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Export Restrictions and Sustainable Management of Natural Resources

Trade and Sustainable Development Symposium at Rio+20

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Export restrictions in headlines

- China’s restrictions of the exports of rare earth metals
- WTO Dispute 2011, United States (US), the European Union (EU) and Mexico vs China’s Export restrictions on selected raw materials
- One-third of all export taxes recorded by WTO cover natural resource sectors
- ‘Food crisis’ of 2007–2008 - dozens of countries imposed export restrictions

Outline

- Economic, legal and environmental dimensions of export restrictions
- Why do countries resort to export restrictions? Potential implications for domestic and global welfare
- WTO regulation
- GATT/WTO cases, including the ‘China- Raw Materials’ case
- Environmental protection vs. disguised restriction on trade
- WTO reform agenda

Policy Objectives

- To maintain domestic food supplies
- To promote downstream processors and manufacturers
- Important source of government revenue (10 per cent of government revenue in Côte d’Ivoire)
- Environmental protection (exhaustible natural resources including fisheries, forest products and minerals)
- Prevent or slow down the depletion of natural resources
- High energy intensity of the production/processing of raw materials: cut emissions, promote energy efficiency

Welfare implications

- Export restrictions result in welfare losses at the national and global levels
- Potential impacts vary depending on the demand and supply elasticity of the commodity
- Domestic consumers of the restricted product would benefit from lower than pre-export restriction prices (yet deadweight cost of market distortion)
- At the global level, in the short run, supply restrictions push up the prices of the restricted commodity, consumer welfare will decrease while producer welfare will increase
- Export restrictions unilaterally applied by one country may also lead to some trade diversion

Beyond pure economics

- Markets for environmental goods and services are not fully developed (market imperfections) , prices do not reflect the full costs or benefits in production
- Export restrictions may help internalise some negative environmental externalities
- To what extent such policy interventions justify the welfare losses is a question of the social value of environmental goods
- The effectiveness of the intervention: there could be significant discrepancies between the intended policy objectives and the actual impact
- Alternative policy tools could be employed and be equally as effective or more so than export restrictions

Alternative tools

(instead of or in addition to export restrictions)

- Strong regulatory mechanism imposing strict environmental standard on production
- Pollution charges directly applied to producers based on the amount of physical/chemical pollutants they discharge
- Promoting and subsidising clean and efficient technologies
- Liability insurance mechanisms covering potential environmental damage

WTO Regulation

- WTO regulation is limited, offers ample ‘policy space’
- GATT XI requires Members to eliminate all prohibitions and quantitative restrictions on exports
- Exceptions: ‘temporarily applied’ to prevent critical shortages;
- Environmental considerations, under Article XX
- Sub-paragraph (b) allows measures necessary to protect human, animal or plant life or health
- Sub-paragraph (g) allows measures relating to the conservation of exhaustible natural resources (if applied in conjunction with restrictions on domestic production)
- WTO law does not restrict Members to imposing export taxes

‘WTO-plus’ commitments

- New WTO Members, such as China, Mongolia and Ukraine (and Russian Federation) were required to commit to stricter rules
- They were obliged to phase out export taxes or to limit them to a designated number of tariff lines with a bound rate
- Additional concessions that they had to make to become a Member of the WTO

GATT/WTO Disputes

- ‘Canada – Salmon’ case (1988)
- Canada’s fishery legislation prohibited the exports of raw salmon . The US: violation of Article XI to promote the downstream processor sectors in Canada
- Canada claimed that the measures were part of its fisheries conservation and management regime (hence justified under Article XX(g))
- Panel examined the meaning of the terms ‘relating to’ and ‘in conjunction with’ in Article XX(g)
- The measure had to be primarily aimed at conservation of exhaustible resources

GATT/WTO Disputes

- Panel found that the Canadian fishery regulation which restricted domestic production covered other fish varieties which were not subject to export prohibitions
- The prohibitions only applied to supplies in unprocessed form and not in all forms
- The measures restricted purchases only by foreign processors and consumers and not those made by domestic processors and consumers
- Concluded that the prohibitions were not primarily aimed at the conservation of salmon stocks
- Canada violated Article XI

China – Raw materials case

- China – Measures Related to the Exportation of Various Raw Materials
- Bauxite, coke, fluorspar, magnesium, manganese, phosphate (yellow phosphorus), silicon (metal and carbide), and zinc
  - China imposes quantitative restrictions (Article XI:1 of the GATT 1994 and the Accession Protocol)
  - China imposes export duties on the commodities in question (the Accession Protocol)

China – Raw materials case

Bauxite: electronic and consumer goods

Fluorspar: steel production

Phosphate: agricultural fertilisers

Silicon: semiconductors

Magnesium: packaging, transportation

Manganese: steel production dry cell batteries

Zinc: agriculture, chemical, paint industries

China – Raw materials case

- China classified the minerals as ‘Energy intensive, highly polluting, resource-based products (EPRs)’ (i.e. coke, magnesium, manganese, etc.)
- China argued that these export restrictions are ‘necessary’ to protect the health of its domestic population—as they reduce the pollution emitted during the process of production and extraction of these materials.
- The measures contribute to conservation of the natural resources by reducing foreign demand for these minerals, which would result in lower extraction rates

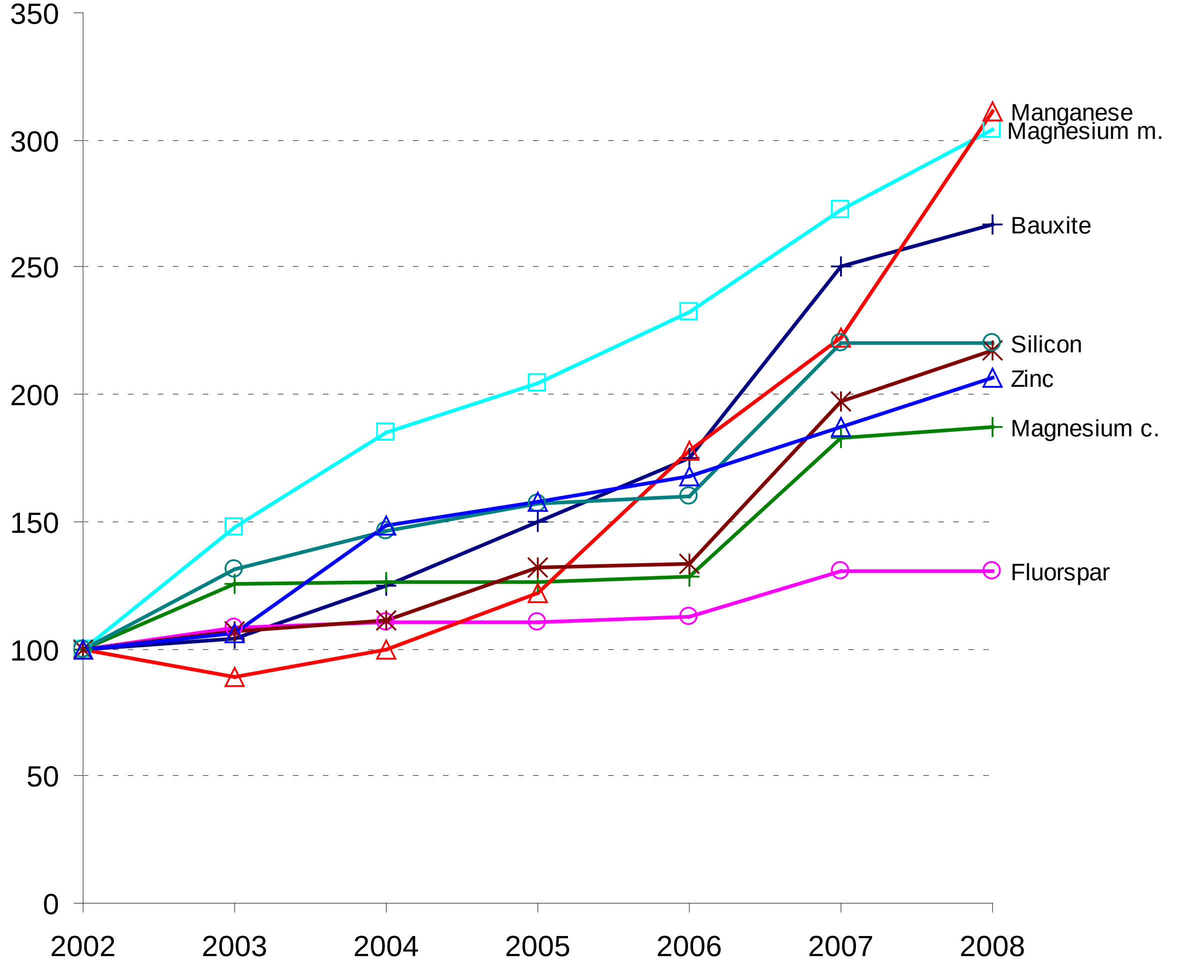
Necessary?

- Necessity test: measure has to be ‘‘indispensable’’
- The Panel found the measures are not part of China’s highly fragmented environmental regulation on mineral production (no reference to export restrictions)
- The panel also looked at the availability of WTO-consistent or less trade-restrictive alternative measure
- Investment in environmentally friendly technologies, recycling, higher environmental standards, production restrictions and pollution controls
- China failed to justify why these WTO-compliant and less trade restrictive alternatives could not be utilized instead of imposing export restrictions

Related to?

- Measures contribute to conservation of the natural resources by reducing foreign demand?
- The data on domestic production showed that there had been a substantial increase in the domestic consumption
- Opposite effect on the conservation of natural resources by generating additional demand from the domestic downstream sectors

Production trends in selected minerals, China, (2002 =100)



Source: USGS Mineral Commodity Summaries (2010)

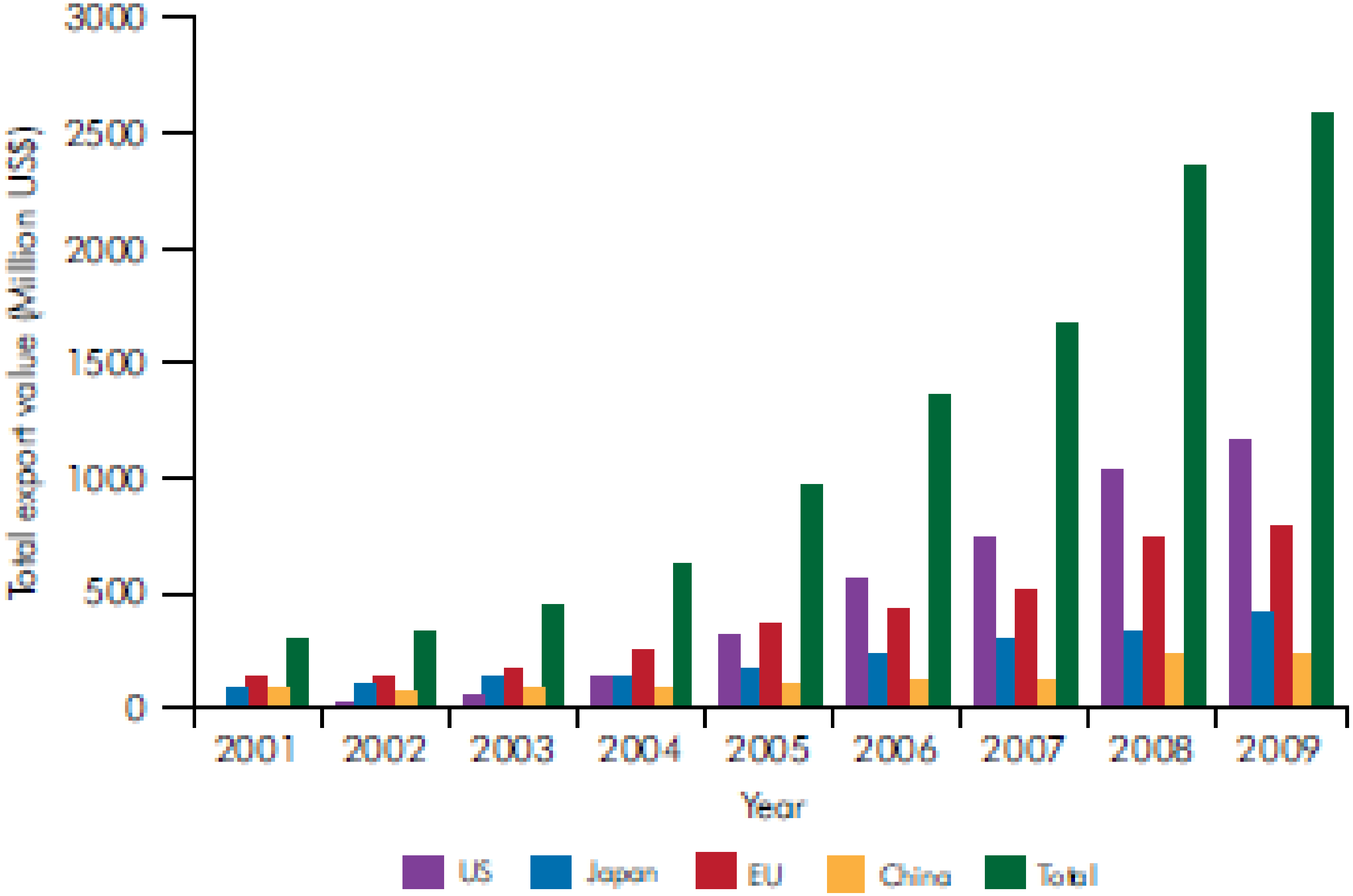
Export restrictions in Africa

Cameroon	Logs e**xports of wood**: export tax of 17.5% manganese	
Chad	Chadian gum: 7.5 %	Exports of heifers and calves have been banned since 2003
Congo		Quantitative restriction on rough **timbe**r: 15 % of its total production volume
Ghana	Hydrocarbons: US$0.09 per litre on aviation turbine kerosene; US$0.03 per litre on gas oil.	Exports of **round or unprocessed logs**, raw rattan cane and bamboo are prohibited
Guinea	2 per cent all exports Gold in ingots: 5 per cent tax Diamonds: 5-10% (raw), 2% per cent (cut stones)	

Other countries

Nigeria	Export taxes apply to some agricultural products	Export bans may cover raw hides and skins, timber (rough or sawn), scrap metals, unprocessed rubber latex and rubber lumps, rice, yams, maize
Sierra Leone	Artisanal mining: 3% export duty while Kimberlite mining has a 5% royalty fee and 0.5% valuation fee **cocoa and coffee** (2.5%), diamonds (3%).	Exports of plants and charcoal are restricted through permits
Zambia	15% on **copper** concentrates and 20% cotton seed 25% export duty on **unprocessed timber**	Export prohibitions apply to certain types of logs under international agreements

Viet Nam: Timber exports



Source: Quyen and Nghi, 2011)

Viet Nam: Timber exports

- WTO accession: prohibited exports of various timber products for the purpose of protecting the environment
- At the same time restrict the cutting volume
- Around 30% of production forests certified according to sustainable standards
- REDD+ initiatives , Voluntary Partnership Agreement with EU
- Target: Share of forest cover up to 42-43% by the end of 2010 and 47% by 2020

Stricter Regulation?

- The WTO law, proposals to tighten the disciplines on export restrictions
- Japan proposed to ‘tariffy’ all export prohibitions and restrictions, and to bind all export taxes
- Proposals by Switzerland and Jordan: stricter - elimination of all export restrictions and the binding at zero of all export tariffs
- New proposal by Japan and Switzerland: consultations between affected parties; establishment of ‘standing committee of experts’ for binding arbitration
- Chile, Japan, Republic of Korea, and the United States, circulated a communication in the non-agricultural market access negotiations
- Resistance from developing countries

‘Differentiated’ reform agenda

- (i) Quantitative export restrictions should be ‘tariffied’, and all export taxes should be subject to differentiated bound rates (objective criteria)
- (ii) Low income developing countries should be exempted from stricter regulation
- iii) Allow more flexibility for environmental considerations (differentiated export taxes, based on production and processing methods, that contribute to ecological efficiency should be allowed)
- (iV) improve transparency and predictability of these measures (Monitoring Committee)
- (v) Establishment of a strong enforcement mechanism

Conclusion: ‘Unfair’ competition vs. sustainability

- GATT/WTO disputes involved alleged ‘unfair’ advantages
- Canada and China cases: environmental component/objective of the measures in question was relatively weak as compared to their economic component/objective with a restrictive impact on trade
- Export restrictions may help internalise some negative environmental externalities
- Production and processing methods based export taxes could contribute to ecological efficiency
- Levying carbon exports optimization tax could be one tool developing countries could use to improve the carbon efficiency of exporting sectors - counter border adjustment measures (BAMs)
- A carefully measured export restriction policy in conjunction with other domestic measures and institutions controlling and limiting production and consumption could contribute to sustainable management of natural resources

Thank You!