to impose in the future, food export restrictions or extraordinary taxes for food purchased for non-commercial humanitarian purposes by the WFP. Other Ministers stressed the importance of addressing the root causes of food insecurity and underlined the importance of allowing Members to use their rights under WTO agreements. Some Ministers signalled their support for a proposal to establish a work programme on trade-related responses to mitigate the impact of food market prices and volatility, especially on LDCs and NFDCs, for action by the Ninth Ministerial Conference. Several Ministers noted that the issue

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2 WTO Document TN/AG/W/4/Rev.4.

3 “Differential export taxes” (i.e. taxes that decrease with the degree of processing of a specific raw material contained in the product) are mentioned as an issue on which no convergence existed, with no further comments.

of food security was multifaceted and needed to be looked at in its entirety, including the impact of export restrictions on international prices.”

In this context, the prospects for post-Bali WTO negotiations remain unclear (Evenett and Jara 2013, Matthews 2014). The decision taken in Bali to ask the Trade Negotiations Committee to prepare a “clearly defined work programme on the remaining Doha Development Agenda issues” by December 2014 should mean, in principle at least, that the negotiations agenda is confirmed and that countries are committed to identifying a road map to try to reach an agreement. However, the extent to which stronger disciplines on export restrictions might be included as a priority area in such a work programme remains highly uncertain. Assuming some traction in the post-Bali negotiations, changes could nevertheless be introduced in the rules regarding export restrictions, even in a relatively low-ambition WTO agreement. In this scenario, two options seem realistic given the negotiating stands observed: forbidding the imposition of export restrictions on food purchases by international organizations to be distributed as food aid, and making existing disciplines enforceable.

A reform of current disciplines with a low level of ambition could consist in exempting food purchased by international organizations to be distributed on a non-commercial basis for humanitarian purposes from the imposition of export restrictions and export taxes. To define which transactions should be exempted from the imposition of export restrictions as well as under which circumstances and by which international organizations they should be handled, Annex L of the December 2008 draft modalities can be used, *mutatis mutandis*, as a basis. It is important to realize that the volume of food involved in purchases by humanitarian international organizations is very limited with respect to the size of the international market of the same commodities. In 2008, 852,000 t of rice were distributed as food aid, including rice purchased and distributed locally, an amount which equals 3.1 per cent of the rice traded internationally in the same year; food aid in wheat and wheat flour was equal to 1,444,000 t, 1.1 per cent of the quantity of the same commodities traded internationally. As a result, should this option be implemented, its impact on volumes traded and market prices would be marginal (and, as a result, so should concerns by exporting countries). However, benefits in terms of the amount of food international organizations would be able to distribute under their relatively rigid financial constraints would be sizeable, as such an agreement would prevent the imposition of an additional cost on the purchase and distribution of food for humanitarian purposes when this is needed the most and is the hardest to access. The volume of wheat and wheat flour distributed as food aid in 2008 was only 53 per cent of that distributed in 2005; for rice it was 64 per cent. Restraints on imposing export restrictions and extraordinary export taxes on food to be distributed on a non-commercial basis for humanitarian purposes were agreed both at the November 2009 FAO World Summit on Food Security and at the June 2011 G20 meeting. However, not all countries subsequently acted in accordance with the commitment they had agreed to, and no consensus materialized to introduce a similar commitment within the legally binding framework of the WTO.

A second, relatively more ambitious, option would leave current disciplines unmodified, but would make them enforceable by clarifying some of the terms used and adopting a transparent, unambiguous language.<sup>4</sup> Export taxes would remain a policy instrument that countries could use.

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4 The options discussed are not mutually exclusive. On the contrary, each of them should include the pertinent provisions of the less ambitious ones.

Only the conditions to allow the use of export restrictions other than taxes would be clarified and the procedures to be followed to implement an export restriction would be strengthened. Under current rules, export prohibitions and restrictions can only be introduced if they are "temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party" (Article XI:2a of GATT 1994). The meaning of terms such as "temporarily", "prevent", "relieve", "critical shortage" or "essential" remains open to a wide spectrum of equally legitimate, legally sound interpretations. In fact, the current text does not define legally binding conditions, making it practically impossible to challenge any potentially illegal use of an export restriction in agriculture at the time of a price spike under the WTO. The agreement under this option would spell out the meaning of Article XI:2a in such a way as to make it legally possible to identify agricultural export restrictions other than export taxes that are contrary to WTO disciplines and, subsequently, challenge such restrictions within the dispute settlement framework.

Article 12 of the AoA refers to specific consultation and notification obligations for the introduction of export restrictions in the case of agricultural products. Countries (other than net food-importing developing countries) introducing an export restriction based on Article XI:2a of GATT must give "due consideration to the effects of such prohibition or restriction on importing Members' food security". Before introducing the restriction, the country "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", providing, upon request, all the necessary information. Current notification requirements, although very bland, remain largely ignored. They could be made more stringent and effective through the introduction of a notification and implementation procedure similar to that jointly proposed by Japan and Switzerland in April 2008. Countries should be required to notify the Committee on Agriculture in advance of their intention to introduce an export restriction on a foodstuff (the use of export taxes would remain unrestricted), providing adequate information on the legal base for introducing the restriction, the expected impact on other Members' food security and specifying the date by which it will be removed. The actual introduction of the restriction could not occur before the successful conclusion of a time-constrained consultation with other Members affected by the restriction or, if this consultation has not come to an end by the given deadline, before a green-light decision by an arbitration panel whose decision would be binding, a process that also has to be completed within a severe time constraint. To address the legitimate concern of countries fearing that the process leading to the implementation would be too long and would prevent the temporary restriction from generating its expected and much needed effects, countries could be allowed to implement the export restriction after a very short period of time after the notification of the declaration of intent; however, they would be forced to immediately remove the policy and to compensate Members that were negatively affected if the arbitration panel were to rule that it did not satisfy the requirements of Article XI:2a of GATT.

This option would be a small but significant step forward with respect to the existing discipline, as it would improve the transparency and predictability of the use of export restrictions and, hence, reduce information asymmetries and transaction costs for traders and investors and the uncertainty about world markets as a source of food when this is most needed. The higher

institutional cost of introducing export restrictions may deter some countries from doing so and reduce the probability of "panic" policy reactions, such as the sudden introduction of an export ban.

If countries can conclude the DDA Round or reach an agreement in a new Round of negotiations that includes agriculture (and it would be difficult to imagine a new Round which does not), more stringent disciplines on export restrictions in agriculture would very likely be considered. Also, under such a scenario, with respect to the overall negotiations, two options are presented for the introduction of new disciplines for export restrictions with different levels of ambition.

The relatively less ambitious one would introduce stricter disciplines for export restrictions as well as export taxes. Export restrictions and taxes would now be treated equally. Export restrictions and export taxes would be declared illegal and then exceptions under which this prohibition would not apply would be defined. These exceptions need to be defined in a simple and transparent way, resulting in "automatic", easy to verify and legally enforceable rules. The exceptions could relate to the countries that would be allowed to intervene to restrict their exports, the staple food products that could be subject to export restrictions, and the trigger mechanism that would allow a country to restrict its exports. Only developing countries, or a subgroup of them, acting on food security concerns would be allowed to use export-reducing policies, on a temporary basis. The lifting of the prohibition could be further restricted to countries where a significant share of the population is food insecure. The identification of countries allowed to use export-restricting policies could be based either on transparent criteria or on self-selection. Products for which export restrictions can be imposed would be limited to staple foods. The most sensitive element of the provisions under this option is the mechanism which would make it possible for a country that can, in principle, use export-limiting policies for a specific product to be actually allowed to do so. The trigger mechanism needs to be as transparent and "automatic" as possible and to include both a trigger activated by a significant increase in domestic price and one activated by a significant increase in exports. It should also parallel mechanisms already in use in WTO regulations, such as those used for the Special Safeguard Provisions (Article 5 of the AoA) or, if an agreement were to be found in the negotiations, those that would likely be in place for the Special Safeguard Mechanism (SSM).<sup>5</sup>

One possibly efficient way to design the new provisions would be to stay with relatively ample, uncomplicated and easy to apply rules with respect to the countries that can make use of export-limiting policies, to define a set of staple foods on which such policies could be applied and which is relatively ample and the same for all countries, and to devote more energy to the negotiation on the trigger mechanism, which should be transparent as well as effective in identifying circumstances that justify the use of export restrictions through the legitimate food security concerns of exporting countries.

A more ambitious option, which could be part of a comprehensive multilateral agreement, would be to introduce full "symmetry" in WTO disciplines regulating import and export restrictions. The agreement would extend to export restrictions, *mutatis mutandis*, the provisions for import restrictions contained in the agreement reached. In tandem with the discipline on market access introduced with the AoA, the new disciplines would include the "taxification" of all existing export restrictions other than export taxes, i.e. their replacement with "equivalent" export taxes, and

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5 WTO 2008.

the reduction of export taxes, both the existing ones and those resulting from the taxification. For products for which there exist export restrictions other than taxes, a Special Safeguard Clause would make it possible to introduce an export tax above the maximum level otherwise allowed, for a limited time and under special circumstances. To guarantee minimum export volumes, export quotas at reduced tax rates, whose volumes will be defined in terms of a certain percentage of domestic production in a reference period, could be introduced for all countries restricting their exports; quotas would have to be administered on a MFN basis. Under certain circumstances, countries would be allowed not to replace an existing export restriction with an equivalent export tax; however, in this case, minimum export volumes would have to be larger than otherwise. Finally, special and differential treatment would apply to developing countries (longer implementation periods, the exemption from tax reduction commitments and the introduction of bound tax rates instead, and smaller tax rate quotas). Bindings for export taxes and the prohibition of introducing new ones are included in the accession protocols of countries that became members of the WTO after the Uruguay Round, including China, Mongolia, Russia and Ukraine (Karapinar 2012, Anania 2013), as well as in many Regional Trade Agreements (Korinek and Bartos 2012).

## Conclusion

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Export restrictions significantly contribute to exacerbating the negative effects on food security when an unexpected, rapid increase of food prices occur and a food crisis develops. Export restrictions also have important negative effects on food security in a medium run. By undermining the confidence in international markets as a trustworthy source of food in the event of a food shortage, they induce a shift in net food importers' food security strategies from relying on international markets towards higher self-sufficiency and larger food reserves. They also lower the propensity to invest in agriculture in exporting countries, where a competitive advantage in production exists. In addition, because the non-cooperative policy reactions by importers and exporters to soaring international prices partially offset each other, significantly lowering the capacity of the policy instruments used to limit the increase of domestic prices, the need emerges for all countries, importers and exporters alike, to look into multilaterally agreed improved disciplines of export restrictions.

Agricultural export restrictions are a policy area that is "under-regulated" in the WTO. Current provisions are weak and remain largely ignored. Doha Round negotiations do not seem to have internalized the fact that the state of agricultural markets has changed since the conclusion of the Uruguay Round and, as a result, considering disciplines of trade interventions in the event of high food prices has never come "on the collective radar of WTO Members" (De Schutter 2011). Nevertheless, the main reason why an agreement on export restrictions has not been given a high priority on the agenda of the negotiations is the lack of the necessary consensus on it. The truth is that it is difficult to foresee large developing country exporters – and some of them are certainly among the most politically powerful actors at the table of the negotiations today – giving up the possibility of restricting staple food exports without obtaining significant gains in other areas (Gilbert 2012, Headey 2011). It is against this simple fact that all potential scenarios have to be assessed.

If a WTO agreement on export restrictions does not materialize, countries may decide to agree on a "code of conduct" for export restrictions outside this institution, in the framework of FAO,

of the G20 group, within RTAs or on the basis of voluntary agreements signed by a significant group of exporters, for example as part of an International Commodity Agreement. Would this be a feasible option? Would it be an effective option? My answer to the first question is "yes", that to the second question is "no". It would certainly be a feasible option, as countries have already shown that they are ready to assume stricter commitments on export restrictions outside the WTO framework than those they are subject to within it. However, this would not be an effective option. In fact, any agreement without legally enforceable provisions that would make it not in the interest of countries to ignore the commitments they had agreed to would be of little use. Among the existing international institutions, only the WTO has proved to have an effective mechanism to enforce compliance with its rules (when these are defined in a legally binding way). This is not the case for the other institutions mentioned above. For example, not all countries honoured the commitments on export restrictions they had assumed at the 2009 FAO World Summit on Food Security.

Price spikes and food crises can be expected to occur even more frequently in the future than in the past. Not having multilaterally agreed, effective disciplines of policy intervention in place to restrict exports –similar to those in place for policies limiting imports and analogous to those that Members acceding to the WTO after the conclusion of the Uruguay Round had to accept – significantly increases the costs of extreme market events for the poor in importing countries. WTO Members have the responsibility of removing this inconsistency in the trade rules system where costs are borne by the most food insecure.

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# Tackling Agriculture in the Post-Bali Context

A collection of short essays

At the ninth WTO Ministerial Conference in Bali, Ministers agreed to prepare a "clearly defined" work programme on the remaining Doha Development Agenda issues. However, the global agricultural trade landscape has evolved significantly since negotiations froze in 2008 – and even more so since Doha was launched in 2001. As WTO Members start crafting the contours of a possible post-Bali agenda, developing a sound understanding of this new global reality and its implications for future multilateral disciplines in agriculture is critical.

This volume builds on the most recent analysis of global trends and domestic policy reforms to inform negotiations on a post-Bali agricultural trade agenda. It features a series of concise, non-technical and solution-oriented papers by leading experts and thinkers, covering systematically all elements of the agricultural negotiations on market access, domestic support and export competition. By making this compilation widely available to policy makers and analysts, the editors intend to make a constructive and policy-relevant contribution to the debate over the shape of a possible post-Bali work programme.

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