

Agricultural Export Restrictions, Food Security and the WTO



1. Introduction

Export restrictions have been known to exacerbate food insecurity in an environment of rapid and unanticipated food price increases, even though they are not the main contributor to food insecurity amongst the poor in the developing world.

Agricultural export restrictions remain ‘under-regulated’ in the Uruguay Round agreement, with current provisions being 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. Given that food price hikes are plausible in the future, it would be useful to have in place an improved, multilaterally-agreed regulatory framework to reduce the negative effects of export restrictions on food security. 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.

This paper is based on a longer study¹ by Professor Giovanni Anania, focusing on export restrictions in agriculture as an emergency measure in reaction to soaring international prices, and on the negotiations to ensure their judicious use. The aim is to contribute to the on-going debate on the introduction of more effective, multilaterally agreed and enforced rules on export restrictions to avoid the additional problems they impose on poor consumers worldwide in the event of a dramatic price surge.

2. Benefits and Costs of Export Restrictions

Food security concerns often cause countries to restrict exports as a means of arresting price rises, or to cap their increase by limiting the transmission to domestic prices of an out-of-ordinary inflationary pressure in the international markets. Other expected effects for countries deciding to restrict their exports include reducing price volatility in domestic markets, securing fiscal revenue, the “infant industry protection argument” where a country protects its domestic industries by restricting exports of raw materials, counteracting importer tariff escalation practices, limiting the overexploitation of the domestic environment, protecting endangered species and controlling the trade of weapons and dangerous materials/substances.



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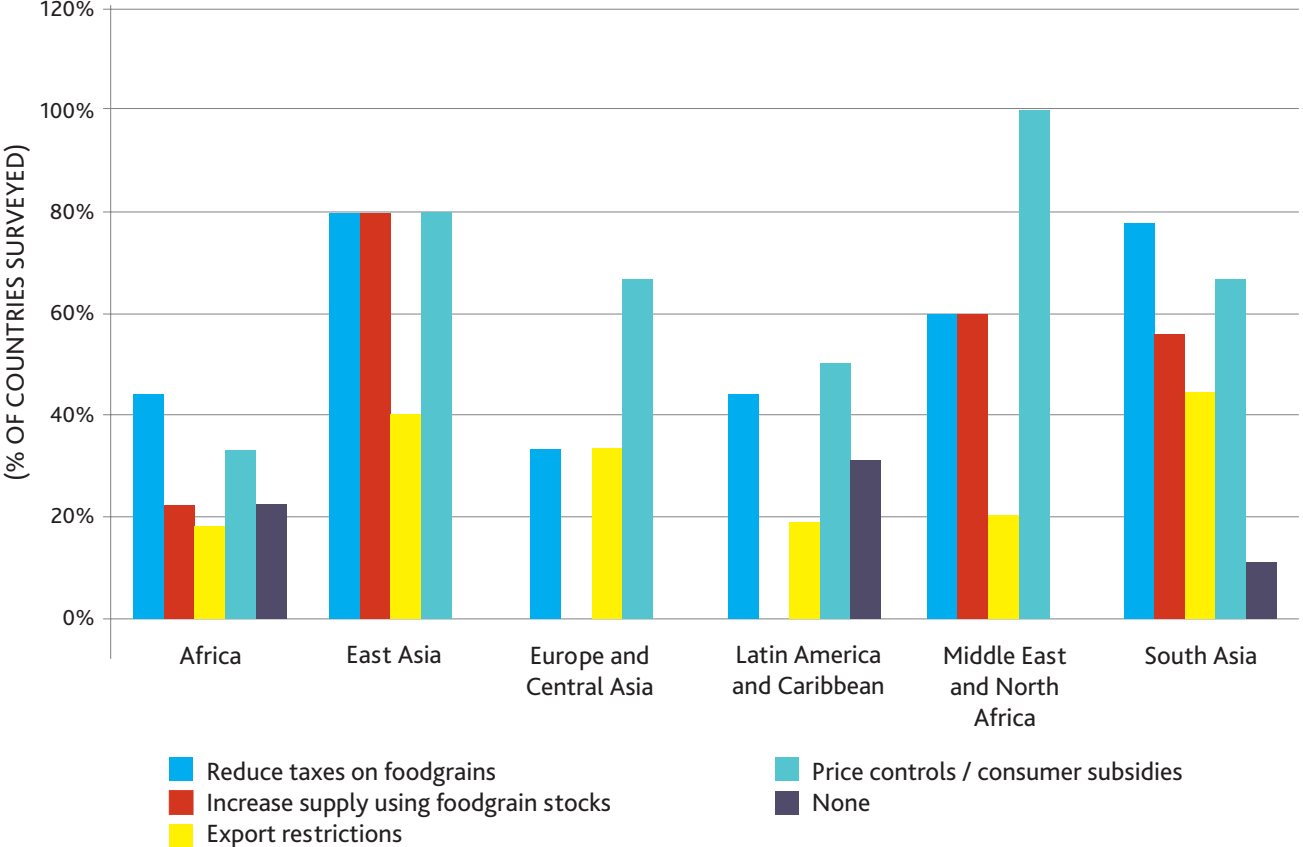
1 Anania, G (2013), “Agricultural export restrictions and the WTO: What options do policy-makers have for promoting food security?”. ICTSD, Geneva. <http://ictsd.org/i/publications/179103/>

Food price volatility has significant implications for food security. It has a strong impact on food security, because of its effect on household income and thus on purchasing power. The larger a country's share of low-income non-rural households, the more severe the consequences of price volatility on food security. Restricting exports is a key policy instrument at the disposal of country looking to address this concern. Well-functioning markets would obviate the need for export restrictions, as food would be available

on the market even during times of shortage. However, when markets function poorly, it may be difficult for an importer to have access to the volume of food needed, at any price.

Export restrictions meant to prevent an extraordinary rise in international prices from being transmitted to domestic prices are often used as short-term measures, introduced in emergencies to be lifted once international prices return to normal levels (figure 1).

Figure 1. Popularity of Measures Used in the Face of Rising Food Prices



Source: FAO

Several policy instruments are available for a country looking to restrict exports. Broadly, it can either impose a tax on its exports, or use non-tax export restrictions. The vast set of further options these cover are different in terms of their impact on exports, their distributional effects, their transparency and the administrative burden involved in their implementation.

All countries may be assumed to consider intervening to avoid significant, rapid increases in domestic prices. A shock-induced price increase on international markets may induce a country to intervene to limit the transmission of the

price increase on its domestic market, which in turn further increases the international price, which triggers a chain reaction as other countries intervene to protect their domestic markets, and so on. This domino effect characterizes a “prisoner’s dilemma”, where most countries eventually find themselves far from where they were trying to get in terms of protecting domestic consumers. Both importers and exporters may find themselves better off if they all jointly decide to restrain themselves from intervening. The only solution to the prisoner’s dilemma is for countries not to resort to individual decisions, but to look for multilaterally agreed joint strategic

action. This may be achieved through a formal cooperation mechanism, or well-defined rules and binding commitments, or through the gradual learning process of a “learning game”.

However, there are a number of factors to take into account when assessing the domestic impact of restricting exports in order to limit the transmission to the domestic market of an extraordinary inflationary pressure in the international market. Emergency measures, by their inherent short-term nature, lead to an initial increase in consumption, while production is less affected because production decisions are often taken in advance, before the introduction of the policy. However, in the medium-term, producers will take into account the negative impact of export restrictions on their profits, which may lead to lower domestic production. However, the positive short-term effects on domestic consumption are not obvious for a country with a significant share of poor households as farmers who are net food sellers. The larger the share of rural poor, the more problematic would be any assessment of the net implications of restricting exports for the country’s food security. Additionally, a full assessment of the domestic impact of restricting exports should go beyond the effects of a lower domestic price to consider the macro effects as well, including those associated with changes in balance of payments, exchange rates and public finance. From a more strategic point of

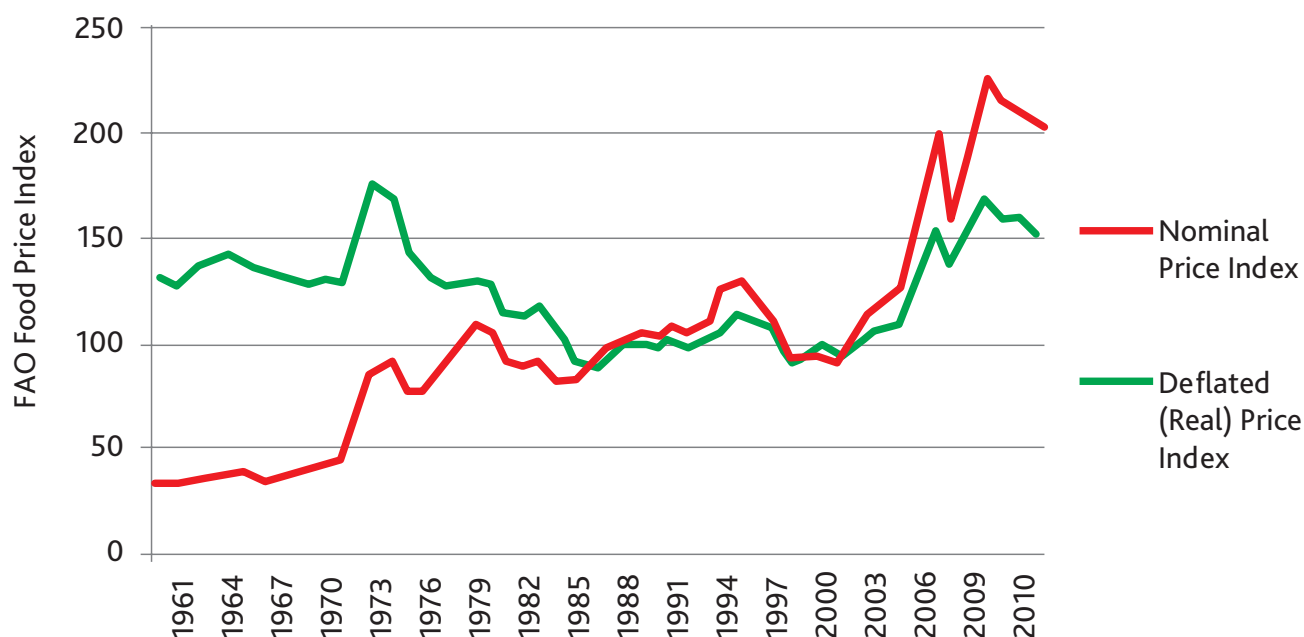
view, restricting exports also reduces importers’ confidence in international markets as a reliable source of food during a crisis.

Is it possible for exporters to resort to less distorting policies than trade restrictions to achieve their objective of protecting domestic consumers? The most efficient and effective short term policy intervention to this end would be to target the non-farming poor segments of the population with safety net measures to be applied when domestic prices rise above certain levels, for example by providing them with subsidies in cash, or with food, out of emergency reserves for free, or at subsidized prices or in exchange for work services. However, targeted assistance needs a well-functioning public sector, the availability of substantial financial means, and the delivery system to already be in place. These are difficult to attain, but even more so in developing countries, which explains the preference for policies providing support to all consumers by lowering price on the domestic market.

3. The Use of Export Restrictions During the 2007/08 and the 2010/2011 Food Price Hikes

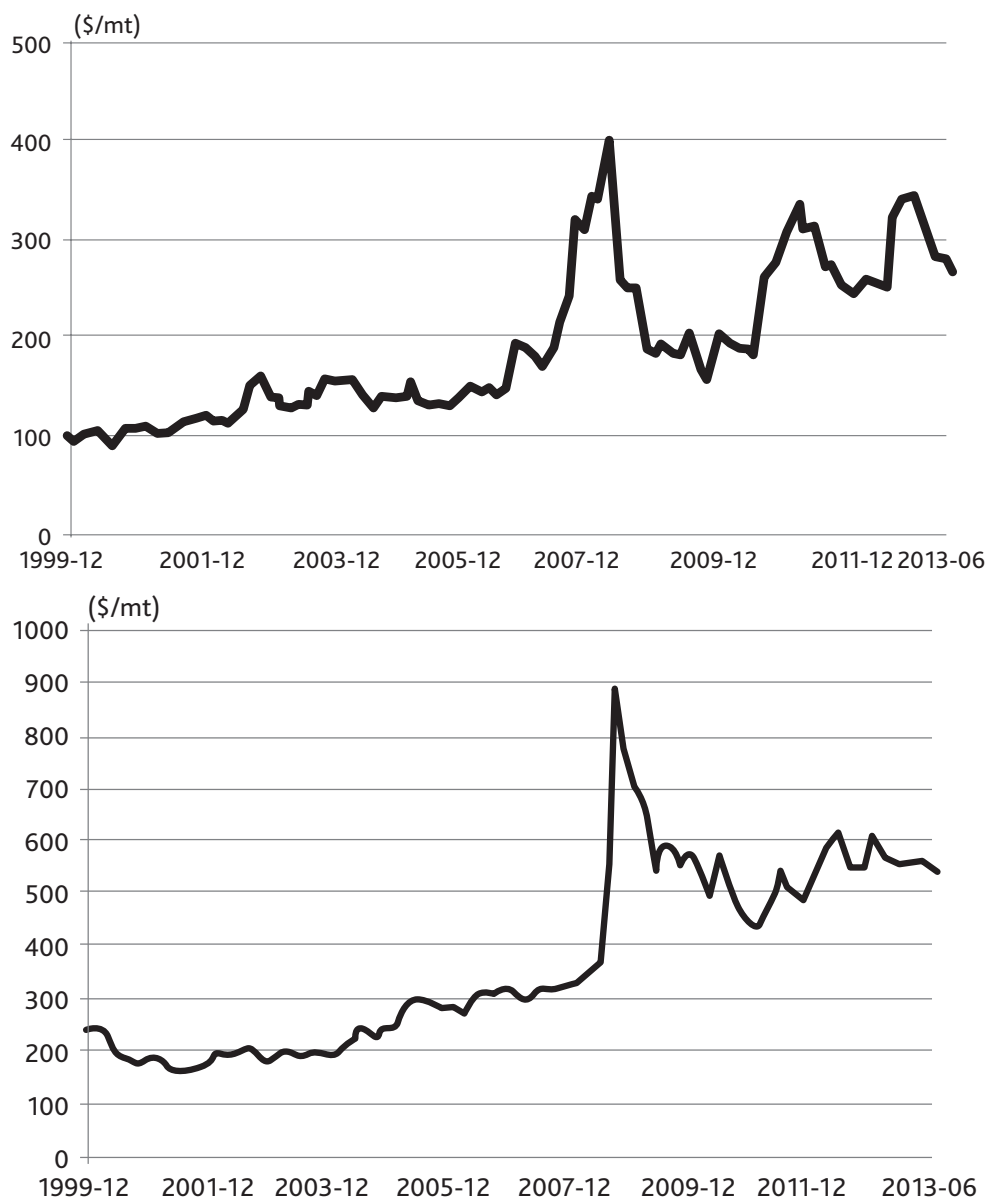
In the past decade, international prices of several staple foods have experienced rapid and pronounced increases, followed by equally rapid falls (figure 2).

Figure 2. Rise in the Food Price Index



Source: FAO

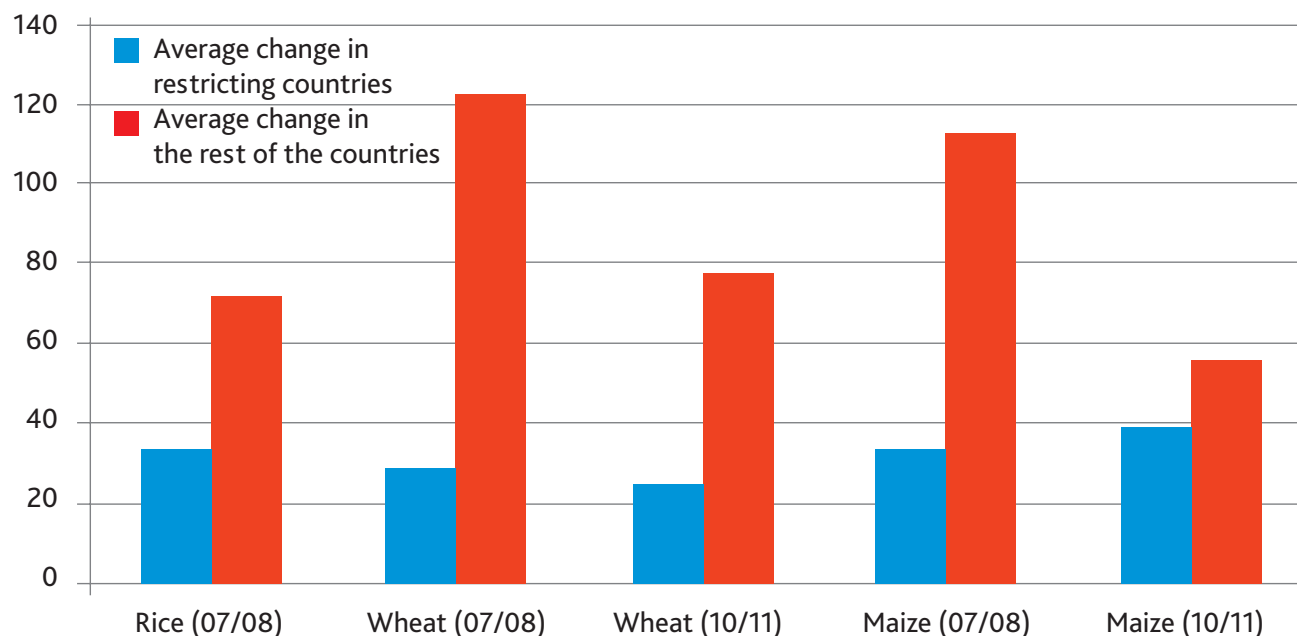
Figures 3 and 4. Wheat Monthly Price (US, nominal \$/mt, December 1999- June 2013) and Rice Monthly Price (Thailand, nominal \$/mt, December 1999- June 2013)



The price spikes of 2007/08 and 2010/11 have been attributed to several factors such as rising energy (oil) prices, weather-related adverse events in key exporting countries, low stocks, increased demand for agricultural goods used to produce bio-fuels, a depreciated US dollar, lower interest rates, non-traditional hedge fund investments in financial

derivative markets for agricultural commodities, and reduced food aid as a result of reduced public stocks. As a means to reduce the negative impact on poor consumers of food price volatility, many countries dealt with soaring international prices by reducing exports, or facilitating imports. An FAO study monitored policy action by 81 countries and

Figure 5. Change in domestic price relative to change in world price (in %) during five spike periods



Source: Sharma (2011)

concluded that 43 reacted to the 2007/08 price surge by reducing the import protection they had in place, while 25 restricted or inhibited exports (Demeke et al., 2009).

In 2010/11, price increases occurred under significantly different market conditions than in 2007/08. As this period was characterized by less severe price increases than in 2007/08, reactions by both exporters and importers were less evident (Howse and Josling, 2012). This is particularly evident in the case of rice (figures 3 and 4 below).

The most significant intervention was in August 2010, when Russia announced an export ban on grains following a disastrous harvest. A vast literature exists on the causes of these recent price crises, a majority of which fail to find export restrictions as a major causal factor; however, they do find export restrictions to be a factor which exacerbated the extent of the crisis by putting additional pressure on prices.

Evidence exists suggesting that countries that imposed export restrictions were effective in making domestic prices rise less significantly than they rose in countries which did not intervene (figure 5 below).

Dawe and Timmer (2012:129) outline how *‘during the world rice crisis of 2008 three countries (China, India and Indonesia, the three most populous developing countries in the world) successfully insulated their*

domestic rice economies from the turmoil on world market ... this was one reason why the crisis pushed fewer people into poverty and undernourishment than was initially feared.’ However, while export restrictions were effective in significantly reducing upward price variability across the spectrum of the countries using them, they were responsible for price increase in other countries. The negative impact of such “beggar-thy-neighbour” policies has been heterogeneous, with more severe effects in less developed net food-importing countries. Moreover, protectionist reactions of countries inflicted a severe damage to trust in the world market as a reliable source of food: restoring confidence will require credible commitments by both exporting and importing nations, acting in their own self-interest.

4. Export Restrictions and WTO Agreements

The key legal text regarding the discipline of export restrictions in the WTO framework is Article XI (General Elimination of Quantitative Restrictions) of GATT 1994. Export Restrictions are also dealt with in Article 12 (Discipline on Export Prohibitions and Restrictions) of the 1994 AoA. Article XI of GATT states that imports and exports can be restricted, but only by means of duties and taxes, while the use of other export reducing policy instruments such as quotas or export licenses is forbidden, while Article 12 of the AoA refers more to consultation and

notification obligations. Evidence suggests that these obligations are not very restrictive for a country attempting to limit its exports points, for the following reasons:

- 1) If the prohibitions to use export restrictions different from a tariff were to be made effectively binding, a country could always decide to restrict its exports using an export tax. In addition, export taxes being unbound, a country can always completely ban exports by imposing a large enough tax to make exports unviable.
- 2) The text of Article XI of GATT 1994 is ambiguous so as to make its enforcement practically impossible. For instance, the terms 'temporarily', 'prevent', 'relieve', or 'critical shortage' in paragraph 2 (a) of Article XI of GATT 1994 are not clearly defined. Similarly, the phrase 'product essential to the exporting contracting party' with reference to non-agricultural products is not clear. In addition, while the group of 'net food-importing developing countries' is well defined in the WTO legal context, the phrase 'net food-exporting developing countries' is not clearly defined in paragraph 2 of Article 12 of the AoA.

Finally, no penalties are identified for countries deciding to ignore the obligations of Article 12. In fact, the WTO notification and consultation record on export restrictions is disappointing. Between 1995 and March 2013, only 8 members submitted notifications for the introduction of 14 export restricting measures under Article 12 of the AoA, and only one country (the Kyrgyz Republic) notified export restriction measures at the time of the 2007-08 price spike.

WTO law on export restrictions is an area of evident 'under-regulation' or regulatory deficiency, as it neither defines the circumstances under which quantitative restrictions might be used, nor regulates export taxes. This gives countries ample leeway for decision-making on export-restrictions, a freedom they don't have with restricting imports. There is a clear asymmetry in how country policy interventions limiting exports and imports are treated in the WTO. Export restrictions are clearly trade distorting, and

there is no reason for them not to be effectively regulated under the WTO. Current regulations in agriculture show a bias towards protecting the interests of those exporting countries which do not distort trade, and seem to give little importance to the interests of net food importers.

A legitimate concern then is why export restrictions did not receive as much attention as import protection in the Uruguay Round (and in the Doha Round, at least so far). When the Uruguay Round was launched in 1986, prices of many commodities were at record lows and stocks were high. Developed countries routinely used export subsidies as a way to dispose of products in excess of what they needed. The recent food crises, the policy reactions by main exporters of food-grains, the implications of their decisions on 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, require a different framework of analysis with respect to the one at the time of the Uruguay Round negotiations. Moreover, the change in the negotiating power among developing and developed countries, and net food importing and exporting countries provides an opportunity to reform existing legislation on export restrictions, and reduce the current asymmetry in WTO regulations.

Export restrictions are often regulated in RTAs, including bilateral ones, and often these go beyond the regulations stipulated by the WTO. Commitments regarding export restrictions in RTAs are subject to the Most Favoured Nation Treatment rule (article 1 of GATT 1994). Some agreements contain provisions to limit the negative effects on other members of one of the members of the RTA restricting its exports. A general point that can be made here is that the fewer the countries involved in a negotiation, easier it is to find an agreement. However regional and bilateral negotiations were not successful in yielding stronger provisions than the WTO regarding export restrictions when the countries involved included major users of these policy instruments, such as China (Kim, 2010).

5. A Multilateral Agreement on Export Restrictions: What are the Options?

When food prices increase, exporting countries' policies to limit exports often contribute significantly to stoking the negative impact on prices, and exacerbate the negative impact on food security of many poor in the developing world. There are very good reasons for avoiding the additional upward pressure in prices caused by exporter policy reactions during times of food price rises. Stricter WTO discipline for exporters may be useful for the following reasons:

- 1) It would remove the uncertainty that importers face surrounding export-limiting policy interventions. This is an important step in restoring the confidence in the market to deliver food security.
- 2) Exporters may gain additional benefits from stricter WTO rules because the greater transparency and increased predictability of outcomes would lead to less uncertainty in investment decisions in agriculture by domestic and foreign actors.
- 3) If countries are cognizant of the reactions of other countries, credible coordination can be achieved and the prisoner's dilemma trap can be avoided.

The following are some options which could be considered to modify current WTO disciplines on export restrictions. These options are presented in increasing order of their 'ambition' and are generally not mutually exclusive.

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

Restraints on imposing export restrictions and extraordinary export taxes on food to be distributed for humanitarian purposes were agreed upon, both at the November 2009 FAO World Summit on Food Security and at the June 2011 G20 meeting. To define which transactions should be exempt from the imposition of export restrictions, under which circumstances and by which

international organizations, Annex L of the December 2008 draft modalities can be used, *mutatis mutandis*, as a basis. This limitation of the use of export restrictions, even if effectively implemented, would have a positive, although limited, impact on food insecurity 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 and hardest to access. The volume of wheat and wheat flour distributed as food aid in 2008 was only 53 percent of that distributed in 2005; for rice it was 64 percent. The impact of this option on the volume traded and market price would be minimal, as the food involved in purchases by humanitarian international organizations is very limited with respect to the size of the international market for the commodities involved.

- b) Improving the enforceability of existing disciplines

There is scope to make current disciplines enforceable by clarifying some of the terms used, and adopting unambiguous language. Under this option, export taxes may be used by countries as a policy instrument. The conditions to allow the use of different export restrictions need to be clarified, and the procedures to be followed to implement an export restriction strengthened.

It is necessary to clearly define the terminology used in Article XI:2a (temporarily, prevent, relieve, critical shortage of foodstuff, essential) to make it legally possible to identify agricultural export restrictions different from an export tax contrary to Article XI, and, subsequently, to challenge such restrictions within the WTO dispute settlement framework. Additionally, the mandates of Article 12 of the AoA, which refers to specific consultation and notification obligations for the introduction of export restrictions in the case of agricultural products, remain largely ignored. Making these rules more stringent and effective could be achieved by introducing a notification and implementation procedure similar to that

jointly proposed by Japan and Switzerland in 2008. Countries should be required to notify in advance the Committee on Agriculture of their intention to introduce an export restriction on foodstuff, providing adequate information on the legal base for introducing the restriction, the expected impact on the other members' food security and specifying the date by which it will be removed. 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 within a short period after the notification of the declaration of intent. This would be a significant step forward with respect to improving the transparency and predictability of the use of export restrictions, and hence, reduce information asymmetries and transaction costs for traders and investors. While the impact of this option on the quantities traded and the prices would be very small, as countries could always opt for an export tax, the higher institutional cost of introducing export restrictions may deter some countries from implementing them and reduce the probability of 'panic' policy reactions.

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

This approach imposes a constraint on the effects of export taxes and quantitative restrictions on world markets. Current disciplines would be left unchanged, but their use would be made conditional on exporting country and product specific constraints on the volume exported. For instance, in order to be allowed to use policies limiting exports, countries will have to maintain unchanged the share of domestic production of the specific product exported, or, alternatively, to guarantee that a given proportion of this share is exported, with respect to the recent past.

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. The least complicated policy instruments countries may use to abide by this constraint is an export quota or an export tax. This option has the advantage that it would not need any negotiation of the details defining exceptional circumstances under which a country could use export restrictions. Moreover, it is based on the explicit acceptance that exporters have the right to pursue and fulfill the goal of protecting their consumers by preventing domestic production flooding foreign markets when prices rise exceptionally. The main issue involved with this option would be setting the constraints, which need to be product and country specific, and monitoring of the implementation, due to the lack or the poor quality of the data to be used.

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

A few weeks before the December 2011 WTO Ministerial Conference, the net food-importing developing countries (NFIDCs) and some of the least-developing countries (LDCs) jointly formally submitted a proposal to develop a work program to dampen the impact of international food price volatility on them, including exploring *'the possibility of developing rules to exempt purchases of LDCs and NFIDCs ... from export restrictions invoked under Article XI.2(a) of the GATT 1994 by other WTO Members, which are major exporters of the specific foodstuffs concerned.'*

While this option imposes restrictions on exports directed towards poor food-importing countries, it does not impose restrictions on the use of export taxes. Current legislation would be modified to make illegal the imposition of export restrictions on staple foods which are important in the consumption of the poorest segments of the population of net food-importing countries.

The provisions should include a transparent and unambiguous definition of the set of poor net food importing countries whose imports cannot be subject to export restrictions. The prohibition should be limited to those staple foods which constitute a key component of the diet of the country's poor.

- e) Introducing stricter disciplines for export restrictions as well as export taxes

This option imposes stricter discipline on the use of export restrictions and suggests applying the same restrictions 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. Under this option, export restrictions and export taxes are both declared illegal, and then exceptions are defined. Only developing countries, acting on food security concerns would be allowed to use, on a temporary basis, export-reducing policies. 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 should be limited to staple foods. The expected impact of this provision on traded volumes and prices can be expected to be significant.

- f) Full symmetry in regulating import and export restrictions

Extending the provisions of import restrictions, *mutatis mutandis*, to export restrictions is the most ambitious option. While the complete abolition of export restrictions and taxes has been proposed, this is not politically feasible for a WTO agreement. In tandem with the discipline on market access introduced with the AoA, this option should include the 'taxification' of all existing export restrictions other than export taxes, i.e. their replacement by equivalent 'export taxes', and the reduction of both existing export taxes and those resulting from taxification, Special Safeguard Clauses or Special and Differential Treatment

provisions. 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, will be introduced for all countries restricting their exports. The quotas will have to be administered on a MFN basis. Additionally, if an agreement does conclude the Doha Round, this will include provisions for revised disciplines on market access. In this case, these new provisions would be those to be extended, *mutatis mutandis*, to export restrictions.

A quantitative assessment of the different volume and price effects of these six options is not possible, because these will depend on the fine details contained in the actual legal text agreed. However, the conclusions of the studies which empirically simulated the market effect of export restrictions, or of their removal, can be useful in this regard.

6. Conclusions

Fighting food insecurity is a complex challenge, involving numerous factors. Intervention by countries to restrict exports may not be the main causal factor for inadequate food intake by the poor in the developing world, however, export restrictions significantly contribute to exacerbating negative effects on food insecurity when an unexpected, rapid increase of food staple prices occurs, and a food crisis develops. Additionally, non-cooperative policy reactions by importers and exporters to soaring international prices partially offset each other, which reduces the efficacy of policy instruments to limit the increase of domestic prices. Thus the need emerges for all countries to look into multilaterally agreed improved disciplines of export restrictions.

Agricultural export restrictions are under-regulated in the Uruguay Round Agreement, and current provisions remain weak and largely ignored. Negotiations to improve them have not succeeded. This paper provides six possible options for a WTO agreement on export restrictions, 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. Today, it is difficult to foresee that large developing country exporters would give up the possibility of restricting staple food exports, without obtaining significant gains in other areas. All the proposed policy options have been evaluated against this backdrop.

If a WTO agreement on export restrictions does not materialize, countries may decide to agree on a code of conduct regarding export restrictions outside this institution, within the FAO or G20 frameworks, within RTA's, or even on the basis

of a voluntary agreement signed by several exporters, for example as a part of an International Commodity Agreement. However, this is not an effective option, despite being feasible. Based on the past, any agreement without legally enforceable provisions would be of little use. Among the existing international institutions, only the WTO has an effective mechanism to enforce compliance of its rules. Any alternative to a WTO agreement will likely prove difficult to achieve, or very weak in its capacity to effectively limit exporters reacting to price surges by restricting their exports.

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Citation: ICTSD; (2014); *Agricultural Export Restrictions, Food Security and the WTO*; ICTSD Programme on Agricultural Trade and Sustainable Development; Information Note; International Centre for Trade and Sustainable Development, Geneva, Switzerland, www.ictsd.org

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ICTSD is grateful for the support of ICTSD's core and thematic donors including the UK Department for International Development (DFID), the Swedish International Development Cooperation Agency (SIDA); the Netherlands Directorate-General of Development Cooperation (DGIS); the Ministry of Foreign Affairs of Denmark, Danida; the Ministry for Foreign Affairs of Finland; the Ministry of Foreign Affairs of Norway; Australia's AusAID; and Oxfam Novib.

This information note draws on the analysis by Prof. Giovanni Anania in "Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for Promoting Food Security?". ICTSD would also like to thank Suchita Srinivasan for helping to prepare this information note.

ICTSD welcomes comments and feedback on this information note. These can be sent to [jhepburn \[at\] ictsd.com](mailto:jhepburn@ictsd.com)

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