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Multilateralising Regionalism: Disciplines on Export Restrictions in Regional Trade Agreements

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ABSTRACT

MULTILATERALISING REGIONALISM: DISCIPLINES ON EXPORT RESTRICTIONS IN REGIONAL TRADE AGREEMENTS

The proliferation of preferential trade agreements has posed challenges for the multilateral trading system. But regional trade agreements (RTAs) also allow countries to develop and strengthen trade disciplines beyond what is possible at the multilateral level. In some instances, RTAs explore policy areas that are the subject of few disciplines at the multilateral level. They may provide lessons and suggest good practices that could be used to inform discussions in a wider setting. One such policy area is export restrictions and taxes. Export restrictions and duties have not been given the same degree of attention in multilateral trade agreements and negotiations as the elimination of import tariffs and quantitative restrictions. The WTO provides a general prohibition on quantitative export restrictions but the broad and, at times, ambiguous exceptions somewhat vitiate the ban. Moreover, export taxes are not explicitly forbidden in the WTO. This study suggests that there are a number of ways by which WTO disciplines could benefit from the approaches found in some RTAs in the area of export restrictions.

Keywords: regional trade agreements, preferential trade agreements, RTA, PTA, export restrictions, export taxes, export duties, export charges, export tariffs, export levies, export fees, export restraints, dispute settlement, WTO, GATT, multilateral trading system, trade diverting, trade creating, WTO provisions, trade disciplines, quantitative export restrictions, export licensing, minimum export prices, trade instruments, WTO-plus, GATT Article XI, GATT Article XX.

JEL Classification: F13, F15, F10, F1

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Executive summary

This report surveys 93 regional trade agreements in order to examine their provisions on export restraints. It aims to shed light on regional trade agreements (RTAs) disciplines on export taxes and restrictions and whether they have developed disciplines that go beyond the WTO provisions on these trade instruments. RTAs may provide lessons and suggest good practices that could be used to inform discussions on this issue in a wider setting.

In some instances, RTAs explore policy areas that are the subject of few disciplines at the multilateral level. One such policy area is export restrictions and taxes. Export restriction measures can be divided into two categories: quantitative restrictions on exports, which restrict the volume of exports, and export taxes, which levy a tax on exports. The export restraints disciplines in RTAs, if they exist, generally follow the WTO formula on quantitative export restrictions which consists of a general ban plus a list of exceptions.

A comparison of RTA provisions on quantitative export restrictions with those of the WTO yields some key findings. Out of the sample of 93 RTAs, 15 agreements contain stronger language than the WTO quantitative export restriction disciplines (i.e. they are WTO-plus), while 38 are equal and 22 are weaker (i.e. WTO-minus). Eighteen agreements fail to mention quantitative export restrictions at all. Some early agreements include provisions that are WTO-minus simply because they were drafted prior to WTO agreements that include disciplines in this area.

Export taxes, however, are not explicitly forbidden in the context of the WTO. Since the GATT does not include any direct disciplines on export taxes, a regional trade agreement is considered WTO-equal if it has no language or explicitly allows for export taxes. Of the 93 agreements studied, 66 are WTO-plus because they include explicit disciplines on export taxes. The relevance of disciplining export taxes is underlined by the finding that over 70% of agreements analysed include disciplines on export taxes.

The study suggests that there are a number of ways in which WTO disciplines could benefit from the experiences of RTAs in the area of export restrictions. Some RTAs have introduced greater precision in disciplines. Some have established a list of products on which export restrictions are allowed; others state explicitly the amount of time that they may be in place; still others define the maximum export tax that may be applied. Some RTAs simply eliminate some of the exceptions to the general WTO ban on quantitative export restrictions. The exceptions that are most frequently eliminated are Article XX(j) for products in short supply followed by Article XX(i) for domestic stabilization plans.

Some of the RTAs increase transparency and improve communication among their members by instituting procedures or mandating institutions to oversee implementation of export restrictions. Requiring RTA parties to publish export charges on the internet and to inform RTA partners in advance of their application improves transparency and predictability. Some RTAs institute procedures in the case that a member wishes to impose an export restriction. Signatories must consult with other RTA members to determine whether conditions justify the use of an export restriction and they are required to cooperate in removing restrictions as circumstances change. Some agreements establish procedures in which the RTA's governing committee takes a significant role.

Finally, one singular approach found in the context of RTAs is to impose conditions on the use of exceptions so that when export restrictions or taxes are implemented they do not negatively affect other RTA members. It is stipulated, for example, that an RTA member that uses export restraints must continue to attribute the same share of its exports to its RTA partner, and avoid disrupting "normal channels of supply." This kind of discipline attempts to mitigate the negative impacts of export restrictions on importers rather than banning the use of export restrictions as a policy instrument altogether. However, as with all disciplines in the agreements examined, they apply to trade between members of the RTA, not to countries outside the agreement.

Some RTAs allow existing restrictions that are in place but do not allow new ones, nor do they permit an increase in existing levels of export taxes. This is another potentially significant way of disciplining export restraints in the longer term as situations change and restrictions on a given product are no longer desirable to the exporting country.

I. Introduction

Some 489 regional trade agreements (RTAs) have been notified to the World Trade Organization (WTO) or its predecessor, the GATT,[1] and 297 of those agreements are in force.[2] The proliferation of RTAs has been a relatively recent phenomenon: in 1991 there were only 50 RTAs in existence, and this number has since been steadily increasing. In 2005, 180 RTAs were in force, demonstrating the accelerated spread of agreements in the last few years.[3]

The proliferation of preferential trade agreements has posed challenges for the multilateral trading system. Regional trade agreements may be trade diverting or trade creating. They may lead to entrenched preferential practices or, on the other hand, increased liberalization. Moreover, the complex "spaghetti bowl" of agreements has created rules of origin, standards, and dispute settlement mechanisms that are often distinct for different agreements. The complexity of overlapping procedures increases transactions costs for businesses and investors, and makes enforcement and oversight difficult for governments (Inter-American Development Bank, 2007). But regional trade agreements also allow countries to develop and strengthen trade disciplines beyond what is possible at the multilateral level.[4] At times, innovation in RTAs has paved the way for practices at the multilateral level by exploring policy areas uncharted by multilateral disciplines such as environmental standards, investment, and competition policy. Another such policy area which has less developed disciplines at the multilateral level is export restrictions and taxes.

This report surveys 93 regional trade agreements in order to examine their provisions on export restraints. Its aim is to shed light on RTA disciplines on export taxes and restrictions and whether they have developed disciplines that go beyond the WTO provisions on these trade instruments. RTAs may provide lessons and good practice that could inform discussions on this issue in a more inclusive setting. Innovation at the regional level, if it exists, could spur further development of disciplines in this policy area. In order to better ascertain possible innovative practices at the regional level, this study compares existing provisions on quantitative export restrictions and export taxes from the 93 RTAs examined to the WTO disciplines in force. Using these comparisons, the report draws lessons from the RTA provisions and uncovers some innovative approaches used in RTAs that strengthen their disciplines beyond those in the WTO.

Section II of the report defines export restrictions. Section III conveys the multilateral disciplines on export restrictions and taxes present in the WTO and surveys existing interpretations of those disciplines and formal negotiating positions on export restrictions within the Doha Round. Section IV reports on the sample of RTAs examined in this study. Sections V and VI report the key findings from the survey of agreements and compare the RTA disciplines to those in the WTO with Section V analysing provisions on quantitative export restrictions and section VI analysing provisions on export taxes. Finally, section VII compares the different approaches used in RTAs that may strengthen

1. General Agreement on Tariffs and Trade

2. wto.org/english/tratop_e/region_e/region_e.htm, accessed 17 August 2011. The number of RTAs is as of 15 May 2011 and account for goods and services notifications separately.

3. www.wto.org/english/thewto_e/whatis_e/tif_e/bey1_e.htm

4. Ibid.

the WTO disciplines on export restraints, and section VIII concludes. Readers who are looking for a general overview of lessons learned from export restriction disciplines in RTAs rather than a more detailed view may want to skip sections V and VI and go directly to section VII.

II. Defining export restrictions

The WTO's Dispute Settlement Body has defined export restrictions, also called export restraints or export controls, in its Panel Report on *Measures Treating Export Restraints as Subsidies* as, "a border measure that takes the form of a government law or regulation which expressly limits the quantity of exports or places explicit conditions on the circumstances under which exports are permitted, or that takes the form of a government-imposed fee or tax on exports of the products calculated to limit the quantity of exports" (WTO, 2001c, p. 75). Export restraints have also been defined more broadly by analysts as "measures instituted by exporting countries to supervise export flows" (Bonarriva, Koscielski, and Wilson, 2009).

Export restriction measures can be divided into quantitative restrictions on exports, (QRs), which restrict the volume of exports, and export taxes, which levy a tax on exports. The former group of measures includes export quotas and export bans. Export quotas define a maximum volume of exports, while export bans prohibit exports of a certain product completely.[5] Restrictive export licensing, minimum export prices, or export restrictive state-trading enterprises are other types of export restrictions, even though they do not necessarily affect the volume of exports. Non-automatic export licensing allows only approved firms to export a good. Governments can restrict exports by simply refusing to approve new licenses or by forbidding the signing of new export contracts (Dollive, 2008). If export licenses are accorded in a very restrictive fashion, they can encourage the formation of export cartels and other rent-seeking activities; as such a practice involves a discretionary distribution of scarce opportunities to export. An extreme form of export licensing is state-trading monopolies. In this case, one firm, in a monopoly situation imposed by a country's government or legislation, has the exclusive right to export a good. The monopoly can use its market power to influence domestic supply and prices and possibly prices in export markets (Bonarriva, Koscielski, and Wilson, 2009).

The second category of export restrictions is export taxes. Also called export duties, export charges, export tariffs, fees, or export levies, export taxes have been imposed by 65 of the 128 countries reviewed by the WTO since 2003 (Kim, 2010). More countries have imposed export duties since 2003 than in previous years, and they are primarily used

5. The use of export bans governed by international agreements in areas such as protection of endangered species, prevention of the spread of dangerous materials or weapons, or for human rights reasons is not covered in this study. Examples of such agreements are the UN Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the UN Convention on the Development, Prohibition, Stockpiling, and Use of Chemical Weapons, and the UN Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, or the Kimberley Process certification system which documents the origin of rough diamonds so as to prevent groups in conflict areas from financing their war through diamond sales (Kim, 2010). Other export restrictions that are in accordance with international arrangements are restrictions associated with sanitary standards and quality control, restrictions that protect patents or copyrights, and restrictions in the process of counteracting countervailing duties of an importing country.

by developing countries, including least developed countries.[6] There are two types of export taxes: *ad valorem*, which tax a percentage of the value of the exports, or *specific* taxes, which levy a given monetary amount per unit or weight of the exported product. Export taxes can be progressive, implying a higher tax when the price of the good export is high and a lower tax when the price is low. Export taxes can also be differential, for example, charging a higher tax on the unprocessed export and a lower tax on the processed version of the export in order to encourage domestic processing (Bonarriva, Koscielski, and Wilson, 2009). Taxes on exports are often easier to administer and collect, than some other kinds of taxes. Moreover, if the demand for a good is highly inelastic or the country controls a significant share of world exports, the burden of the export tax is largely borne by foreign consumers (Deese and Reeder, 2007).

III. Multilateral disciplines and negotiating positions regarding export restrictions

Export restrictions and duties have not been given the same degree of attention in multilateral trade agreements and negotiations as the elimination of import tariffs and quantitative restrictions. The WTO provides a general prohibition on quantitative export restrictions but the broad and, at times, ambiguous exceptions somewhat vitiate the ban. Moreover, the 1994 General Agreement on Tariffs and Trade does not include any direct disciplines on export taxes. There is a large amount of "grey area" that may lead to differing interpretations of international rules and obligations on export controls in the multilateral context.

1. WTO provisions and GATT/WTO official interpretations

In the multilateral trading system, export restrictions are governed by Article XI of the 1994 General Agreement on Tariffs and Trade (GATT). Article XI:1 imposes a general ban on quantitative restrictions:

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party (GATT, 1994).

Article XI:2(a) makes an exception to the general ban:

The provisions of paragraph 1 of this Article shall not extend to the following:

> (*a*) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party (GATT, 1994).

Article XI:2(a) permits quantitative export restrictions to be applied to foodstuffs and essential products to prevent or relieve critical shortages, although only temporarily. The *GATT Analytical Index* provides a guide to interpretation of GATT Articles drawn from

6. There is no substantive difference between the terms export duties and export taxes. The *GATT Analytical Index* considers the terms to have the same meaning, and the current interpretations of trade law recognize no difference between them (Kazeki, 2005).

official documentary sources. The *Index* notes that Article XI:2(a) applies not only in the case of shortages in volumes of foodstuffs but also in the case of increases in their prices:

> At the Havana Conference the Sub-Committee on Articles 20 and 22 "was satisfied that the terms of paragraph 2(a) ... are adequate to allow a country to impose temporary export restrictions to meet a considerable rise in domestic prices of foodstuffs due to a rise in prices in other countries". The Report of the Review Working Party on Quantitative Restrictions also recorded the view that "to the extent that the rise in prices was associated with acute shortages of the products in question, as it normally would be, [temporary export restrictions applied to meet a considerable rise in domestic prices of food-stuffs due to a rise in prices in other countries], whether affecting foodstuffs or other products, was clearly covered by that sub-paragraph [2(a)] (GATT Analytical Index, 1994, pp.326-327)."

Thus, price increases could justify the use of export restrictions on foodstuffs or other essential products. On the question of which goods could be considered "products essential to the exporting contracting party," the *Index* clarifies that, "The Sub-Committee at the Geneva session of the Preparatory Committee which considered this provision altered the wording 'to indicate the view of the Sub-Committee that for the purposes of this provision the importance of any product should be judged in relation to the particular country concerned'" (GATT Analytical Index, 1994, p.327). Thus, the goal of that phrasing is to allow for the exception to be country specific and vary depending on which goods are most important to the country in question.

Despite the past commentary on this clause, it is still somewhat ambiguous. Terms such as "temporarily," "critical," and "essential" are not defined, and WTO case law has not clarified exactly what types of products are exempted from the general ban under this provision and for how long. This ambiguity could present a problem in determining which export restrictions fall under the cover of this exception and how long "temporary" restrictions imposed during a shortage can endure. For instance, during the food price increases of 2008, India imposed a ban on export of non-basmati rice because high prices had put pressure on domestic supplies. However, in July 2010, the government extended the ban for an additional six months despite much improved harvests and less volatile world food prices. It was politically difficult for the government to reverse this policy for fear that a rise in food prices, having been kept artificially low through the export ban, would hurt consumers (Poole, 2010). This case illustrates how a temporary restriction, initially justified under XI:2(a), can outlive the circumstances that led to its use.

The Uruguay Round Agreement on Agriculture takes up the issue of export restrictions on foodstuffs. The agreement stipulates that when a country uses the GATT Article XI:2(a) shortage exception to justify an export restriction on foodstuffs it must give due consideration to the effect of such restrictions on the food security of food-importing countries. Moreover, members must notify the Committee on Agriculture of new export restrictions on foodstuffs and consult with affected member states when implementing them (Kazeki, 2005). Exporting countries must "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" (Agreement on Agriculture, Article 12.2). This applies to developed countries and to developing countries that are net exporters of the foodstuff in question.

Article XI:2(b) makes a further exception for restrictions "necessary to the application of standards or regulations for the classification, grading, or marketing of commodities in international trade." Paragraph 2(b) was interpreted in the 1988 Panel Report on "Canada - Measures Affecting Exports of Unprocessed Herring and Salmon." In this case, Canada claimed that its regulations prohibiting the export of unprocessed sockeye and pink salmon and herring were permitted under Article XI:2(b), as the fish were "commodities" and the regulations dealt with "standards" and "marketing". However, the GATT Panel found that Canada did not allow the export of unprocessed salmon and herring even if they met the quality standards generally applied to Canadian fish exports. Thus, the restrictions on exports were not intended to control for quality standards. Moreover, the Panel report suggested that the exception for "marketing" only justified restrictions "designed to further the marketing of a commodity by spreading supplies of the restricted product over a longer period of time… but not of export restrictions on one commodity designed to promote sales of another commodity (GATT, 1988)." The Panel report stated that XI:2(b)'s exception for marketing does not justify export restrictions "protecting a domestic industry and enabling it to sell abroad." Canada was not able to justify its export restriction on unprocessed herring and salmon under this exception to the general ban on restrictions.[7]

Article XX stipulates further exceptions to the general prohibition of quantitative export restrictions. These provisions allow countries to use export restrictions if necessary to protect public morals, to protect human, animal, or plant life or health, to manage the import and export of gold and silver, to protect intellectual and industrial property, to protect national treasures of artistic, historic, or archaeological value, and to fulfil obligations of international commodity agreements. These exceptions ensure countries have the ability to implement legitimate restrictions and protect national public interests like health, the money supply, or preservation of cultural treasures.

The most important provisions affecting export restrictions disciplines under Article XX are XX(g), (i), and (j). First, XX(g) allows for quantitative restrictions relating to conservation of exhaustible natural resources on the condition that "such measures are made effective in conjunction with restrictions on domestic production or consumption." This exception was cited in the 1988 Canada herring and sockeye salmon case, as Canada claimed that its salmon and herring stocks were exhaustible natural resources and that its export restriction on unprocessed salmon and herring related to the conservation of those fish stocks. The Panel ruled that the trade measure in question does not have to be "necessary or essential" to the conservation of an exhaustible natural resource, but it does have to be "primarily aimed" at the conservation to be considered as "relating to" conservation within the meaning of XX(g).[8] On this point, the Panel ruled against Canada, arguing that the primary aim was not conservation of fish stocks. The Panel also ruled on the requirement that trade measures be used "in conjunction with" restrictions on domestic production or consumption (GATT, 1988). Since Canada limited the purchases of unprocessed fish only by foreign processers and consumers and not by domestic

7. Canada also argued that these export restrictions were part of a system of fishery resource management aimed at preserving fish stocks, and therefore were justified under Article XX(g) regarding preservation of natural resources. The Panel found that the measures maintained by Canada were contrary to GATT Article XI:1 and were justified neither by Article XI:2(b) nor by Article XX(g).

8. This provision was not subject to appellate review. After the creation of the Appellate Body in 1995, this provision has been reviewed in a number of cases, e.g. *US – Gasoline, US – Shrimp and Beef* and *Korea – Beef.* Some of the findings of the Appellate Body have been dissimilar to those by the 1988 Panel described here. Since those cases do not deal with export restrictions, however, their findings have not been summarized here.

processers and consumers, the Panel decided that Canada's export restrictions were not justified under Article XX(g).

A further case where a Panel has ruled on using one of the GATT Article XX exceptions to justify an export restriction is the WTO Dispute Settlement Panel in cases 394, 395, and 398: China — Measures Related to the Exportation of Various Raw Materials. In this recent case, the European Union, Mexico and the United States challenged Chinese export restrictions on nine categories of industrial raw materials—bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc.[9] China has imposed export quotas on bauxite, coke, fluorspar, silicon carbide, and zinc, as well as certain intermediate products incorporating some of these inputs.[10]

China argued that some of its export duties and quotas were justified because they related to the conservation of exhaustible natural resources for some of the raw materials (i.e. the Article XX(g) exception). The Panel, confirmed by the Appellate Body, ruled however that China was not able to demonstrate that it imposed these restrictions in conjunction with restrictions on domestic production or consumption of the raw materials so as to conserve the raw materials. "Neither the measures implementing the export restrictions, nor the contemporaneous laws and regulations, convey in their texts that the export restrictions are contributing to, or form part of a comprehensive programme for the fulfillment of the stated environmental objective." Furthermore, the panel found "no clear link between the way the duty and the quota are set and any conservation objective" (WTO, 2011).

The Panel criticized China for lacking corresponding restrictions on domestic production and consumption of these materials, which has been shown to be a requirement under WTO law when claiming a GATT Article XX exemption. In this regard, it noted that "export restrictions are not an efficient policy to address environmental externalities, when these derive from domestic production rather than exports or imports … The pollution generated by the production of goods consumed domestically is not less than that of the goods consumed abroad" (WTO, 2011). In this way, both the Canadian and Chinese cases illustrate that export restrictions imposed for reasons of conservation of natural resources must be shown to be one part of a broader context of environmental regulatory change and include restrictions on domestic production or sales.

Another exception to the ban on quantitative export restrictions is offered by Article XX(i) which permits the use of export restrictions on "domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan," as long as such restrictions are non-discriminatory and do not "increase protection afforded to the domestic industry." There

[9]. The panel report was circulated to Members on July 5, 2011. It can be found at: www.wto.org/english/tratop_e/dispu_e/cases_e/ds394_e.htm#bkmk394r. The Panel report has been appealed; the Appellate Body report is expected to be issued at earliest in January 2012.

10. China imposes export duties on several raw materials and imposes other restrictions such as export fees. In its 2001 Accession agreement, China agreed to eliminate all taxes or charges on exports excluding products specifically listed in Annex 6 of the agreement. The products listed can only be subject to export duties, not QRs, with maximum rates fixed in the agreement's annex.

has never been a WTO ruling on this paragraph. However, when it was first introduced in 1947 by New Zealand, it was aimed at allowing countries to maintain permanent policies of price stabilization across the whole range of the economy. In discussion of the paragraph at that time, it was pointed out that the provision could only apply where countries, like New Zealand, already had internal price stabilization plans in place; it could not be used to protect a domestic industry in a country that did not already have a price stabilization plan (GATT Analytical Index, 1994, p.593).[11] A 1950 Working Party Report charged with investigating the use of quantitative restrictions for protective purposes, concluded that, "the Agreement does not permit the imposition of restrictions upon the export of a raw material in order to protect or promote a domestic industry, whether by price advantage to that industry for the purchase of its materials, or by reducing the supply of such materials available to foreign competitors, or by other means" (GATT Analytical Index, 1994, p.593). There has been no further official interpretation of Article XX(i). Thus, the paragraph remains ambiguous. It does not define what qualifies as a "domestic stabilization plan" and how long restrictions justified under such a plan can remain. Also, it gives no criteria by which to evaluate whether a domestic stabilization plan gives undue protection to domestic industry. This is especially problematic because export taxes and restrictions on raw materials are often used to indirectly subsidize domestic processing industries (Bouet and Laborde, 2010).

Finally, Article XX(j) even more generally allows restrictions that are "essential to the acquisition or distribution of products in general or local short supply," qualifying that restrictions must abide by the principle that "all contracting parties are entitled to an equitable share of the international supply of such products." This provision is aimed at allowing countries to cope with shortages of non-agricultural raw materials, but could also be interpreted to justify restrictions on agricultural products (Mitra and Josling, 2009, p. 13). When this paragraph was first introduced in 1951, the Geneva session of the Preparatory Committee indicated that it was meant to

> "permit during the transitional period the use of differential internal taxes and mixing regulations as well as quantitative restrictions in order to distribute goods in short supply, to give effect to price controls based on shortages and to liquidate surplus stocks or uneconomic industries carried over from the war period" (GATT Analytical Index, 1994 p.594).

The Committee clarified that the phrase "general or local short supply" was meant to "include cases where a product, although in international short supply, was not necessarily in short supply in all markets throughout the world" and that the phrase was not used in the sense that "every country importing a commodity was in short supply otherwise it would not be importing it" (GATT Analytical Index, 1994, p.594). This Article has not been used in a challenge since 1949, when the US justified its measures under the European Recovery Program under this short supply exception after a complaint by Czechoslovakia. The outcome of that dispute ruled in favor of the United States, as the Article stipulates that parties are only entitled to an "equitable" share of world supply, not a "non-discriminatory share."

Despite these past official interpretations, it is not completely clear how this Article should be interpreted in light of contemporary conditions. It remains unsettled what kind

11. New Zealand has not used price stabilization policies since 1990.

of products this paragraph can apply to and what qualifies as “short supply.” Article XX(j) could be interpreted to justify a wide range of export restrictions.

Other relevant articles that make up the multilateral disciplines on export restrictions are Article XXI, which details national security exceptions and Article XIII, which stipulates that restrictions must be applied in a non-discriminatory manner (Bonarriva, Koscielski and Wilson 2009). The disciplines on export restrictions have been strengthened in the accession agreements of some new WTO members such as China, Ukraine, Mongolia, Viet Nam, and Saudi Arabia. For instance, in its accession, China agreed to eliminate all export duties with the exception of 84 product lines (WTO, 2001b).

In the history of GATT/WTO case law and dispute settlement, aside from the 1988 Canada herring and salmon and the 2011 China industrial raw materials cases detailed above, only a few cases have come before the WTO’s Dispute Settlement Body (DSB) which have touched on the Article XI:1 ban on export restrictions. In 1997, the EC brought a complaint against Pakistan and requested consultations on its restrictions on the export of hides and skins wet blue leather made from cow hides and cow calf hides. This case did not advance beyond these consultations (WTO, 1997). The EC also requested consultations with India in 1998 for its export restrictions on hides and skins. In 2000, the EC further requested the establishment of a panel to rule on these restrictions, but the Dispute Settlement Body deferred this request and no further action has been taken since (WTO, 2000a). In 2000, the DSB decided a case between Argentina and the EC over an Argentinean law which allowed representatives of the tanning industry to be present at customs during the export of bovine hides. The EC claimed that this law created a *de facto* export restriction by having a “chilling effect” on hides producers who chose to export rather than sell domestically, but the Panel Report ruled that the EC had not proven that their presence had a chilling effect and therefore had not proven that Argentina’s law constitutes a violation of Article XI:1 (WTO, 2000b, paras. 11.28-11.34).

On the whole, the combination of the Article XI:2 exceptions and the Article XX exceptions have provided strong cover for many export restrictions on raw materials or agricultural products (Mitra and Josling, 2009). However, the Panel ruling against Canada’s export restrictions on unprocessed salmon and herring and the Panel report on China’s export restrictions on raw materials provide some guidance and precedent for enforcing the ban on export restrictions.

Thus, the structure of the WTO disciplines consists of a general elimination of quantitative export restrictions plus a list of exceptions to that rule. There are two kinds of exceptions to the general ban: product specific and situational. Product specific exceptions exempt particular goods or categories of goods from the ban. The exemption of products that are considered exhaustible natural resources from the general prohibition is an example of a product specific exception.[12] Situational exceptions, meanwhile, exempt the exporting country from abiding by the ban on quantitative restrictions under certain conditions. Exceptions for shortages of foodstuffs or essential products, for a domestic stabilization plan, or for acquisition or distribution of products in short supply are all situational exceptions. These exceptions are contingent on particular circumstances that last for a finite period of time. By contrast, product specific exceptions are not based

12. In fact the natural resources exception is both product-specific and situational as illustrated by the findings of the two cases that have come up for dispute settlement. This exception can only apply to a finite group of products, i.e. not manufactures or processed agricultural products.

on temporary conditions and are therefore permanent. This distinction between kinds of exceptions implies different best practices recommendations and strategies for disciplining export controls for each type.

2. Use of WTO agreements regarding subsidies and anti-dumping measures to discipline export restrictions

Export restrictions that do not directly violate WTO rules, for example export duties, have at times been indirectly addressed in WTO in the context of other rules and agreements such as those pertaining to subsidies and anti-dumping. There has been a case where certain export restrictions were brought before a DSB as constituting subsidies as defined by the WTO Agreement on Subsidies and Countervailing Measures (SCM).

One case of export restraints in the context of SCM has been brought for dispute settlement. The case, *United States – Measures treating export restraints as subsidies*, concerns "US measures that treat a restraint on exports of a product as a subsidy to other products made using or incorporating the restricted product if the domestic price of the restricted product is affected by the restraint" (WTO, 2001c).

The SCM allows countervailing duties to be placed on actionable subsidies which are placed by a government or entrusted or directed by the government to confer a direct benefit to recipients, and are placed on a specific sector or product. The case pertaining to *Measures treating export restraints as subsidies* found that: "An export restraint as defined in this dispute cannot constitute government-entrusted or government-directed provision of goods … and hence does not constitute a financial contribution in the sense of Article 1.1(a) of the SCM Agreement." According to the Panel, "explicit and affirmative action of delegation or command" is required, rather than mere government intervention in the market which by itself leads to a particular result or effect (WTO, 2001c).

According to the WTO Anti-Dumping Agreement (ADA), anti-dumping duties may be imposed on imported products if they are dumped and cause injury to a domestic industry (Van Den Hende and Paterson, 2009). Dumping occurs if the exported price of a product is below its "normal value", generally taken to be the domestic price with any appropriate adjustments. In the case of export restrictions on raw materials, it has been argued that the domestic price is distorted, in which case a calculation of an undistorted price or some proxy adjusted to reflect conditions in the domestic market, could be used.[13]

3. Negotiations in the Doha Round

In the ongoing Doha Round of multilateral negotiations, export taxes and restrictions were discussed in the Negotiating Group on Market Access (NAMA). In these negotiations, the EC proposed removing all quantitative export restrictions on raw materials (Deese and Reader, 2007). In the Market Access for Non-Agricultural Products

13. The European Union placed a 20.6% anti-dumping duty on imports of aluminium car wheels from China in May 2010, further raised to 22.3% in October 2010 for a period of five years. The Commission Regulation indicates that one of the main reasons that dumping can be said to occur is that an export tax is imposed on one of its main raw materials, as well as a differential system of refunding VAT in place between raw materials and finished goods: "primary aluminium for export is subject to a 17 % VAT (while VAT on exports of finished goods is refunded) plus a 15 % export tax" (European Commission, 2010b).

negotiations, the EC's revised proposal of 2008 suggested the "confirmation and operationalisation of basic GATT disciplines to apply to those situations where WTO members use export taxes for industrial or trade policy purposes with negative effects on other WTO members," effectively eliminating the use of export taxes except in certain situations such as "financial crises, infant industry, environment (preservation of natural resources), and local short supply." In order to increase the predictability of export taxes, the EC proposed that WTO members "undertake to schedule export taxes on non-agricultural products in their Schedules of Concessions and bind the export taxes at a level to be negotiated." The proposal also emphasized that there should be additional flexibility for small developing member countries and least-developed countries. As an exception to the requirement to schedule and bind export taxes, the EC proposed that least-developed countries undertake to schedule export taxes but may maintain these export taxes unbound. Other developing countries would schedule export taxes and could maintain the taxes unbound for a certain number of tariff lines. The proposal raised concerns over the lack of notifications of export taxes and restrictions to the WTO, despite several mandates to do so such as the Ministerial Decision of 1993 (European Communities, 2008).

Transparency was also at the centre of concerns that were addressed in the NAMA proposal on Enhanced Transparency on Export Licensing which was co-sponsored by Chile, Costa Rica, Japan, Korea, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Ukraine and the United States. The proposal defined notification requirements of existing measures on export licensing, and changes to existing measures within 60 days of the effective date of the new measure. Information to be included in the notification is spelled out: products for which licenses are needed, procedures for submission of licensing requests, eligibility criteria, contact points, etc. The draftees suggest that implementation of this proposal would bring increased transparency on export licensing measures which would serve to inform traders and facilitate trade (WTO, 2009c).

Meanwhile, Japan and Switzerland expressed concern as food-importing countries over export restrictions' effect on their food security and proposed elimination of all export taxes and restrictions that hinder food security. In 2006, Japan proposed that the WTO publish the rules and administration for export restrictions, the notification procedures to the Committee, and the information relevant to the restrictions, such as domestic production levels (Deese and Reeder, 2007).

The US proposal on Long-Term Agricultural Trade Reform in 2000 suggested that the WTO "prohibit the use of export taxes, including differential export taxes, for competitive advantage or supply management purposes." The differential taxes referred to here are export taxes which levy a higher charge on unprocessed products than on processed ones in order to encourage domestic processing. In the section on food security, the US reiterated that the WTO must "strengthen substantially WTO disciplines on export restrictions to increase reliability of global food supply" (USDA, 2000). The 2002 US proposal on market access suggested that only developing countries be permitted to use export taxes for revenue purposes and required that such taxes be applied at a uniform rate on all agricultural exports for at least one year (Deese and Reeder, 2007).

Finally, in 2000 in the Doha Round negotiations on agriculture, the Cairns Group of 17 agriculture-exporting countries linked reductions in export taxes and restrictions to the elimination of import tariff escalation.[14] In the context of creating "better opportunities for developing countries to develop processing industries" and with a view to improving food security for developing country net food-importers and least developed countries, the Cairns Group called for the WTO to "develop improved disciplines on export restrictions and taxes and eliminate tariff escalation." At the same time, however, the WTO should provide "special and differential treatment provisions to address the legitimate needs of developing countries, including least developed and net food importing developing countries" (Cairns Group Negotiating Proposal, 2000).

IV. Sample of Regional Trade Agreements used in this study

This study examines the provisions on export restrictions in 93 regional trade agreements.[15] The sample of RTAs includes all major, large agreements such as the North American Free Trade Agreement (NAFTA), the Association of South East Asian Nations (ASEAN), the Southern Common Market (MERCOSUR), the Commonwealth of Independent States (CIS), the Caribbean Common Market (CARICOM), and the European Union (EU). The sample covers all of the United States' RTAs, all of the European Communities (EC)'s RTAs, most of Canada's RTAs, and most of the European Free Trade Area (EFTA)'s agreements. Seven of China's RTAs are included, as are six of Japan's. Five intra-African RTAs, including the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Southern Africa Customs Union (SACU), and the African Economic Community, are covered. Seventy of the 93 agreements involve at least one developing country. Twenty-seven are between developing countries. Forty-one agreements are cross-regional. Appendix I includes a full list of the RTAs studied, their signatory states, and the years they entered into force. Appendix II provides a summary of how each agreement's export restrictions provisions compare to the WTO.

The sample aims for both geographic and income-level diversity. Agreements are chosen for the sample if they contain at least some provision on export restrictions, if they are a large or important RTA, or if they include a country that has recently imposed a major export restriction. For instance, the India-Thailand and India-Bangladesh RTAs are included in the sample; both India and Thailand recently banned exports of rice during the food price crisis in 2008. At the same time, even though the Central American Common Market (CACM), ASEAN-China, and the Andean Community have no language whatsoever on export restrictions, they are included because they are far-reaching and well-known RTAs. The quality and precision of regional trade agreements varies widely. While some agreements are less than ten pages long and use non-specific language, others are hundreds of pages long and scrupulously detailed. This survey tends to select more detailed, substantive agreements with enforceable language over unclear ones. More recent agreements—generally entering into force from 1990's and onward—

14. The Cairns Group argues for the elimination of all import barriers and reduction in trade-distorting support for agricultural products as a necessary corollary to enhanced disciplines on export restrictions.

15. Despite the fact that many of these preferential trade agreements are not necessarily between countries in the same geographic region, this paper will refer to them as "regional trade agreements" or RTAs.

are included over older ones unless the older agreements are well-known or large, such as CARICOM (1973) or CACM (1961).

V. Provisions on quantitative export restrictions in selected Regional Trade Agreements

The GATT provides a much more developed discipline on quantitative export restrictions in Article XI than it does on export taxes.[16] The disciplines on these export restrictions present in RTAs can be compared to the WTO disciplines that are outlined in Section III above. The RTAs under study here have been classified into four groups based on how they compare to existing WTO disciplines: agreements with no language on export restrictions, and those that include provisions that are WTO-minus, WTO-equal, or WTO-plus. A WTO-equal RTA is an agreement that neither improves upon nor regresses from the WTO disciplines. A WTO-minus RTA allows export restrictions where the WTO does not. A WTO-plus RTA forbids export restrictions where the WTO allows them.

Out of the sample of 93 RTAs, 15 agreements contain stronger language than the WTO export restriction disciplines (i.e. they are WTO-plus), while 38 are equal and 22 are weaker (i.e. WTO-minus). Eighteen agreements fail to mention export restrictions at all. There is a marked tendency toward WTO-plus provisions in more recently concluded RTAs. Many of the WTO-plus RTAs were concluded more recently than the RTAs that are categorized here as WTO-minus. Out of the 22 WTO-minus agreements, seven were concluded before 1994 (i.e. the completion of the Uruguay Round) whereas only two of the 15 WTO-plus agreements were concluded prior to 1994.

Analysis of quantitative export restrictions disciplines reveals that RTAs generally continue to follow the GATT formula of stipulating a general prohibition of export restrictions plus a list of exceptions. Exceptions are either product specific or situational. Some RTAs include, for example, a larger positive list of product exemptions than would be included in the WTO, but eliminate some of the over-riding situational exemptions. Such RTAs are classified here as "WTO-minus" since they allow export restrictions on products that would not be allowed under WTO disciplines. Classifying certain agreements as WTO-minus requires weighing their broad exceptions for some types of goods against their elimination of some situational WTO exceptions. It should be noted that this classification should not be regarded as normative or suggestive of a flawed agreement. Moreover, some agreements that have been examined here were concluded before the Uruguay Round provisions came into effect in 1994. The purpose of the classification is to better understand ways in which RTA disciplines innovate over those in the WTO. WTO-equal agreements often include language that is taken directly from the WTO agreement, or is very similar. WTO-plus agreements are those that allow fewer exceptions to the general ban on quantitative export restrictions or establish disciplines on the imposition of export taxes. There are no hard-and-fast rules by which to classify agreements as WTO-minus, -equal or –plus. The purpose of this study is to better understand how export restrictions may possibly be disciplined. The RTAs covered in this section and their corresponding provisions on quantitative export restrictions are summarised in tables in Appendix III.

16. For the purpose of brevity, quantitative export restrictions will also be referred to as "export restrictions" in this section.

1. RTAs with no provisions on quantitative export restrictions

Eighteen out of the 93 RTAs surveyed either do not impose disciplines on quantitative export restrictions or omit mention of export restrictions entirely. This list includes some major agreements like ASEAN, MECOSUR, ASEAN-China, ASEAN-India, the Central America Common Market, the Andean Community, the Common Market for Eastern and Southern Africa (COMESA), and ECOWAS. Some agreements such as Thailand-India, stipulate that future negotiations will cover the topic of export quantitative restrictions, but say nothing about them in the actual agreement. ASEAN includes a clause on non-tariff barriers but defines quantitative restrictions as a separate kind of measure from non-tariff barriers. Other agreements mention export restrictions tangentially, but do not create actual disciplines. For instance, COMESA does not impose a general ban on either export duties or restrictions. It stipulates that the member states should exchange information on existing export restrictions and duties, and that they should coordinate the export and import of agricultural commodities. Despite these references to greater transparency and coordination in the implementation of export restrictions, the agreement lacks a precise discipline on the issue. Of RTAs that include disciplines on export restrictions, agreements are classified here as WTO-minus, WTO-equal, or WTO-plus.

2. WTO-minus Agreements

Twenty-two agreements were found to be WTO-minus. The fact that a WTO-minus category exists calls into question the conformity of such RTA disciplines with WTO rules on quantitative restrictions. Even if a WTO-minus regional trade agreement allows a certain kind of export restriction, for instance on hides and skins, that export restriction may not be allowed by the WTO. The existence of a WTO-minus category suggests that some agreements allow trade measures that violate provisions of the WTO. This incongruity between RTA and WTO disciplines is one of the challenges that the proliferation of preferential trade agreements poses to the multilateral trading system.

These 22 agreements are weaker than the WTO because they allow for export restrictions on goods where the WTO does not. WTO-minus agreements tend to allow countries to impose export restrictions on agricultural products such as coffee or copra, fuel related products, and precious metals and stones. A distinction has been made between agreements that do not apply to all products, i.e. agreements with limited scope, and those that allow export restrictions on certain products that would not be allowed under WTO. For example, many of the EC and EFTA bilateral agreements exclude agriculture from their agreements' provisions. Since the agriculture sector is excluded from many EC and EFTA RTAs, export restrictions on agricultural products are necessarily undisciplined by these agreements. Since the agreements are of limited scope, and explicitly or implicitly WTO rules apply to products not covered in the RTA, they are not necessarily classified as WTO-minus. Some other agreements, however, ban export restrictions, often stipulating "as set by GATT 1994", but include a positive list of goods to which the ban does not apply. If that positive list includes products that it would be difficult to classify within one of the exceptions specified in GATT 1994, e.g. coffee, precious stones and metals, etc., that agreement is considered WTO-minus.

No new situational exceptions were found aside from re-export clauses in a few RTAs.[17] The addition of a re-export clause alone is not considered a WTO-minus situational exception because as a multilateral agreement the WTO has no need for re-export clauses while preferential agreements between a given number of signatories run the risk of re-export. Meanwhile, on specific products, there are new exceptions that are not allowed by the WTO. Within this WTO-minus category, there are four subgroups based on the kinds of goods on which the agreements allow members to use export restrictions.

2.1 Agreements with selected multi-sector exceptions

The first subgroup of 12 WTO-minus RTAs allows members to impose export controls on a few specific goods, rather than a broad group of agricultural products. For instance, the US agreement with the Central American Free Trade Area and the Dominican Republic (US-CAFTA-DR) allows several parties to maintain export restrictions on specific goods. Costa Rica, for example, may impose restrictions on coffee, ethanol, and crude rhums, and a minimum export price on bananas, and Guatemala can impose quantitative restrictions on coffee exports. Nicaragua can use restrictions for up to one year on a positive list of foodstuffs including beans, brown sugar, chicken meat, coffee, corn, corn flour, tortillas, powdered milk, rice, salt, and vegetable oil. These exceptions are not in the context of a domestic stabilization plan or shortage of foodstuffs; Nicaragua can place restrictions on the export of any of these products for up to one year at its discretion, regardless of the circumstances. The WTO's 2006 Trade Policy Review of Nicaragua does not mention export restrictions on any of these goods, however, indicating that Nicaragua has not taken advantage of these exceptions. Nicaragua only maintains export restrictions on caoba roundwood and spiny lobsters, as well as licensing on sawn wood exports (Kim, 2010). The US agreements in this subgroup also allow the US to use export restrictions on logs of any type. The US agreements incorporate GATT Article XX *in toto* with all of its exceptions to the general ban on export restrictions. However, the US-Colombia and US-CAFTA-DR agreements eliminate the GATT Article XI:2(a) foodstuffs and shortage exception, strengthening these disciplines somewhat.

Nicaragua has obtained similar exceptions to the general elimination provision in its RTA with Taiwan. As in the US-CAFTA-DR agreement, the Taiwan-Nicaragua agreement stipulates that Nicaragua may impose an export restriction for up to one year on a list of basic foodstuff products or on bovine leather. Nicaragua can extend the restriction if Taiwan consents. Interestingly, in this agreement, the exception for shortages applies to all goods, not just to foodstuffs or "other products essential to the exporting party" as it does in the WTO. But, again, according to Nicaragua's 2006 TPR, it has not yet used any of these exceptions to impose export restrictions.

In the MERCOSUR agreements with Bolivia and Chile, there is, as in the WTO, a general elimination of quantitative export restrictions. However, an exception is made for a law in Paraguay that requires domestic processing of raw petit grain before export; Uruguay gets an exception for its state monopoly on the export of fuels. In addition, the MERCOSUR-Chile agreement eliminates the GATT Article XX exceptions for

17. Re-export clauses are present in some RTAs in order to assure that exports that are subject to restrictions outside the RTA are not simply exported through the RTA partner country in order to circumvent the general ban.

restrictions on natural resources, in the case of shortage, or for domestic stabilization plans. Aside from the exceptions for Paraguay and Uruguay, this makes the MERCOSUR-Chile discipline relatively strong compared to other WTO-minus RTA disciplines. It is noteworthy that no special exceptions apply to Argentina in either agreement.[18]

Some of the most singular export restrictions disciplines in the RTAs studied are those of CARICOM. While CARICOM generally prohibits any quantitative export restrictions, it makes an exception for “Schedule III: Development of the Oil and Fats Sub-sector” in both the original agreement and the Revised Treaty of Chaguaramas of 2001. The schedule defines “oils and fats” as coconut including seeds and copra, cottonseed, and oils and fats derived from coconut, copra, and cottonseed. The stipulations of Schedule III essentially create an export cartel administered by a committee called the Conference on Oils and Fats. The Conference sets CARICOM’s export price for copra, raw coconut oil, and refined edible coconut oil annually. Member states can only liberalize their exports of copra destined outside of CARICOM up to 10% their total production and any export liberalization must be notified to the Secretariat. CARICOM is the only RTA studied that sets up an export control agreement in this way. This provision essentially requires all members to impose export controls on a set of products and makes the CARICOM export restrictions discipline definitively WTO-minus.

Another finding in this subgroup is the exception for unprocessed fish in Canada’s RTAs with Israel, EFTA, and Peru. While these three agreements incorporate GATT Article XI and XX entirely, they add an exception for unprocessed fish in their annexes. While Canada may be permitted under the RTAs to impose export restrictions on unprocessed fish, such restrictions are not allowed according to WTO rules. Also, it should be noted that in 1988, the GATT ruled that Canada’s specific export restriction on unprocessed herring and salmon was not allowed under Article XI and was not justified under Article XX. The fact that Canada makes an exception in three agreements for restrictions on a good that the WTO has ruled against in the past renders these RTAs WTO-minus for the purposes of this study. According to *A Guide to Canada’s Export Controls* of 2007 and the WTO’s 2007 Trade Policy Review, Canada maintains export controls on roe herring from which the roe has not been extracted (Export Controls Division 2007, p.100; WTO, 2007b, p. 57).

2.2 Agreements with exceptions for fuel-related products

The second subgroup of agreements that are WTO-minus in terms of quantitative export restrictions consists of four agreements that exclude fuel-related products from the general elimination of export restrictions. Three out of the four grant these exceptions to Mexico. For instance, the EC-Mexico agreement makes an exception so that “Mexico may restrict export licenses for the sole purpose of reserving foreign trade to itself” for a list of goods including aromatic hydrocarbon mixtures, rubber extended oils, petroleum oils, aviation and motor fuel stocks, petroleum gases, paraffin wax, not calcined petroleum coke, petroleum bitumen, bitumen and asphalt natural, ethane, butane,

18. By contrast, under the general ban on export taxes in these agreements, Argentina negotiated exceptions on various oilseeds, soya beans, and skins. This is covered in more detail in the following section.

pentanes, hexanes, and heptanes (EC-Mexico, 2000).[19] The WTO Trade Policy Review of Mexico reports that Mexico requires export licensing on 16 tariff headings on the basis of its rights to exploit and market non-renewable natural resources, presumably referring to petroleum and fuels-related products (Kim, 2010). The fact that this group of RTAs permits export restrictions on fuel-related products where the WTO disciplines do not renders them WTO-minus. The Japan-Mexico agreement, however, eliminates the WTO exceptions for natural resources, domestic stabilization plans, and for the acquisition of products in short supply from GATT Article XX(j). The EC-Mexico agreement also eliminates the Article XX(j) exception, while EFTA-Mexico incorporates Article XX entirely.

2.3. Agreements with exceptions for precious metals and stones

The third subgroup of WTO-minus RTAs, including Southern African Development Community – SADC, Russia-Ukraine, Belarus-Ukraine, the Commonwealth of Independent States - CIS, and the African Economic Community, makes exceptions to the general prohibition of quantitative export restrictions for precious metals and stones. This allows members to maintain quantitative export restrictions on key metals and stones within the RTAs. It is a very broad exception because there is no definition of “precious” given and there is no universally acknowledged definition of what qualifies a metal or stone as “precious.” Thus, depending on interpretation of the terms, restrictions on many metals and stones may be allowed. For instance, SADC member Tanzania currently maintains export bans on the waste and scrap of antimony, cobalt, copper, chromium, indium, manganese, and nickel (Korinek and Kim, 2009). Depending on which of those metals and stones are defined as “precious”, and whether waste and scrap can be considered in that category, many of those restrictions may go undisciplined within SADC. Some precious stones and metals could be considered “exhaustible natural resources.” However, by adding a separate exception for precious metals and stones, these agreements allow restrictions on these products regardless of whether the restrictions are primarily aimed at environmental conservation or whether they are in conjunction with domestic conservation measures, as the WTO exception for natural resources demands. The Russia-Ukraine and Ukraine-Belarus agreements eliminate the GATT Article XX exceptions for exhaustible natural resources and domestic stabilization plans but expand the shortage exception to apply to all goods if there is an “acute deficit of this product in the domestic market, until the market situation is stabilized.” Overall, despite eliminating some WTO exceptions, the exemption for precious metals and stones allow the imposition of a wider range of export restrictions relative to the WTO.

2.4. Agreements with other types of provisions

Finally, some WTO-minus RTAs include other types of WTO-minus stipulations on export restrictions. For example, the SACU agreement grants the Council of Ministers of

[19]. EFTA-Mexico stipulates that, “Mexico may restrict the granting of import and export licenses for the sole purpose of reserving foreign trade in these products to itself” and lists the same products as EC-Mexico: HS 2707.50, 2707.99, 27.09, 27.10, 27.11, 2712.90, 2713.11, 2713.20, 2713.90, 27.14, and 2901.10. The Japan-Mexico agreement stipulates that “Mexico may maintain the measures specified below, provided that such measures do not accord more favorable treatment to any non- Party” on a similar list of products including HS 2707.50, 2707.99, 2709.00, 27.10, 27.11, 2712.90, 2713.11, 2713.11, 2713.20, 2713.90, 27.14, and 2901.10.

SACU the authority to "restrict or prohibit exportation on the basis of economic, social, cultural, or other reasons," giving that body broad powers to control exports. Moreover, it stipulates that any domestic law prohibiting or restricting exports takes precedence over the SACU agreement. The US-Israel agreement forbids new quantitative export restrictions but does not eliminate existing ones. The US-Israel agreement most likely contains weaker language because it was contracted before export restrictions disciplines came to the fore, entering into force in 1985. Indeed, some older agreements contained very forward-looking language against the use of export restrictions, i.e. prohibiting any new restrictions, at the time they were contracted.

3. WTO-equal Agreements

This survey of RTAs found 38 agreements which contained WTO-equal provisions on quantitative export restrictions. Some of these agreements incorporate the relevant GATT Articles XI and XX or imitate the WTO language. Many follow the GATT formula for export restriction disciplines of a general ban plus a list of situational and specific goods exceptions. For instance, the US trade agreements with Peru, Chile, Morocco, Korea, Singapore, Bahrain, Oman, and Panama incorporate completely GATT Articles XI and XX. The only difference from the WTO is an exception for US quantitative restrictions on logs.

Some RTAs include a general ban on quantitative export restrictions but include large categories of goods to which it does not apply. For instance, the European Union's RTAs with countries in the Balkans, including Albania, Bosnia, Croatia, Macedonia, and Montenegro, impose a general elimination of all quantitative export restrictions. However, these RTAs exclude from the ban the goods in HS chapters 1-24 as well as the list of products in Annex I of the WTO Agreement on Agriculture.[20] The EC-Turkey agreement follows the same structure but excludes a slightly different list of agricultural goods. At the same time, however, the agreements eliminate the GATT Article XX exceptions for restrictions on exhaustible natural resources, for domestic stabilization plans, and the GATT XX(j) exception for "the acquisition or distribution of products in general or local short supply." But the broad range of exempted goods nevertheless implies that these RTAs cannot be considered as WTO-plus.

A minor difference between some of these agreements and the WTO can be found in EC-Mexico, for example, which institutes a re-export clause allowing export restrictions in the case of a threat of re-export to a third party against which the exporting party maintains restrictions. As a multilateral agreement the WTO has no need for re-export clauses while preferential agreements between a limited number of parties run such a risk. Thus, this addition to EC-Mexico does not make it WTO-minus. Twenty-five of the 75 agreements with disciplines on export restrictions contain exceptions for restrictions to prevent re-export.

Some of the WTO-equal agreements eliminate quantitative export restrictions in the context of a clause eliminating all non-tariff barriers on export and import as consistent with the WTO. Since quantitative export restrictions are a form of non-tariff barrier on export, and since in each case the agreement specifies that non-tariff barriers are

20. These goods include mannitol, sorbitol, essential oils, albuminoidal substances, modified starches, glues, finishing agents, hides and skins, raw furskins, raw silk and silk waste, wood and animal hair, raw cotton and waste, cotton carded or combed, raw flax, and raw hemp. They are listed with their HS product codes.

disciplined in accordance with the WTO disciplines, these kinds of provisions can be considered WTO-equal.

4. WTO-plus Agreements

Finally, this study found 15 RTAs with quantitative export restriction provisions that are WTO-plus. These are divided into two subgroups: agreements that impose conditions on the use of exceptions, and those which allow fewer exceptions than the WTO.

4.1. Agreements that impose conditions on the use of exceptions

The first subgroup of WTO-plus agreements includes Canada-Chile, Canada-Costa Rica, and NAFTA. This group goes beyond the WTO disciplines by imposing conditions on the use of exceptions clauses to the general elimination of export QRs. All three agreements incorporate GATT Articles XI and XX, but in order for a party to impose a quantitative export restriction justified under GATT XI:2(a) or XX(g), XX(i), or XX(j) it must meet two conditions. First, the restriction must not reduce the proportion of total export shipments made available to the other party relative to the total supply of the good from the party maintaining the export restriction, as compared to the last 36 months. Thus if a country wants to apply an export restriction, it must ensure that it can continue to supply the same proportion of exports to the other parties in the RTA. Second, the restriction cannot disrupt normal channels of supply or normal proportions of specific goods supplied to the other RTA parties. In Canada-Chile, however, copper, Chile's main export product, is exempt from this Article.

These provisions guard against the negative impacts of export restrictions on importers, rather than eliminating export restrictions as a policy option. They ensure that export restrictions do not negatively affect the imports of RTA members since members are obliged to continue to supply the same proportion of the product in question to RTA members if they impose an export restriction. It should be noted, however, that these conditions only apply to trade within the RTA, not to all trade affected by the export restriction. Requiring parties to meet certain conditions when applying quantitative restrictions is an effective approach to disciplining their use.

4.2 Agreements with fewer exceptions than the WTO

A second approach to strengthening WTO disciplines is to allow for fewer exceptions than the WTO. This approach is used in 12 WTO-plus agreements. The agreements with the fewest exceptions are EC-South Africa, EFTA-Israel, EC-Israel, the EU, and CEFTA 2006. Among the other agreements a wide variety of exceptions are eliminated. For instance, all of the 12, aside from EFTA-Chile, eliminate the GATT Article XX(j) exception for restrictions "essential to the acquisition or distribution of products in general or local short supply." Five of the agreements eliminate the natural resources exception. Nine agreements eliminate the domestic stabilization plan exception. EC-CARIFORUM and EC-Cote d'Ivoire restrict the shortage clause to apply to foodstuffs only, as opposed to both foodstuffs and other essential products as in the WTO. Interestingly, the EC-CARIFORUM agreement makes no mention of an exception for CARICOM's policy of restricting the export of copra and coconut oil. EC-South Africa eliminates the shortage exception entirely, as does CEFTA 2006, the EFTA Convention, EFTA-Israel, the EU Convention, and EFTA-Chile. What unites this group is that the agreements forbid export restrictions where the WTO may allow them under an exception clause.

VI. Provisions on Export Taxes in Regional Trade Agreements

The GATT does not include any direct disciplines on export taxes. Therefore, for the purposes of this study, a regional trade agreement is considered WTO-equal if it has no language or explicitly allows for export taxes.[21] Twenty-seven of the 93 agreements studied contain no language on export duties and can thus be considered WTO-equal. The remaining 66 agreements are WTO-plus because they strengthen the WTO disciplines on export taxes. A proposed classification of RTAs' export taxes provisions is laid out in Appendix IV.

Fifty-five of the 66 RTAs which include language on export duties, handle export taxes in the same way as the WTO does for quantitative restrictions, which is a general elimination provision followed by a list of exceptions.

1. WTO-plus: Agreements prohibiting new export taxes or increases on existing taxes

The first group of WTO-plus agreements consists of seven RTAs which allow existing export taxes to be maintained but prohibit the application of new taxes and increases in existing ones (i.e. standstill clause). For instance, in EC-Cote d'Ivoire, Cote d'Ivoire can maintain its export taxes, but may not impose new taxes or increase existing ones. However, the agreement makes an exception allowing Cote d'Ivoire to apply new, temporary duties to its exports to the EC on a limited number of traditional goods if it can justify the need for fiscal receipts, infant industry protection, or environmental protection. The RTA also permits Cote d'Ivoire to apply new duties or increase existing export duties if necessary to ensure food security.

This type of export tax discipline is particularly prevalent in RTAs involving Argentina, where export taxes are used on a large number of goods. In the MERCOSUR-Chile and MERCOSUR-Bolivia agreements, Argentina reserves the right to increase export taxes on certain products up to a given percentage. Both agreements allow Argentina to impose up to 3.5% export tax on soya beans and various types of oilseeds and up to a 15% tax on 13 types of hides and eight types of skins. The tax of 3.5% allowed within these RTAs is much lower than the 23.5% export tax applied on those products reported in the Trade Policy Review of Argentina. In this case, it appears that trade within the agreement was subject to an export tax 20% less than that on trade in oilseeds and soya beans outside the RTA in 2004. As of 2006, Argentina also charges a 15% tax on all exports of hides and skins (WTO, 2007a, pp.70-72).

In the MERCOSUR-Bolivia agreement, Brazil reserves the right to impose export taxes of up to 9% on bovine, equine, and sheep skins and hides and up to 40% on cane molasses and inverted sugars and honey in trade with Bolivia. According to Brazil's WTO Trade Policy Review, it takes advantage of this exception and levies a 9% tax on leathers and skins destined for any country, including Bolivia and even within MERCOSUR. Brazilian domestic law allows for the application of an export tax of up to 150%. This potential export tax applies to all products except coffee, sugar, and alcohol and related products (WTO, 2009b, pp.58-59).

21. Since the GATT does not prohibit or limit export taxes explicitly, no RTA can be considered "GATT minus".

In the MERCOSUR-Peru agreement, Argentina reserves the right to use export taxes on 354 pages of product codes with potential levies ranging from 5% to 40%. This broad-ranging exception covering almost all products completely vitiates the spirit of the RTA's ban on new or increased export taxes. It is interesting to note, however, that Argentina has much more limited exceptions in the Chile and Bolivia agreements with MERCOSUR where it is only allowed new taxes on oilseeds and skins. The reason for the difference in exceptions allowed between the MERCOSUR agreement with Peru and the agreements Bolivia and Chile is not apparent.

The group of agreements describe above is WTO-plus because it prohibits new or increased export taxes. It is still a "light" discipline, however, and the profusion of exceptions can undermine the strength of this weak provision.

2. WTO-plus: Agreements imposing a general prohibition on export taxes

All 55 other RTAs that contain language on export taxes have a provision that prohibits the maintenance or adoption of export taxes in the style of the GATT Article XI's general ban on quantitative export restrictions. Most of these agreements choose to discipline export taxes by applying the language of the WTO discipline on quantitative export restrictions to export taxes. Thus, the agreement often uses the general ban on quantitative export restrictions as a template for a general ban on export taxes. Then, like the WTO discipline on export QRs, the agreements add exceptions to the general prohibition. Usually, RTAs incorporate some or all of the WTO exceptions from Articles XI and XX.

In applying the general ban to export taxes, many RTAs include additional exceptions beyond the exceptions to the ban on export QRs in Article XI and XX. For instance, some RTAs add a situational exception in the case of threat of re-export of a good to a country outside the RTA against which the exporting party maintains an export tax. Other RTAs add further product specific exceptions to the ban on export taxes for agricultural products or for key export commodities like coffee or wood products.

2.1 Agreements with both situational and product specific exceptions

The RTAs with a general ban on export taxes are divided between those that incorporate both product specific exceptions and situational exceptions and those that have only one or the other type of exception. Forty-five of the 55 RTAs with a general prohibition of export taxes have both kinds of exceptions. As in the case of quantitative export restrictions, there are further subdivisions among agreements with both specific and situational exceptions.

2.1.1 Agreements with agricultural goods exception

Eleven agreements exempt broad categories of agricultural goods from the ban on export taxes. Four of these agreements are between the EC and its European neighbours Bosnia, Croatia, Macedonia, and Montenegro. In these cases, the general prohibition of export taxes only applies to "industrial goods" in HS Chapters 25-97. Moreover, the agreements also make exceptions for goods listed in Annex I of the GATT/WTO 1994 Agreement on Agriculture which include essential oils, hides and skins, raw silk, raw fur skins, raw cotton, raw flax, wool and animal hair, and raw hemp. The goal in exempting these goods may be to allow the countries involved to use export taxes to support domestic processing of raw materials. In addition to these exceptions, the agreements include a paragraph stipulating that no provision of the RTA shall restrict the agricultural policies of the EC or the other party.

Under these EC agreements, if a country wants to use the exceptions for shortages or threat of re-export to justify an export duty, the agreements provide for specific procedures to invoke these exceptions. Provisions stipulate that the country must apply to the Interim Committee of the RTA before implementing the tax to find an agreement suitable to both parties for dealing with the circumstances. If no agreement is reached within 30 days, then the country can impose the tax. Any export duties made in the context of a shortage or threat of re-export must be notified to the Interim Committee and will be subject to periodic reviews and consultations with a view to establishing a timetable for elimination as soon as circumstances permit. The procedures set out in the EC agreements aim to increase transparency and communication between the parties in using situational exceptions. There is a requirement to inform and consult with other parties before resorting to export taxes and a joint effort to phase out duties when the situation no longer justifies them. These four EC agreements provide examples of how RTAs can inject transparency and cooperation into export restriction disciplines.

The EC-Israel RTA, like the above EC agreements prohibits export taxes but the ban excludes many agricultural products, which are stipulated in a positive list in the annexes. On the other hand, the agreement's ban on export quantitative restrictions covers all products. This forces the parties to use export taxes rather than export restrictions to control exports of agricultural goods since only taxes are allowed. This kind of difference between the exceptions to the ban on QRs and export taxes may be one way to encourage countries to use export taxes rather than export quantitative restrictions. At the moment, however, neither the EC nor Israel maintains any export taxes, according to their most recent WTO Trade Policy Reviews (Kim, 2010).

In six agreements in this subgroup involving EFTA, unprocessed agricultural goods in HS chapters 1-24 are not included in the general elimination of export taxes. This exception allows RTA parties to maintain or increase their export taxes on any of those goods. For instance, Botswana and Namibia (members of SACU) who charge export taxes on cattle, are in accordance with the EFTA-SACU agreement (Kim, 2010). Despite the broad agricultural products exception, export taxes such as South Africa's tax on wine are eliminated in trade within that RTA by a general ban (Kim, 2010).

2.1.2. Agreements with multi-sector product specific exceptions

A second subgroup of agreements incorporating both types of exceptions allows only a few specific goods exceptions in addition to an exception for export taxes on natural resources. For instance, the US-Central America Free Trade Agreement-Dominican Republic agreement permits Costa Rica to apply export taxes on coffee, bananas, and meat products and the US-Colombia agreement permits Colombia to levy taxes on coffee and emeralds. Costa Rica uses these exceptions to impose an export tax of one USD/40 pounds on bananas and a tax of 1.5% on the value of coffee exports, which is used to finance Costa Rica's national coffee administration, ICAFE (Kim, 2010). Colombia maintains a 5% ad valorem tax on the value of mild coffee exports and a 1% tax on the export price of unset emeralds (Kim, 2010). Both of these US RTAs do not contain exceptions for shortages or threat of re-export, but do incorporate all the exceptions applied to QRs in GATT Article XX. The RTA between Canada and Israel also falls into this group. Canada takes exceptions for export taxes on unprocessed fish, logs, and alcohol, while Israel has an exception for charges on exports of metal waste and scrap. According to Israel's most recent WTO Trade Policy Review in 2006, however, it does not currently levy taxes on scrap and waste metal products (Kim, 2010).

In this group of agreements, the EFTA-Ukraine RTA is particularly interesting because it was the first agreement between Ukraine and a country outside the post-Soviet Union.. The agreement prohibits export taxes on all products covered by the agreement, thereby going far beyond the WTO framework. The general ban on export taxes does not apply for the Ukraine to exhaustible natural resources and other specific products such as essential oils, lamb meat, fox, raw furskins, cotton, casein glues, mannitol, swine, goats, albuminates, dextrins, and modified starches. Ukraine however applies export taxes on metals such as nickel, cobalt, copper, chromium (Korinek and Kim, 2009), on livestock, rawhide, and certain oilseeds (Deese and Reeder, 2007), and on maize, wheat, and barley (OECD, 2011b), some of which do not fall under the stated exceptions.[22] Upon entry into force of the RTA, Ukraine will have to suppress export taxes on products exported to EFTA countries that are outside the list of exceptions. The agreement allows for situational exceptions in the case of a shortage of foodstuffs or "essential products," domestic stabilization plans, and the GATT XX(j) exception for short supply, but not for the threat of re-export.

2.1.3. Agreements with precious stones and metals exceptions

A third subgroup of four agreements incorporates exceptions for "precious metals and stones." There is no definition of what qualifies a stone or metal as "precious" in the agreement and a universally agreed upon definition does not exist. The CIS, Russia-Ukraine and Ukraine-Belarus RTAs all include this exception, possibly providing cover for Russia and Ukraine's export taxes on minerals such as tungsten, titanium, molybdenum, cobalt, platinum, or palladium (Korinek and Kim, 2009). The South African Development Community (SADC) also provides for this exception. One of SADC's members, Tanzania, maintains export taxes on strategic minerals such as tungsten, titanium, manganese, indium, chromium, cobalt, and antimony (Korinek and Kim, 2009).

2.1.4. Agreements whose only product specific exception is for exhaustible natural resources

The fourth subgroup of RTAs consists of 21 agreements which incorporate only "exhaustible natural resources" (GATT XX(g)) as a specific goods exception. Most of these agreements include the United States, Canada, EC, or EFTA among their signatories. All of the US agreements incorporate GATT Article XX exceptions *in toto* but do not include an Article XI:2(a) style exception for shortages of foodstuffs or essential products. Some agreements in this group allow for phase-out periods for export taxes on sensitive goods, particularly for developing country partners. For instance, the US-Morocco RTA allows Morocco five years to phase out its export tax on unprocessed phosphates and stipulates that the tax during that period may not exceed MAD 34 per ton. Similarly, the EC-CARIFORUM agreement gives Guyana three years to phase out its taxes on precious stones, bauxite, sugar, molasses, and greenheart and gives Suriname three years to eliminate its taxes on wood products. In this way, these agreements allow

22. As regards wheat, barley and maize, a quantitative restriction was in place since 2010 following a drought which affected Ukraine, and this quota was replaced with an export tax on 1 July 2011 (OECD, 2011b, p. 271).

special and differential treatment by according longer phase-out periods for developing partners.

2.1.5. Agreements which impose conditions on use of exceptions

A fifth group of agreements takes an innovative approach to regulating export taxes. NAFTA, Canada-Chile, and Canada-Costa Rica stipulate a general prohibition of export taxes and allow for the exceptions in GATT Article XI:2(a) and Article XX. However, they go further by requiring that countries meet certain conditions if they wish to impose an export tax justified under GATT XI:2(a), GATT XX(g), XX(i), or XX(j) type exceptions. They may only use such an exception to levy a tax if "the Party does not impose a higher price for exports of a good to the other Party than the price charged for such a good when consumed domestically, by means of any measure, such as licenses, fees, taxation, and minimum price requirements" (NAFTA, 1994). Canada's agreements with Chile and Costa Rica use the same language. These three agreements are the only agreements Canada or any of the other parties have made that use such language. This stipulation requires that if a country charges an export tax then it must ensure that the export price charged to the other RTA parties is the same as the price charged domestically. This condition essentially eliminates the parties' ability to use export duties to create a price wedge between the domestic price and the export price. Establishing this condition for using export taxes disciplines the negative impacts of export taxes rather than trying to eliminate their use as a policy instrument altogether. However, the provision does not apply to export prices charged to countries outside of the RTA. While on trade within the RTA the discipline is very effective, export taxes may still create price wedges in trade outside the RTA.

NAFTA in particular goes even farther in precision on its other exceptions. NAFTA's shortage exception clause only applies to Mexico and specifies that no export tax justified under this exception may last more than one year. Moreover, only basic foodstuffs may be subject to export taxes under this exception, and the agreement stipulates a positive list of foodstuff items that may be taxed. The domestic stabilization plan exception applies to all parties but requires that export duties only last as long as necessary for the stabilization plan and may only be applied to foodstuff products. It also lays out a positive list of goods that may be taxed under this provision. Specifying exactly which products can be taxed under the exception and defining time limits are effective ways to clarify ambiguities that exist in other agreements such as the WTO.

2.2 Agreements with only product specific exceptions

A seventh group of RTAs incorporate only product specific (not situational) exceptions into their general elimination of export taxes. These agreements do not have the GATT Article XI and XX exceptions for shortages, domestic stabilization plans, acquisition and distribution of products in short supply, or an exception for the threat of re-export to a third party. For instance, the EC-Albania agreement does not have an exception for export taxes on natural resources but does exempt all agricultural goods in HS Chapters 1-24 from the ban. In addition it exempts essential oils, glues, hides and skins, raw furskins, raw silk, wool and animal hair, raw cotton, carded/combed cotton, raw flax and raw hemp. Similarly, the EC-Turkey agreement allows export taxes on a wide range of agricultural products stipulated in a positive list but does not permit export taxes on exhaustible natural resources. Currently, Turkey imposes export taxes of USD 0.5/kg on raw skins, USD 0.04/kg on unshelled hazelnuts, and USD 0.08/kg on shelled hazelnuts (Kim, 2010). The tax on skins is not permissible in exports to the EC under the agreement. In 2009, 0.7% of the EC's imports from Turkey fell under HS chapters 41-43, which cover raw hides and skins (European Commission, 2010a). There is no evidence, however, that the EC has raised any dispute over Turkey's tax on skins, despite the fact that it seems to be in violation of the agreement.

2.3 Agreements with only situational exceptions

The final group of RTAs includes those with only situational exceptions (not product-specific ones) to their general elimination of export duties. Within the EU, there is a complete ban on export duties on all goods and in almost all situations, except to protect industrial or commercial property, to protect public morals, or to protect human, animal, and plant health and life. The Common Economic Zone (CEZ), a customs union which came into force in 2004 between Russia, Ukraine, Belarus, and Kazakhstan, also claims to institute a complete ban on export duties. But the brevity of this agreement and its vague language may make it challenging to implement and enforce. For instance, in 2008, Russia imposed a 40% export tax on wheat. While initially the tax did not apply to exports destined within the customs union, within a month Russia declared that there was a threat of re-export by other parties to countries outside the CEZ. In the end, Russia levied the tax even on exports within the CEZ, even though the text of the agreement does not provide an exception for the threat of re-export. These breaches of the RTA suggest that implementation and enforcement of the agreement's provisions is challenging.

Also in this group, the Taiwan-Nicaragua agreement eliminates all export taxes except in the case of shortage or a domestic stabilization plan. However, this agreement's shortage clause does not just apply to shortages of foodstuffs or "other products essential to the exporting party" as in the GATT's Article XI but to any good where supply is insufficient for domestic consumption. Taiwan-Nicaragua RTA also requires that any export charges must be published on the internet and that duties imposed must not protect domestic industry, be intended for fiscal purposes, or exceed approximate costs of services rendered.

The Japan-Mexico discipline on export taxes is one of the strongest of the agreements studied. It contains a general ban on the use of export duties like the other agreements, but it permits very few exceptions. There is no exception for shortages of any kind, for domestic stabilization plans, for the conservation of natural resources, or for products in short supply. Moreover, out of the ten general exceptions in GATT XX, the Japan-Mexico RTA only includes four of them, with exceptions for protection of public morals, protection of human, animal, or plant life or health, protection of intellectual property, and restrictions relating to prison labor. The discipline between Japan and Mexico is therefore as strong on export taxes as the corresponding discipline on trade within the European Union. But while the discipline on export taxes in Japan-Mexico is very stringent, the quantitative export restrictions provision allows exceptions on 11 fuel-related products and for shortages of foodstuffs or essential products. Like the EC-Israel agreement, there is a discrepancy between the strength of the taxes and quantitative restrictions disciplines.

In conclusion, in the sample of RTAs studied, less than one-third of the agreements have export taxes provisions that are WTO-equal and the rest are WTO-plus. However, there are widely varying degrees of WTO-plus agreements. Since the WTO does not explicitly discipline export taxes, an agreement qualifies as WTO-plus by merely including some regulation on export taxes. Most RTAs model their export taxes provisions after the WTO provisions for quantitative export restrictions. Agreements follow the GATT formula for QRs by instituting a general ban and incorporating exceptions using provisions in the spirit of GATT XI:2(a)'s shortage of foodstuffs or essential products exception, GATT XX's natural resource exception, GATT XX's domestic stabilization plan exception, or a re-export clause. In addition, some RTAs stipulate exceptions for specific products that may be particularly important to one party's economy such as coffee or hides or exceptions for broad categories like agricultural goods.

The strongest disciplines on export taxes in RTAs are Japan-Mexico, the European Union, EC-Jordan, EFTA, EFTA-Israel, CEFTA, NAFTA, Canada-Costa Rica, and Canada-Chile. These agreements take different approaches to strengthening the WTO disciplines. Japan-Mexico, the European Union, EC-Jordan, EFTA, EFTA-Israel, and CEFTA allow few exceptions to their general prohibition on export taxes. Meanwhile, NAFTA, Canada-Chile and Canada-Costa Rica innovate with respect to practices used in the WTO by requiring that parties meet certain conditions if they want to make use of exceptions to levy export taxes. Some best practices gleaned from the RTAs for designing export taxes disciplines include: specifying time limits for temporary export taxes; stipulating positive lists of products that are considered "basic foodstuffs" or other essential products to which taxes may be applied (as opposed to a negative list) during a shortage or stabilization plan; instituting detailed procedures for requesting use of an exception, in some cases creating a body to regulate and coordinate their use; procedures for collaborating with the other parties to remove taxes when they are no longer justified; and publicly posting existing export charges and fees to increase transparency. The next section will further explore lessons learned from the study of the RTA provisions and their potential implications for strengthening the WTO discipline.

VII. Lessons learned from the study of Export Restrictions in RTAs

As discussed above, export restraint disciplines are generally constructed as a general ban on the measure plus a list of exceptions. This study discerns three approaches in the RTAs that improve this structure and render agreements WTO-plus. First, some RTAs refine the WTO exceptions by making them more transparent, more precise, or limiting their scope. Different practices exist for improving situational and product specific exceptions. Second, some RTAs strengthen the discipline by eliminating some WTO exceptions altogether, although in many RTAs this is coupled with adding new exceptions for certain specific products. Third, three RTAs, Canada-Chile, Canada-Costa Rica, and NAFTA, demand that countries meet certain conditions if they wish to impose an export restriction or tax justified under one of the major WTO exceptions. This approach creates some of the most stringent RTA disciplines.

1. Refining exceptions to the general prohibition of export restrictions

The first approach to refining the WTO exceptions to the general ban on export restrictions adds more transparency or precision. Practices found in RTAs for refining situational exceptions include defining specific time periods for the duration of the restriction; narrowing the scope of exceptions; and instituting procedures for consulting with other parties when implementing a restriction. Since situational exceptions depend on circumstances which make taxes or restrictions necessary, like a shortage, domestic stabilization plan, or (in the case of RTAs) the threat of re-export, these exceptions should be temporary. Often, however, export restrictions outlive the circumstances that necessitated their use. For instance, in Argentina, export taxes were first imposed to raise federal government revenue during the currency crisis of 2002. While some export taxes may have been temporarily justifiable during the crisis, many of the taxes have long outlived their initial purpose now that the situation has stabilized, yet Argentina continues to impose new taxes and increase existing ones.

1.1 Refining situational exceptions

Defining fixed time periods for restrictions or taxes imposed during a shortage or other particular situation is one way that some RTAs have brought greater discipline in their implementation. Among the export taxes provisions studied, NAFTA specifies time limits for its situational exceptions. Under NAFTA, if a party wishes to impose a tax justified by the shortage exception, it can last for a maximum of one year. Taiwan-Nicaragua also imposes a maximum time limit of one year for quantitative export restrictions placed on goods by Nicaragua in the context of situational exceptions like shortages and stabilization plans. The restrictions can be extended beyond one year if Taiwan consents.

Some RTAs include a positive list of products rather than a general situational exception thereby increasing precision of which products may restricted. NAFTA, for example, includes a positive list of products to which some situational exceptions may apply. Its provisions specify that a duty may be imposed on certain basic foodstuffs in the context of a domestic stabilization plan. A positive list of products, with product codes, which may be subject to export taxes is stipulated in the agreement's annex. The use of a positive list of products, rather than a situational exception that is more open to interpretation, implies a sharper, more precise discipline that may reduce future misunderstandings or disputes.

Some other RTAs refine the situational exceptions by limiting their scope. For instance, some RTAs narrow the GATT XI:2(a) exception for "shortages of foodstuffs or other products essential to the exporting contracting party" so that only "shortages of foodstuffs" justify an exception. This makes for a more precise discipline because the phrase "other products essential" is ambiguous. The following RTAs restrict the shortage exception clause to only foodstuffs: EC-Cote d'Ivoire, NAFTA, CARICOM, SADC, EC-CARIFORUM. These agreements include a wide variety of countries in different regions and at different levels of development, which may indicate this type of refinement is amenable to the greater global community.

A third way that RTAs refine the situational exception clauses is by requiring parties to follow a certain procedure in requesting to use them. The procedures incite parties to consult with other RTA members to determine whether conditions justify the use of an export restriction and to cooperate in removing restrictions as circumstances change. Some EC agreements stipulate that before a member imposes a quantitative export restriction in the context of a stipulated exceptional situation, the member must apply to the RTA's governing committee and allow 30 days for a solution to be reached through the committee that is acceptable to all parties.[23] The member is obliged to select export restriction measures which are least disruptive to trade within the RTA. If 30 days pass with no solution through the committee, the member may implement necessary measures. If there are "exceptional and critical circumstances requiring immediate action prior to information or examination" the member may apply precautionary measures on exports necessary to deal with the situation before going to the committee. However, it must

[23]. This includes EC's agreements with Bosnia, Croatia, Chile, Cote d'Ivoire, Macedonia, Israel, Jordan, and Lebanon.

immediately inform the other RTA parties. Any export restrictive measures that are imposed under the shortage or re-export exceptions are subject to periodic consultation between the parties within the RTA's governing committee with a view to "establishing a timetable for their elimination as soon as circumstances permit."

Creating procedures such as those detailed above for applying restrictions justified by situational exceptions creates more transparency and communication among RTA members. It also helps parties hold one another accountable for their use of quantitative export restrictions. The procedure requires that parties explain how the exceptional situation justifies their export restrictions and uses periodic review of restrictions to ensure that temporary measures do not outlive the circumstances that precipitated them.

The ability of signatories of an RTA to implement and comply with these kinds of procedures, however, assumes a high level of institutional capacity. A functioning governing body, which itself requires expertise, funding, and logistical support, is needed to organize and monitor the procedures for applying to use export restrictions and for consulting with RTA members. Not every RTA has achieved the level of institutional development necessary to make such procedures effective.

1.2 Refining product specific exceptions

RTAs use different strategies to refine exceptions for specific goods. These practices include phase out periods for sensitive goods; stipulating positive lists of exempt goods with product classification codes rather than exempting broad or vague categories of goods; and transparency measures to make information about existing taxes or restrictions more accessible. First, some agreements allow members extra time to phase out the use of export taxes or restrictions on key products. This practice helps developing countries in particular adjust to the complete elimination of export restraints. These measures can be regarded as special and differential treatment (SDT). There are many examples of this type of SDT. In EC-CARIFORUM, Guyana is granted three extra years to phase out taxes on the export of precious stones, bauxite, unrefined cane sugar, aquarium fish, molasses, and greenheart. The US-Morocco agreement contains a very precise clause stipulating a maximum tax during the phase out period, allowing Morocco to maintain an export duty of up to MAD 34/kg on unprocessed phosphates.

A second way to improve specific goods exceptions is by clearly specifying positive lists of exempt products with classification codes rather than broad categories of goods. Some RTAs, for example, include broad exceptions to the general ban on export taxes for "precious and strategic metals and precious and semi-precious stones." In such cases, definitions of key terms like "precious" or "strategic" could be provided or a list of specific products stipulated.

A third example of refinement in product-specific exceptions is specification of a maximum level of a tax or QR. In MERCOSUR-Bolivia, product codes are listed for goods which are excluded from the ban on new export taxes for both Argentina and Brazil and both lists specify the maximum export tax that can be charged on each good. Including the product codes of exempted goods along with maximum export charges increases the precision and transparency of the agreements' exceptions.

However, in the MERCOSUR-Peru agreement, this best practice is taken to the extreme. The agreement includes a 354-page list of thousands of product codes for items which are exempt for the general ban on new taxes with the maximum export tax rate that

Argentina is permitted to levy. The list includes products from live eagles to ballpoint pens. Taken to this degree, this generally good practice loses its efficacy.

A more general way to improve specific goods exceptions is through transparency measures. Agreements such as Canada-Peru, Taiwan-Nicaragua, China-Chile, China-New Zealand, China-Peru, and China-Pakistan include a clause which requires that a list of administrative fees and charges imposed on or in connection with exportation be posted on the internet. According to GATT Article VIII on Administrative Fees and Formalities, export taxes are not technically considered an administrative fee or charge, but transparency is gained from publishing a list of export charges. Requiring RTA parties to publish export charges on the internet injects more transparency and accountability into trade within the agreement. This kind of transparency measure would be even more effective if applied to export taxes and quantitative restrictions as well as administrative fees and charges on exports.[24]

2. Fewer exceptions to general prohibitions of export restrictions or taxes

A second approach taken by the RTAs to strengthening the GATT formula is to eliminate some of the key exceptions to the general ban on export restrictions. These exceptions include GATT XI:2(a) for shortages of foodstuffs and other essential products, XX(g) for exhaustible natural resources, XX(i) for domestic stabilization plans in which the price of materials necessary to domestic processing industries is held below world prices, and XX(j) for restrictions necessary to ensure acquisition or distribution of products in general or local short supply. Thirty-nine of the 76 RTAs which have some language on export taxes or restrictions eliminate at least one of these exceptions. Of those 39, 32 agreements eliminate GATT XX(j), indicating that this exception may be the most easily dispensable. Twenty-nine agreements eliminate exception XX(i) for domestic stabilization plans. Only 19 RTAs eliminate exception XI:2(a) for shortages, and another 18 eliminate the exception for exhaustible natural resources. The chart in Appendix V shows the breakdown of which agreements eliminate which exceptions. While many RTAs eliminate at least one WTO exception, many add more product specific exceptions at the same time. In some cases, if the added exceptions are significant enough, this can render the agreement WTO-minus. There seems to be a trade-off in some RTAs between including a very strong discipline with a long list of exceptions or, on the other hand, a weaker discipline with fewer exceptions.

3. Imposing conditions on use of exceptions to general prohibition of export restrictions or taxes

A third approach to strengthening the WTO discipline on export restrictions and taxes is to stipulate that parties meet certain conditions if they implement a restriction justified under one of the key exceptions. Only three agreements, all involving Canada, take this approach, Canada-Chile (1997), Canada-Costa Rica (2002), and NAFTA (1994). However, Canada's most recent RTAs—such as Canada-Peru (2009), Canada-Jordan (2009), and Canada-Panama (2010)—no longer use this approach in designing disciplines.

[24]. Some transparency mechanisms used in RTAs for other measures could be considered to promote the visibility and accountability of export restrictions. An overview of transparency measures in RTAs, concentrating on provisions of behind-the-border measures, is included in OECD's *Multilateralising Regionalism: Strengthening Transparency Disciplines in Trade,* forthcoming.

This strategy creates a strong discipline on export controls by requiring an RTA member to meet conditions outlined in the agreement if it wishes to use a restriction such as GATT XI:2(a) or GATT XX(g, i, j). In all three agreements, imposition of the restriction must not reduce the total proportion of export shipments made available to the RTA parties that the exporting country usually supplies, as compared to the previous 36 months. Moreover, the restriction must not disrupt normal channels of supply or normal proportions of specific goods supplied to the other RTA parties. The exporting party is thus responsible for implementing the restriction in such a way as to continue providing similar proportions of total supply to the RTA members as in the past. These conditions ensure that if one member imposes export restrictions they will not negatively affect the share of other RTA parties' imported supplies. Requiring that countries continue to supply the same proportion of export shipments if they want to use an export restriction mitigates the negative effects of restrictions on importers, rather than forbidding the use of restrictions completely.

Regarding export taxes, these agreements also require that parties meet conditions for taking advantage of exceptions to the general ban. In this case, the export tax must not impose a higher price for the good when exported to RTA members than the price charged when the good is consumed domestically. It seems unlikely that this condition could be met unless the country levied domestic tax of equal magnitude on the product in question simultaneously. Essentially, this condition eliminates the price wedge usually caused by an export tax between the domestic price and the export price when destined for countries within the RTA. All three agreements note that this condition does not apply to quantitative export restrictions where a higher price may result from restricting the volume of exports.

This third approach is particularly noteworthy because it disciplines the negative effects of export taxes and restrictions on importing countries. Rather than completely eliminating export controls as a policy option, it protects importers within the RTA from changes in proportion of supply they obtain from the exporting party or from higher prices.

VIII. Conclusions

Regional trade agreements offer the possibility of developing trade disciplines beyond WTO provisions and innovating in less developed policy areas like export taxes and restrictions. A number of different approaches to disciplining these policy instruments have been used in the 93 agreements surveyed.

Fifteen of the RTAs that include quantitative export restrictions disciplines are stronger than those found in the WTO, i.e. are WTO-plus, while 22 agreements are WTO-minus. The agreements with WTO-minus provisions allow export restrictions on products that are not allowed under WTO disciplines. There is a marked tendency toward WTO-plus provisions in more recently concluded RTAs: many of the WTO-plus RTAs were concluded more recently than the RTAs that are categorized here as WTO-minus.

Analysis of the RTAs' export restraints disciplines in comparison to those in the WTO suggests they have used a number of strategies for strengthening disciplines. These can be summarized as follows.

- Introducing greater precision in the definition of products on which export restrictions and taxes can be placed, or on the time they are allowed to be applied.

- Elimination of some exceptions to the general ban on export restrictions, or limiting the scope of ambiguous situational exceptions.

- Applying conditions on the use of exceptions in order that export restrictions and taxes do not endanger existing supply chains.

- Inducing greater transparency and accountability about measures that are to be put into place.

- Defining procedures for consultation with affected parties before implementation of quantitative restrictions and taxes.

Some RTAs allow existing restrictions that are in place but do not allow new ones, nor do they permit an increase in existing levels of export taxes. This is a potentially significant way of disciplining export restraints in the longer term as situations change and restrictions on a given product are no longer desirable to the exporting country.

Some of the exceptions clauses in the WTO include vague language. Disciplines could be strengthened by clarifying and defining some of the terms used. Sharma (2011) suggests a long list of terms that are used in the WTO, and in many RTAs, that could be clarified such as defining “foodstuffs,” defining a “critical” shortage of foodstuffs, defining “preventing” or “relieving” the critical shortage of foodstuffs, etc. One important step toward making export restrictions disciplines “tighter” would be to make the WTO exception for “exhaustible natural resources” more precise by defining exactly what qualifies as a good in this category. It may even be possible to agree upon a list of products that are considered “exhaustible natural resources.”

Some RTAs increase transparency and improve communication among their members by instituting procedures or mandating institutions to oversee implementation of export restrictions. Requiring RTA parties to publish export charges on the internet and to inform RTA partners in advance of their application improves transparency and predictability. Some RTAs institute procedures in the case that a member wishes to impose an export restriction. Signatories that are in an exceptional situation where imposition of an export restriction may be imminent must consult with other RTA members to determine whether conditions justify the use of an export restriction and to cooperate in removing restrictions as circumstances change. Some agreements establish procedures in which the RTA’s governing committee takes a significant role.

Many RTAs include provisions for special and differential treatment in the area of export restrictions. Practices like phase out periods for removing export taxes or reforming licensing regimes for developing country partners are some examples. This may provide a precedent for use of SDT in strengthening export restriction disciplines more widely. Allowing developing and least developed country partners to implement stronger disciplines gradually is important so that new disciplines do not disproportionately disrupt developing countries’ policy balance. Indeed, special and differential treatment for least-developing and developing countries was identified as a priority in the negotiating positions of the EC, the Cairns Group, and the US in the area of export taxes during the Doha Round.

Finally, one of the most singular approaches found in the context of RTAs is to impose conditions on the use of exceptions so that when export restrictions or taxes are implemented they do not negatively affect other RTA members. This kind of discipline attempts to mitigate the negative impacts of export restrictions on importers rather than strengthening the ban on the use of export restrictions as a policy instrument altogether. However, as with all disciplines in the agreements examined, these conditions for using the exceptions only apply to trade between members of the RTA, not to outside countries.

It is interesting to note that none of the 93 RTAs examined removed quantitative export restrictions completely. It would be possible to institute an export tax that has the same effect as a quantitative restriction in terms of reducing exports, but would create more government revenue and is permitted within the WTO. There are examples in the RTAs examined where export taxes are allowed on a wider range of products than quantitative export restrictions. This could be used as a regulatory tool in order to favour the use of export taxes in situations where export restraint is desirable, rather than quantitative export restrictions. It seems however that there is no impetus for quantifying existing restrictions by replacing quotas with taxes and potentially negotiating ceilings for those export taxes within the RTAs under study. Some proposals for such disciplines as a tax-rate quota system and a variable export tax scheme can be found in the policy literature (for example Sharma, 2011).

More recently concluded RTAs are paying increasing attention to the issue as export controls, especially export taxes, become a more widely used policy tool (Kim, 2010). Perhaps future RTAs will build on the work of the WTO-plus agreements found in this study to innovate on the use of substantive disciplines on export restrictions and taxes.

One of the questions that remain unanswered after examination of export restrictions provisions in the 93 RTAs selected for this study is why some parties sign different commitments with different partners, imposing the inclusion of exceptions in some cases and not in others. This is particularly true in the case of some WTO-minus and WTO-equal agreements. The reasons for this are probably partly found in the domain of political economy. The political economy of export restrictions is a complex topic. In the case of foodstuffs, governments may not want to "tie their hands" with stringent export restrictions provisions in case of price hikes and/or supply shortfalls in thin markets. If prices rise, however, and major agricultural producers of basic commodities restrict their exports, world price increases will be exacerbated and net food importing countries' welfare will be severely diminished. A commonly held view of the impact of export restrictions during the rise in agricultural prices during 2008-9 is that they diminished global welfare. In the case of some natural resources such as those coming from the extractive industries, resource-rich governments may come under pressure from downstream industries to protect them indirectly by restricting exports of primary products, or they may try to foster investment in higher value added products rather than exporting raw materials. These are important concerns for the viability of future discussions on export restrictions and, although outside the scope of this study, such future work would provide needed input into this research area.

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Appendix I.

Regional Trade Agreements Included in the Sample

Total: 93

Africa

African Economic Community – 1991 (Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic , Comoros, Congo, Cote d'Ivoire, Djibouti, Egypt, Ethiopia, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sahrawi, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Chad, Togo, Tunisia, Uganda, Zaire, Zambia, Zimbabwe)
ECOWAS - 1993 (Benin; Burkina Faso; Cape Verde; Côte d'Ivoire; Gambia; Ghana; Guinea; Guinea Bissau; Liberia; Mali; Niger; Nigeria; Senegal; Sierra Leone; Togo)
COMESA - 1994 (Angola, Burundi, Comoros, Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe)
SADC - 2000 (Angola, Botswana, Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe)
SACU - 2004 (Botswana, Lesotho, Namibia, South Africa, Swaziland)

Asia, Pacific

PATCRA - 1977 (Australia, Papua New Guinea)
SPARTECA - 1982 (Australia, Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Western Samoa)
ANZCERTA - 1983 (Australia, New Zealand)
ASEAN - 1992 (Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand)
Thailand- India - 2003
India- ASEAN – 2004
Australia – Thailand – 2005
India-Singapore – 2005
New Zealand – Thailand - 2005
India-Bangladesh - 2006
India-Chile - 2007
India-Korea - 2009

China

Chile - 1997
ASEAN – 2003
Hong Kong - 2004
Pakistan - 2007
New Zealand - 2008
Singapore - 2009
Peru - 2010

Japan

India – 1958 (an updated agreement is under negotiation)
Mexico - 2005
Chile - 2007
Indonesia - 2008
Switzerland - 2009
Viet Nam - 2009

Eastern Europe-Central Asia

Commonwealth of Independent States - 1994 (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Ukraine, Uzbekistan)
Common Economic Zone - 2004 (Russia, Belarus, Ukraine, Kazakhstan)
Russia – Ukraine – 1994
Belarus-Ukraine – 2006
CEFTA 2006 (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Serbia, UNMIK/Kosovo)

European Communities

EU Convention – 2010 treaty update
Turkey – 1996
Israel – 2000
Morocco - 2000
Mexico - 2000
South Africa - 2000
FYROM - 2001
Croatia – 2002
Jordan - 2002
Chile – 2003
Lebanon – 2003
Albania - 2006
Bosnia – 2008
CARIFORUM - 2008
Montenegro - 2008
Cote d'Ivoire – 2009

European Free Trade Area - 2001 consolidated convention (Norway, Switzerland, Lichtenstein, Iceland):

Israel – 1993
Morocco – 1999
Mexico – 2000
FYROM - 2001
Jordan - 2002
Singapore – 2003
Chile – 2004
Tunisia - 2005
Korea – 2006
SACU – 2006
Egypt - 2007
Colombia - 2008
Canada - 2009
Ukraine - 2010

Canada

NAFTA - 1994 (US, Canada, Mexico)
Chile - 1997
Israel - 1997
Costa Rica - 2002
Peru - 2009
EFTA - 2009

United States

Israel – 1985
NAFTA - 1994 (US, Canada, Mexico)
Jordan - 2001
Chile - 2004
Morocco - 2004
Singapore - 2004
Australia - 2005
CAFTA (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua) -Dominican Republic - 2005
Bahrain – 2006
Peru - 2006
Colombia - 2007
Korea - 2007
Panama - 2007
Oman -2009

Latin America

CACM - 1961 (El Salvador, Guatemala, Honduras, Nicaragua)
CARICOM – 1973, Revised treaty in 1999 (Antigua, Barbados, Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent, Suriname, Trinidad and Tobago)
MERCOSUR - 1991 (Argentina, Brazil, Paraguay, Uruguay)
MERCOSUR – Bolivia - 1997
Andean Community - 2003 (Bolivia, Colombia, Ecuador, Peru, Venezuela)
MECOSUR – Chile – 2004
MERCOSUR – Peru - 2005
Taiwan-Nicaragua - 2006
MERCOSUR – India - 2009

Appendix II.

Comparison between RTA and WTO Disciplines[1]

Agreement	Export taxes	Quantitative export restrictions
ASEAN	=	-
African Economic Community	=	-
Andean Community	=	NA
ANZCERTA	=	=
ASEAN-China	=	NA
Australia-Thailand	=	=
Belarus-Ukraine	+	-
CACM	=	NA
Canada-Chile	+	+
Canada-Costa Rica	+	+
Canada-Israel	+	-
Canada-Peru	+	=
CARICOM	+	-
CEFTA 2006	+	+
China Pakistan	+	NA
China-Chile	+	NA
China-Hong Kong	=	NA
China-New Zealand	+	=
China-Peru	+	=
China-Singapore	=	=
CIS	+	-
COMESA	=	NA
Common Economic Zone	+	+
EC- Jordan	+	NA
EC- South Africa	+	+
EC-Albania	+	=
EC-Bosnia	+	=
EC-CARIFORUM	+	+
EC-Cote d'Ivoire	+	+
EC-Croatia	+	=
EC-FYROM	+	=
EC-Israel	+	+
EC-Lebanon	+	+
EC-Mexico	+	-
EC-Montenegro	+	=

Agreement	Export taxes	Quantitative export restrictions
EC-Morocco	=	NA
EC-Turkey	+	=
ECOWAS	=	NA
EFTA Convention	+	+
EFTA-Canada	+	=
EFTA-Chile	+	+
EFTA-Colombia	+	-
EFTA-Egypt	+	+
EFTA-FYROM	+	=
EFTA-Israel	+	+
EFTA-Jordan	+	=
EFTA-Korea	+	=
EFTA-Mexico	+	-
EFTA-Morocco	+	=
EFTA-SACU	+	-
EFTA-Singapore	+	=
EFTA-Tunisia	+	=
EFTA-Ukraine	+	-
India-ASEAN	=	NA
India-Bangladesh	=	NA
India-Chile	=	=
India-Korea	=	=
India-Singapore	=	=
Japan - Switzerland	+	=
Japan- Viet Nam	=	=
Japan-Chile	+	=
Japan-Indonesia	=	=
Japan-Mexico	+	-
Japan-Thailand	=	=
MERCOSUR	=	=
MERCOSUR – Bolivia	+	-
MERCOSUR – Chile	+	-
MERCOSUR – India	=	NA
MERCOSUR – Peru	+	-
NAFTA	+	+
New Zealand – Thailand	=	+
PATCRA	+	=
Russia-Ukraine	+	-
SACU	=	-
SADC	+	-
SPARTECA	=	NA
Taiwan-Nicaragua	+	-
Thailand-India	=	NA
Treaty on the EU	+	+
US- Singapore	+	=
US-Australia	+	-
US-Bahrain	+	=

Agreement	Export taxes	Quantitative export restrictions
US-CAFTA-DR	+	-
US-Chile	+	=
US-Colombia	+	-
US-Israel	=	-
US-Jordan	=	NA
US-Korea	+	=
US-Morocco	+	=
US-Oman	+	=
US-Panama	+	=
US-Peru	+	=

1. Note that an equal (=) sign suggests the agreement is WTO-equal with regard to export taxes or quantitative restrictions, a minus (-) sign implies the agreement is WTO-minus and a plus (+) indicates the agreement is WTO-plus. A WTO-equal RTA is an agreement that neither improves upon nor regresses from the WTO disciplines. A WTO-minus RTA allows export restrictions where the WTO does not. A WTO-plus RTA forbids export restrictions where the WTO allows them. NA indicates that the agreement does not contain any language on quantitative export restrictions.

Appendix III.

Quantitative Export Restrictions Provisions

No Language on Export QRs

US-Jordan
EC-Jordan
CACM
SPARTECA
MERCOSUR
EC-Morocco
Andean Community
COMESA
ECOWAS
India –Japan (*new agreement forthcoming*)
India-Bangladesh
Thailand-India
China-Chile
China-Pakistan
China-Hong Kong
ASEAN
ASEAN-China
ASEAN-India

WTO MINUS

	Specific Goods Exceptions	Situational Exceptions				
Agreement	**Quantitative Export Restrictions permitted on:**	**Exhaustible Natural Resources**	**Shortage foodstuffs or essential products GATT XI:2(a)**	**Domestic Stabilization Plan GATT XX(i)**	**Re-export**	**GATT XX(j)**
Multi-Sector Product Specific Exceptions						
US-CAFTA-DR	- US:logs - Costa Rica: coffee, ethanol and crude rums, minimum export price on bananas - Guatemala: coffee - Nicaragua: beans, brown sugar, chicken meat, coffee, corn, corn flour, tortillas, powdered milk, rice, salt, vegetable oil (restrictions can last up to 1 year)	Yes	No	Yes	No	Yes
US-Colombia	- US: logs - Colombia: coffee	Yes	No	Yes	No	Yes
US-Australia	- US: logs - Australia: woodchips and processed forest products.	Yes	Yes	Yes	No	Yes
MERCOSUR-Bolivia	- Paraguay: obligatory processing of raw petit grain before export (“Obligatoriedad de la industrialización de la esencia del petit grain cruda para su exportación Ley Nº 268/71”) - Uruguay: state monopoly on export of fuels	Yes	Yes	Yes	No	Yes
MERCOSUR-Chile	- Paraguay: obligatory processing of raw petit grain before export (“Obligatoriedad de la industrialización de la esencia del petit grain cruda para su exportación Ley Nº 268/71”) - Uruguay: state monopoly on export of fuels	No	No	No	No	Yes
EFTA-Colombia	- Colombia: coffee	Yes	Yes	Yes	No	Yes
EFTA-Ukraine	- Ukraine: mannitol, essential oils, lamb meat, fox, raw furskins, cotton carded/combed, casein glues, albuminates, dextrins, modified starches, industrial monocarboxylic fatty acids, swine, goats	Yes	Yes	Yes	No	Yes
CARICOM	- Conference of Member States fixes export price for copra, raw oil, and refined edible oil annually - A member state can only liberalize its exports of copra destined outside of the Community to up to 10% of its production. Any liberalization must be notified to the Secretariat. - Conference of Member States determines states’ surpluses of oils and fats allocates surpluses to deficit members - “oils and fats” = coconut including seeds and copra, cottonseed, oils and fats derived from coconut, copra, or cottonseed	Yes	Yes-foodstuffs only	No	Yes	No

Taiwan-Nicaragua	- Nicaragua: bovine leather, basic foodstuffs (poultry, powder milk, beans, coffee beans, rice, cornmeal, vegetable oil, sugar, corn tortillas, refined salt) - Nicaragua can impose an export QR on the above goods for up to 1 year unless Taiwan agrees to an extension - Taiwan: salmon and trout (various types), weapons, mushrooms containing narcotics	Yes	Yes-applies to all goods, not only foodstuffs or essential products	Yes	No	Yes
Canada-Israel	-Canada: unprocessed fish, logs - Israel: controls on the export of metal waste and scrap	Yes	Yes	Yes	Yes	Yes
EFTA-Canada	- Canada: logs, unprocessed fish	Yes	Yes	Yes	No	Yes
Canada-Peru	- Canada exceptions: logs, unprocessed fish	Yes	Yes	Yes	Yes	Yes
Fuel-related product exceptions						
EFTA-Mexico	- Mexico may restrict export licenses for the sole purpose of reserving foreign trade to itself in: aromatic hydrocarbon mixtures, rubber extended oils, petroleum oils, aviation and motor fuel stocks, petroleum gases, paraffin wax, not calcined petroleum coke, petroleum bitumen, bitumen and asphalt natural, ethane, butane, pentanes, hexanes, heptanes	Yes	Yes	Yes	Yes	Yes
EC-Mexico	- Mexico may restrict export licenses for the sole purpose of reserving foreign trade to itself in: aromatic hydrocarbon mixtures, rubber extended oils, petroleum oils, aviation and motor fuel stocks, petroleum gases, paraffin wax, not calcined petroleum coke, petroleum bitumen, bitumen and asphalt natural, ethane, butane, pentanes, hexanes, heptanes	Yes	Yes	Yes	Yes	No
Japan-Mexico	- Mexico may restrict exports on petroleum oils (crude and other than crude) other aromatic hydrocarbons, petroleum gases and gaseous hydrocarbons, petroleum bitumen, bitumen and asphalt (HS 2707.50, 2707.99, 2709.00, 27.10, 27.11, 2712.90, 2713.11, 2713.20, 2713.90, 27.14, 2901.10)	No	Yes	No	No	No

Precious Metals and Stones Exceptions						
SADC	- transfer of precious and semi-precious stones, including precious and strategic metals - measures necessary to prohibit or control the exportation of second-hand goods	Yes	Yes – on foodstuffs only	No	Yes	No
African Economic Community	- measures for protection of infant industries - "export of strategic minerals and precious stones" - measures for "the control of strategic products"	No	No	No	No	No
Russia-Ukraine	- exception for "other precious metals and stones" - new quantitative restrictions may be introduced subject to mutual agreement of both parties	No	Yes – on any good if there is, "acute deficit of this product in the domestic market, until the market situation is stabilized"	No	Yes	No
Belarus-Ukraine	- exception for precious metals and stones - "In order to pursue a concerted policy of export control with regard to third countries, the Parties shall hold regular consultations and take conciliated measures for the development of an effective system of export control."	No	Yes – on any good if there is an "acute shortage of commodities on the domestic market (before the stabilization of the situation on the market)"	No	Yes	No
Commonwealth of Independent States	- exceptions for "other precious metals or stones"	Yes	No	Yes	Yes	No
Other WTO Minus Provisions						
SACU	- the Council of Ministers, which manages SACU, has authority to restrict or prohibit exportation on basis of economic, social, cultural, or other reasons - provisions of agreement will not supersede any law within the customs area which prohibits or restricts the exportation of goods	Yes	No	Yes	Yes	Yes
US-Israel	- only bans new quantitative restrictions, does not eliminate existing QRs	Yes	No	Yes	No	Yes

WTO EQUAL

Agreement	Specific Goods Exceptions		Situational Exceptions			
	Quantitative Export Restrictions Permitted on:	Exhaustible Natural Resources GATT XX(g)	Shortage foodstuffs or essential products	Domestic Stabilization Plan GATT XX(i)	Re-export	GATT XX(j)
US-Peru	- US: logs	Yes	Yes	Yes	No	Yes
US-Chile	- US: logs	Yes	Yes	Yes	No	Yes
US-Morocco	- US: logs	Yes	Yes	Yes	No	Yes
US-Korea	- US: logs	Yes	Yes	Yes	No	Yes
US-Singapore	- US: logs	Yes	Yes	Yes	No	Yes
US-Bahrain	- US: logs	Yes	Yes	Yes	No	Yes
US-Oman	- US: logs	Yes	Yes	Yes	No	Yes
US-Panama	- US: logs	Yes	Yes	Yes	No	Yes
EC-Chile		Yes	Yes	Yes	Yes	Yes
EC-Albania		No	No	No	No	No
EC-Bosnia		No	Yes	No	No	No
EC-Croatia		No	Yes	No	Yes	No
EC-FYROM		No	Yes	No	Yes	No
EC-Montenegro		No	Yes	No	Yes	No
EC-Turkey		No	No	No	No	No
EFTA-FYROM		Yes	Yes	No	Yes	No
EFTA-Jordan		Yes	Yes	No	Yes	No
EFTA-Singapore		Yes	Yes	Yes	No	Yes
EFTA-SACU		Yes	Yes	Yes	No	Yes
EFTA-Tunisia		Yes	Yes	No	Yes	No
EFTA-Korea		Yes	No	Yes	No	Yes
EFTA-Morocco		Yes	No	No	Yes	No
MERCOSUR-Peru		Yes	Yes	Yes		Yes
MERCOSUR-India		Yes	Yes	Yes	No	Yes
Thailand-Australia		Yes	Yes	Yes	No	Yes
ANZCERTA		Yes	Yes	No	Yes	No
Japan-Thailand		Yes	Yes	Yes	No	Yes
India-Chile		Yes	Yes	Yes	No	Yes

	Specific Goods Exceptions		Situational Exceptions			
Agreement	Quantitative Export Restrictions Permitted on:	Exhaustible Natural Resources GATT XX(g)	Shortage foodstuffs or essential products	Domestic Stabilization Plan GATT XX(i)	Re-export	GATT XX(j)
India-Korea		Yes	Yes	Yes	No	Yes
India-Singapore		Yes	Yes	Yes	No	Yes
China-New Zealand		Yes	Yes	Yes	No	Yes
China-Peru		Yes	Yes	Yes	No	Yes
China-Singapore		Yes	Yes	Yes	No	Yes
Japan-Chile		Yes	Yes	Yes	No	Yes
Japan-Viet Nam		Yes	Yes	Yes	No	Yes
Japan-Switzerland		Yes	Yes	Yes	No	Yes
Japan-Indonesia		Yes	Yes	Yes	No	Yes
PATCRA		Yes	Yes	No	No	No

WTO PLUS

Agreement	Specific Goods Exceptions		Situational Exceptions			
	Exhaustible Natural Resources	**Other Exceptions**	**Shortage foodstuffs or essential products GATT XI:2(a)**	**Domestic Stabilization Plan GATT XX(i)**	**Re-export**	**GATT XX(j)**
Conditions Imposed on Use of Exception Clauses						
Canada-Chile	Yes – can use exception with conditions	**Conditions for Use of GATT XI: 2(a), XX(g, i, j) Exceptions:** Can impose QRs on the condition that: (1) the QR does not reduce proportion of total export shipments made available to other party relative to total supply of the good of the party maintaining the QR as compared to previous 36 months; (2) the QR does not require disruption of normal channels of supply or normal proportions of specific goods supplied to the other party. **Specific Goods Exceptions** - Canada: unprocessed fish, logs - Chile: has the right not to apply the Article eliminating export QRs to copper and other reserves for national industry and authorized entities	Yes - can use exception with conditions	Yes - can use exception with conditions	Yes	Yes - can use exception with conditions
Canada-Costa Rica	Yes – can use exception with conditions	**Conditions for Use of GATT XI: 2(a), XX(g, i, j) Exceptions:** Can only impose QRs on the condition that: (1) the QR does not reduce proportion of total export shipments made available to other party relative to total supply of the good of the party maintaining the QR as compared to previous 36 months; (2) the QR does not require disruption of normal channels of supply or normal proportions of specific goods supplied to the other party. **Specific Goods Exceptions** - Canada: unprocessed fish, logs - Costa Rica: wood in logs or boards from forests, hydrocarbons, coffee, etilic alcohol, crude rums	Yes - can use exception with conditions	Yes - can use exception with conditions	Yes	Yes - can use exception with conditions

Agreement	Specific Goods Exceptions		Situational Exceptions			
	Exhaustible Natural Resources	**Other Exceptions**	**Shortage foodstuffs or essential products GATT XI:2(a)**	**Domestic Stabilization Plan GATT XX(i)**	**Re-export**	**GATT XX(j)**
NAFTA	Yes – can use exception with conditions	**Conditions of Use of GATT XI:2a or XX:(g, i, j) Exceptions:** Can only impose QRs covered under these exceptions on the condition that: (1) the QR does not reduce proportion of total export shipments made available to other party relative to total supply of the good of the party maintaining the QR as compared to previous 36 months; (2) the QR does not require disruption of normal channels of supply or normal proportions of specific goods supplied to the other party. **Specific Goods Exceptions** - Canada: unprocessed fish, logs - US: logs - Mexico: logs, "export permit measures applied to goods for exportation to another Party that are subject to quantitative restrictions or tariff rate quotas by that other Party"	Yes – can use exception with conditions	Yes- can use with conditions	Yes	Yes - can use exception with conditions
Fewer Exceptions to General Prohibition of Export QRs than WTO						
	Exhaustible Natural Resources	Other Exceptions	Shortage foodstuffs or essential products GATT XI:2(a)	Domestic Stabilization Plan GATT XX(i)	Re-export	GATT XX(j)
EFTA Convention	No	- Some agricultural goods are exempted from general prohibition of export QRs	No	No	No	No
EFTA-Egypt	Yes	-positive list of products covered, ban applies to HS chapters 1-97 with very few exceptions for unprocessed agricultural goods	Yes	No	Yes	No
EC-South Africa	No	None	No	No	No	No
EC-CARIFORUM	Yes	- CARIFORUM: when provisions of the EPA lead to problems with availability or access to foodstuffs or other products essential to food security, CARIFORUM can take appropriate measures	Yes- food security only	Yes	No	No
EC-Cote d'Ivoire	Yes	None	Yes-for food security only	No	No	No
CEFTA-2006	Yes	None	No	No	No	No
EFTA-Israel	No	None	No	No	Yes	No
EU Convention	No	None	No	No	No	No
EC-Israel	No	None	Yes	Yes	No	No
EC -Lebanon	Yes	None	Yes	No	Yes	No
EFTA-Chile	Yes	None	No	Yes	No	Yes
Thailand-New Zealand	Yes	None	Yes	No	No	No

Appendix IV.

Export Taxes Provisions

WTO EQUAL: The agreement does not have a discipline on export taxes.

ASEAN
ANZCERTA
CACM
SPARTECA
MERCOSUR
MERCOSUR – India
COMESA
ECOWAS
Australia-Thailand
New Zealand – Thailand
Thailand-India
India-ASEAN
India-Bangladesh
India-Chile
India-Korea
India-Singapore
US-Jordan
EC-Morocco
Andean Community
SACU
African Economic Community
ASEAN-China
China-Singapore
China-Hong Kong
Japan- Viet Nam
Japan-Indonesia
Japan-Thailand

WTO PLUS

Agreement	Specific Goods Exceptions		Situational Exceptions			
	Exhaustible Natural Resources (GATT XX)	Other Specific Goods Exceptions	Shortage foodstuffs or essential products GATT XI:2(a)	Domestic Stabilization Plan GATT XX(i)	Re-export	GATT XX(j)
Maintains Existing Export Duties and Prohibits New Export Duties or Increases on Existing Duties						
EC-Cote d'Ivoire	Yes	If Cote d'Ivoire can justify need for income, infant industry protection, or environmental protection can put temporary duties on limited # of traditional goods after consulting with EC	Yes- food security only	No	No	No
MERCOSUR – Chile	Yes	-Argentina: can increase up to 3.5% tax on soya beans, ground nuts, linseed, rape or colza seeds, sunflower seeds, other oil seeds; up to 15% tax on 13 types bovine or equine raw hides, 8 types of tanned or crust skins of bovine or equine -Uruguay: leathers - incorporates GATT XX	No	No	No	Yes
MERCOSUR – Peru	Yes	- Argentina: 354 pages of products with potential export taxes up to 40% on some products - incorporates GATT XX	Yes	Yes	No	Yes
MERCOSUR – Bolivia	Yes	- Argentina: up to 3.5% tax on soya beans, ground nuts, linseed, rape or colza seeds, sunflower seeds, other oil seeds; up to 15% tax on 13 types bovine or equine raw hides, 8 types of tanned or crust skins of bovine or equine - Brazil: will lower all export taxes to 0% except 25% export tax within the RTA on sugared alcohols; up to 40% tax on inverted honey, inverted sugars, cane molasses, other molasses, ethyl alcohol; up to 9% on bovine or equine skins and hides, sheep skins and hides -Uruguay: leathers - incorporates GATT Article XX	Yes	Yes	No	Yes
EC- South Africa	No	None	No	No	No	No
US-Israel	Yes	- forbids new export taxes	No	Yes	No	No
PATCRA	Yes	*Grants MFN status on export duties * Situational exceptions for: bordering states, preferences granted by other RTAs, preferences granted to developing countries, international commodity agreements	Yes	No	No	No

General Elimination of Export Taxes with Both Specific Goods and Situational Exceptions						
Agricultural Goods Exceptions						
EC-Bosnia	No	- agricultural goods (elimination of export duties only on industrial goods) - Annex I, GATT Agreement on Agriculture goods (mannitol, sorbitol, essential oils, albuminoidal substances, modified starches, glues, finishing agents, hides and skins, raw furskins, raw silk and silk waste, wool and animal hair, raw cotton and waste, cotton carded or combed, raw flax, raw hemp)	Yes	No	No	No
EC-Croatia	No	-cannot interfere with agricultural policy of EC or Croatia -agricultural goods (on[2]ly applies to industrial goods) -Annex I, GATT Agreement on Agriculture (mannitol, sorbitol, essential oils, albuminoidal substances, modified starches, glues, finishing agents, hides and skins, raw furskins, raw silk and silk waste, wool and animal hair, raw cotton and waste, cotton carded or combed, raw flax, raw hemp)	Yes	No	Yes	No
EC-FYROM	No	-cannot interfere with agricultural policy of EC or FYROM -agricultural goods (only applies to industrial goods) -products in Annex I, GATT Agreement on Agriculture (mannitol, sorbitol, essential oils, albuminoidal substances, modified starches, glues, finishing agents, hides and skins, raw furskins, raw silk and silk waste, wool and animal hair, raw cotton and waste, cotton carded or combed, raw flax, raw hemp)	Yes	No	Yes	No
EC-Montenegro	No	-elimination of export duties only applies to industrial goods, agricultural goods exempted -excludes goods in Annex I, GATT Agreement on Agriculture (mannitol, sorbitol, essential oils, albuminoidal substances, modified starches, glues, finishing agents, hides and skins, raw furskins, raw silk and silk waste, wool and animal hair, raw cotton and waste, cotton carded or combed, raw flax, raw hemp) - provision shall not restrict the agricultural policies of EC or Montenegro	Yes	No	Yes	No
EC-Israel	No	- export tax ban exempts agricultural products -Israel: albumins, egg albumin, milk albumin	Yes	No	Yes	No
	Yes					

EFTA-Jordan		- excludes unprocessed agricultural goods in HS chapters 1-24 - positive list of goods covered by the ban on export QRs, including HS Chapters 25-97, fish and marine products, and processed agricultural goods	Yes	No	Yes	No
EFTA-Singapore	Yes	- excludes unprocessed agricultural goods in HS chapters 1-24 - positive list of goods covered by the ban on export QRs, including HS Chapters 25-97, fish and marine products, and processed agricultural goods - incorporates GATT XX	No	Yes	No	Yes
EFTA-SACU	Yes	- excludes unprocessed agricultural goods in HS chapters 1-24 - positive list of goods covered by the ban on export QRs, including HS Chapters 25-97, fish and marine products, and processed agricultural goods - incorporates GATT XX	Yes	Yes	No	Yes
EFTA-Tunisia	Yes	- excludes unprocessed agricultural goods in HS chapters 1-24 - positive list of goods covered by the ban on export QRs, including HS Chapters 25-97, fish and marine products, and processed agricultural goods	Yes	No	Yes	No
EFTA-Korea	Yes	- excludes unprocessed agricultural goods in HS chapters 1-24, - positive list of goods covered by the ban on export QRs, including HS Chapters 25-97, fish and marine products, and processed agricultural goods - incorporates GATT XX	No	Yes	No	Yes
EFTA-Morocco	Yes	- excludes unprocessed agricultural goods in HS chapters 1-24 - positive list of goods covered by the ban on export QRs, including HS Chapters 25-97, fish and marine products, and processed agricultural goods	Yes	Yes	No	No
Fuel-related Product Exceptions						
US-CAFTA-DR	Yes	Costa Rica—coffee, bananas, meat - incorporates GATT Article XX	No	Yes	No	Yes
US-Colombia	Yes	Colombia- emeralds, coffee - incorporates GATT Article XX	No	Yes	No	Yes

EFTA-Colombia	Yes	Colombia - emeralds and coffee - incorporates GATT Article XX	Yes	No	Yes	Yes
EFTA-Ukraine	Yes	Ukraine- mannitol, essential oils, lamb meat, fox, raw furskins, cotton carded/combed, casein glues, albuminates, dextrins, modified starches, , industrial monocarboxylic fatty acids, swine, goats - incorporates GATT Article XX	Yes	Yes	No	Yes
EFTA-Mexico	Yes	Mexico may restrict export licenses for the sole purpose of reserving foreign trade to itself in: aromatic hydrocarbon mixtures, rubber extended oils, petroleum oils, aviation and motor fuel stocks, petroleum gases, paraffin wax, not calcined petroleum coke, petroleum bitumen, bitumen and asphalt natural, ethane, butane, pentanes, hexanes, heptanes - incorporates GATT Article XX	Yes	Yes	Yes	Yes
Canada-Israel	Yes	-Canada: unprocessed fish, logs - Israel: controls on the export of metal waste and scrap - incorporates GATT Article XX and XI	Yes	Yes	Yes	Yes
Precious Stones and Metals Exceptions						
SADC	Yes	- exception for “precious and strategic metals and precious and semi-precious stones” - exception to control the exportation of second-hand goods	Yes	No	Yes	No
Russia-Ukraine	No	- exception for “other precious metals and stones”	No	No	Yes	No
Belarus-Ukraine	No	- exception for “other precious stones and metals”	Yes – acute shortage of commodities on the domestic market before the stabilization of the market; “strictly defined time limit for restrictive measures”	No	Yes	No
CIS	Yes	- exception for “other precious metals and stones”	No	Yes	Yes	No
Product Specific Exception only for Exhaustible Natural Resources						
EC-CARIFORUM	Yes	-Guyana 3 yr phase out: precious stones, bauxite, unrefined cane sugar, aquarium fish, molasses, greenheart -Suriname 3 yr phase out: kinds of wood	Yes – food security only	Yes	No	No
US-Peru	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
US-Chile	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes

US-Morocco	Yes	Morocco- (5 year phase out) unprocessed phosphates - incorporates GATT XX and XI	No	Yes	No	Yes
US-Australia	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
US-Korea	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
US- Singapore	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
US-Bahrain	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
US-Oman	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
US-Panama	Yes	None - incorporates GATT XX and XI	No	Yes	No	Yes
EC-Lebanon	Yes	None	Yes	No	Yes	No
EC-Mexico	Yes	None	Yes	Yes	Yes	No
EFTA-Canada	Yes	None - incorporates GATT XX	Yes	Yes	No	Yes
EFTA-Chile	Yes	None - incorporates GATT XX	No	Yes	Yes	Yes
EFTA-Egypt	Yes	None	Yes	No	Yes	No
EFTA-FYROM	Yes	None - incorporates GATT XX	Yes	No	Yes	Yes
EFTA-SACU	Yes	None - incorporates GATT XX	Yes	Yes	No	Yes
CARICOM	Yes	None	No	No	Yes	No
Canada-Peru	No	- Canada: logs, unprocessed fish - incorporates GATT XI	Yes	No	Yes	No
Japan-Chile	Yes	None - incorporates GATT XX	Yes	Yes	No	Yes
Japan - Switzerland	Yes	None - incorporates GATT XX	No	Yes	No	Yes

Conditions Imposed on Use of Exceptions to General Prohibition of Export Taxes						
Canada-Chile	Yes - can only use exception with conditions	None **Conditions for Use of GATT XI: 2(a), XX(g, i, j) Exceptions:** - "The party does not impose a higher price for exports of a good to the other party than the price charged for such a good when consumed domestically, by means of any measure, such as licenses, fees, taxation, and minimum price requirements." - NB: "The foregoing provision does not apply to a higher price that may result from a measure taken…that only restricts the volume of exports"	Yes- can only use exception with conditions	Yes- can only use exception with conditions	Yes	Yes- can only use exception with conditions
Canada-Costa Rica	Yes- can only use exception with conditions	None **Conditions for Use of GATT XI: 2(a), XX(g, i, j) Exceptions:** - "The party does not impose a higher price for exports of a good to the other party than the price charged for such a good when consumed domestically, by means of any measure, such as licenses, fees, taxation, and minimum price requirements." - NB: "The foregoing provision does not apply to a higher price that may result from a measure taken…that only restricts the volume of exports"	Yes - can only use exception with conditions	Yes - can only use exception with conditions	Yes	Yes- can only use with conditions
NAFTA	Yes- can only use exception with conditions	- Basic foodstuffs – in context of domestic stabilization plan for foodstuffs, domestic food assistance program, or shortage of foodstuffs; positive list of products - ten year phase out period for existing export taxes under General Export Duty Act **Conditions for Use of GATT XI: 2(a), XX(g, i, j) Exceptions:** - "The party does not impose a higher price for exports of a good to the other party than the price charged for such a good when consumed domestically, by means of any measure, such as licenses, fees, taxation, and minimum price requirements." - NB: "The foregoing provision does not apply to a higher price that may result from a measure taken…that only restricts the volume of exports"	Yes – time limit 1 yr, positive list of basic foodstuffs only	Yes - positive list of foodstuffs, export duties can only last as long as necessary for stabilization plan	No	Yes- can only use with conditions

Only Specific Goods Exceptions		
Agreement	**Natural Resources Exception GATT XX(g)**	**Other Specific Goods Exceptions**
EC-Albania	No	- RTA provisions cannot interfere with agricultural policy - agricultural goods (discipline only applies to industrial goods) - excludes Annex I, GATT Agreement on Agriculture (mannitol, sorbitol, essential oils, albuminoidal substances, modified starches, glues, finishing agents, hides and skins, raw furskins, raw silk and silk waste, wool and animal hair, raw cotton and waste, cotton carded or combed, raw flax, raw hemp)
EC-Turkey	No	-Exempts agricultural goods from the elimination of export duties as defined in Article 11 of Association Agreement
CEFTA 2006	Yes	None
EFTA Convention	No	- Exempts agricultural goods listed in Part II and III of Annex C

Only Situational Exceptions					
Agreement	**Domestic Stabilization Plan GATT XX(i)**	**Shortage of Foodstuffs or essential products GATT XI:2(a)**	**Threat of Re-export to 3rd Party**	**GATT XX(j)**	**Other Situational Exceptions**
EC- Jordan	No	Yes	Yes	No	None
EFTA-Israel	No	No	Yes	No	None
Treaty on the functioning of the EU	No	No	No	No	None – only for protection industrial and commercial property
Taiwan-Nicaragua	Yes	Yes- shortage clause can be applied to all goods when supply is insufficient for domestic consumption	No	Yes	- All fees and charges of whatever character (other than import customs duties, charges equivalent to an internal tax or other internal charge, and antidumping or countervailing duties) imposed on or in connection with exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of exports for fiscal purposes - Each party shall make available through the internet a current list of fees and charges it imposed on or in connection with exportation - incorporates GATT XX
Common Economic Zone	No	No	No	No	None
Japan-Mexico	No	No	No	No	- fewest exceptions of any agreement; only GATT XX:(a, b, d, e) exceptions

Appendix V.

RTAs Eliminating Key WTO Export Quantitative Restriction Exceptions

Agreement	Eliminates Domestic Stabilization Exception	Eliminates Shortage Exception	Eliminates GATT XX(j) restrictions for "products in general or local short supply"	Eliminates Natural Resources Exception	Adds WTO-minus specific goods exceptions
EC-Albania	X	X	X	X	X
EC-Bosnia	X		X	X	X
EC-Croatia	X		X	X	X
EC-FYROM	X		X	X	X
EC-Montenegro	X		X	X	X
EC-Turkey	X	X	X	X	X
EC-Mexico			X		X
EC-South Africa	X	X	X	X	
EC-CARIFORUM			X		
EC-Cote d'Ivoire	X		X		X
EC-Israel	X		X		
EC-Lebanon	X		X		
EU Convention	X	X	X	X	
ASEAN	X	X	X	X	X
EFTA-Jordan	X		X		X
EFTA-Morocco	X	X	X		X
EFTA-Tunisia	X		X		X
EFTA-Korea		X			X
EFTA-FYROM	X		X		X
EFTA-Israel	X	X	X	X	
EFTA-Egypt	X	X	X		
EFTA-Chile		X			
EFTA Convention	X	X	X	X	
CEFTA 2006	X	X	X		
CARICOM	X		X		X
US-CAFTA-DR		X			X
US-Colombia		X			X
US-Israel		X			
Japan-Mexico	X		X	X	X
SADC	X		X		X
SACU		X		X	X
African Economic Community	X	X	X	X	X
Russia-Ukraine	X		X	X	X
Ukraine Belarus	X		X	X	X
CIS		X	X	X	X

Agreement	Eliminates Domestic Stabilization Exception	Eliminates Shortage Exception	Eliminates GATT XX(j) restrictions for "products in general or local short supply"	Eliminates Natural Resources Exception	Adds WTO-minus specific goods exceptions
PATCRA	X		X		
ANZCERTA	X		X		
Thailand-New Zealand	X		X		
MERCOSUR-Chile	X	X		X	X