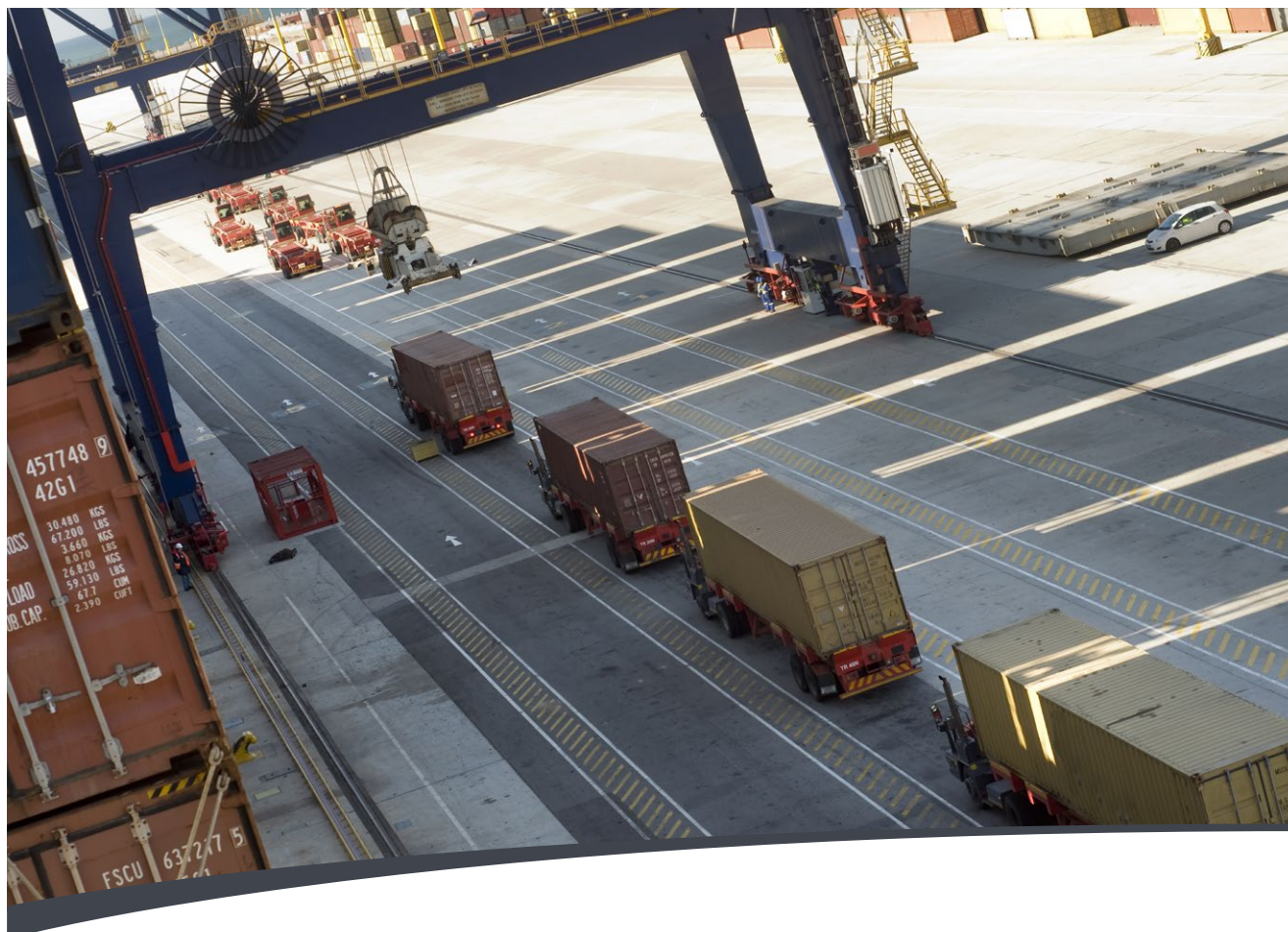


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VOLUME 3, ISSUE 9 – NOVEMBER 2014



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How do export restrictions impact food security in Africa?

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International Centre for Trade  
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## FOOD SECURITY

# How to promote food security through better discipline on export restrictions?

Giovanni Anania

*Countries intervening to restrict their exports are not among the main causes of food insecurity of the poor in the developing world. Nevertheless, export restrictions have proved to significantly contribute to exacerbating negative effects on food security when an unexpected, rapid increase of food staple prices occurs and a food crisis develops.*

**A**gricultural export restrictions are a policy area which remained 'underregulated' in the Uruguay Round agreement; current provisions are weak and largely ignored. It was not until the severe food price spike of 2007/08 that concerns about export restrictions gained visibility in on-going multilateral negotiations. A country restricting its exports in order to reduce the transmission to the domestic market of raising international prices makes prices in other countries increase further. Food security at home is pursued at the expense of food security of the poor elsewhere. As we can expect severe price spikes to occur again, having in place an improved, multilaterally agreed regulatory framework to reduce the negative effects of export restrictions on food security would certainly be useful. However, despite the widely shared concern that has emerged in recent years on the need to introduce more stringent WTO disciplines on export restrictions, so far no agreement has been reached.

### The current legal framework

WTO law on export restrictions is an area of evident 'underregulation' or 'regulatory deficiency', as it neither properly defines the circumstances under which quantitative restrictions can be used, nor regulates export taxes<sup>1</sup>. This leaves countries with ample space for policy decision-making on export restrictions, a space which they do not have when it comes to restricting imports. In fact, while export restrictions are very weakly regulated, with the Uruguay Round Agreement on Agriculture (AoA) all import restrictions for agricultural goods different from tariffs had to be reverted to tariffs, all tariffs were bound and reduction commitments introduced. This means a clear asymmetry exists in how country policy interventions limiting exports and imports are treated in the WTO.

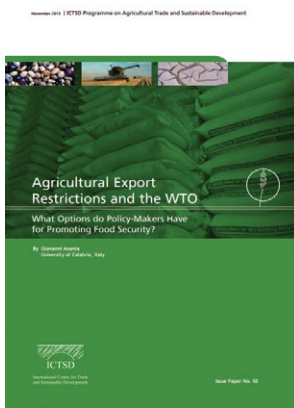
While WTO members decided not to impose any tangible constraint on their own policies restricting exports, they have forced acceding countries to accept significant limitations on their ability to do so. China, Mongolia, Russia, Saudi Arabia, Ukraine and Vietnam had to accept obligations which go beyond, to different extents, existing WTO rules. Export restrictions are often regulated in Regional Trade Agreements (RTAs), including bilateral ones, and in this case as well provisions often go well beyond those in the WTO.

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 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 environment with respect to the one at the time of the Uruguay Round negotiations.

Still, reaching an agreement for the introduction of a multilaterally agreed more stringent discipline on export restrictions is a particularly complex process. In the negotiations since 1999, both in the WTO and in other international fora, exporting countries have proved as strong as importing ones in defending every single square inch of their policy space.

### Options to promote food security

This article presents six alternative options for an agreement to modify current disciplines on the use, on a temporary basis, of export restrictions for agricultural goods in the event of suddenly and rapidly soaring international prices. The options are presented in



This article is based on this ICTSD paper which seeks to provide an evidence-based analysis of the likely trade, food security and development implications of various options for disciplining agricultural export restrictions.

increasing order of 'ambition' in terms of their capacity to limit the policy space currently available to exporting countries. The options are additive, in the sense that, in general, not only they are not mutually exclusive, but, quite the contrary, each of them should include the relevant provisions of the less ambitious ones.

*(a) Exempting from the imposition of export restrictions food purchases by international organizations to be distributed as food aid.*

Starting from the lowest level of ambition, the first option is an agreement to exempt from the imposition of export restrictions and export taxes food purchased by international organizations, to be distributed on a non-commercial basis for humanitarian purposes. Less restrictive disciplines would call for the prohibition to be imposed on extraordinary export taxes only, rather than on export taxes altogether, and for it to apply only to purchases made by selected international organizations, such as the World Food Program (WFP). Were this option to be implemented, its impact on volumes traded and market prices would be marginal. However, the benefits in terms of the amount of food humanitarian organizations would be able to distribute under their relatively rigid financial constraints would be sizeable, as it would prevent the imposition of an additional cost on the purchase and distribution of food for humanitarian purposes when this is needed the most but hardest to access.

*(b) Improving the enforceability of existing disciplines.*

The second option considered does not modify current WTO disciplines, rather it aims at making them enforceable by clarifying some of the terms used, adopting a transparent, unambiguous language. Under this option export taxes would remain a policy instrument countries may use; only the conditions to allow the use of export restrictions different from a tax would be clarified. This is a necessary condition to make it legally possible to identify agricultural export restrictions different from an export tax contrary to Article XI of GATT 1994, and, subsequently, to challenge such restrictions within the WTO dispute settlement framework. Also, the procedures to be followed to implement an export restriction, including consultation and notification obligations, would be strengthened. Implementation rules similar to those suggested under this option are included in several RTAs.

This option would be a 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 impact of this option on the quantities traded and prices would be very small, as countries could always opt for an export tax instead of the now more transparent export restrictions. However, the higher institutional cost of introducing export restrictions may deter some countries from implementing export restrictions and reduce the probability of 'panic' policy reactions, such as the sudden introduction of an export ban.

*(c) Limiting the impact of export taxes and restrictions on world markets, rather than imposing a discipline on export taxes and restrictions directly.*

This option involves a completely different approach to disciplining export restrictions. Rather than tightening the discipline on export taxes and quantitative restrictions, it imposes a constraint on their effects on world markets. Current disciplines would be left unchanged (but for what is foreseen in options (a) and (b) above), but their use would be made conditional on exporting country- and product-specific constraints on the volume exported. In order to be allowed to use policies limiting exports, countries will have to maintain unchanged with respect to the recent past the share of domestic production of the specific product which is exported. This approach can be found in some of the initial negotiation proposals on agriculture post-Uruguay Round. Provisions similar to those considered here are included in the North America Free Trade Agreement (NAFTA) and in the Canada-Costa Rica and Canada-Chile RTAs. This option would make it possible for the exporter to limit the increase in the domestic price, while allowing, at



the same time, domestic producers to accrue at least some of the benefits deriving from higher international prices (depending on the policy instrument used). It also has the advantage that it would not need any negotiation of the details defining the exceptional circumstances under which a country could use export restrictions.

*(d) Prohibiting the use of export restrictions, other than export taxes, on exports directed towards poor net food importing countries.*

This option goes beyond strengthening the existing discipline on export restrictions as it involves making illegal the use of export restrictions on staple food exports directed towards those countries who will be more severely affected, i.e. poor net food importing countries. However, under this option too - as was the case under options (a) and (b) - the use of export taxes would remain unrestricted. The provisions should include the definition of the set of poor net food importing countries whose imports cannot be subject to export restrictions, and the list of the staple foods which would be subject to the prohibition.

*(e) Introducing stricter disciplines for export restrictions as well as export taxes.*

The ambition of this option lies in the stricter disciplines it would impose on the use of export restrictions and on the fact that the same restrictions would now apply to export taxes. However, the provisions under this option would not go as far as imposing limitations on policies restricting exports analogous to those currently imposed on policies which restrict imports. Essentially under this option export restrictions and export taxes would be declared illegal and then exceptions defined under which this prohibition would not apply. The exceptions could relate to the countries that would be allowed to intervene to restrict their exports, the staple food products which cannot be subject to export restrictions and the trigger mechanism which would allow a country to restrict its exports. These exceptions need to be defined in a simple and transparent way, resulting in 'automatic' and easy to verify, legally enforceable rules. Export restrictions and taxes would now be treated equally. This approach is common to the vast majority of RTAs.

*(f) Full 'symmetry' in regulating import and export restrictions.*

The feasible option with the highest ambition is that of extending to export restrictions, *mutatis mutandis*, the provisions for import restrictions currently in place. These provisions should be integrated with those in options (a), (b), (c) and (e) above, as appropriate. Bindings for export taxes and the prohibition on introducing new ones are included in the accession protocols of some of the countries which became members of the WTO since the Uruguay Round as well as in many RTAs. If an agreement were to be found to conclude the Doha Round, this would certainly include revised disciplines for market access; in this case these new provisions would be those to be extended, *mutatis mutandis*, to export restrictions. The effectiveness of this option in expanding volumes traded and reducing price increases in the event of a price rise initially due to an exogenous shock would be substantial.

### **Fighting food insecurity is a complex challenge, involving numerous factors**

Six possible options for a WTO agreement on export restrictions have been identified and discussed, with different levels of ambition in terms of their capacity to limit the use of temporary export restrictions aimed at preventing the transmission to the domestic market of soaring international prices.



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① The key legal text regarding the discipline of export restrictions in the WTO is Article XI (General Elimination of Quantitative Restrictions) of GATT 1994; as far as export restrictions in agriculture are concerned, they are also dealt with in Article 12 (Disciplines on Export Prohibitions and Restrictions) of the 1994 Agreement on Agriculture (AoA).

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