



THE CHALLENGE OF EXPORT CONTROLS

Developing economies will need help navigating the growing number of sanctions and export controls

Chad P. Bown

The World Trade Organization (WTO) is struggling to define its role in a fast-shifting geopolitical climate. The multilateral system is now wading through the implications of both trade wars and real wars. The WTO will be fortunate if it can help countries maintain the status quo, let alone facilitate additional trade liberalization anytime soon.

The resurgence of export restrictions—bans, controls, and sanctions—is one particularly concerning area for the rules-based trading system. Headline-grabbing policies are popping up in a variety of novel contexts. Such policies sometimes push trading partners to respond with additional actions—often in conflict with other WTO rules—to protect themselves from being exposed to future restrictions. This risks a downward spiral.

The WTO should continue to encourage members to limit their use of export restrictions and to keep them targeted and temporary when sales limits must be implemented. But the WTO also needs to push into new and uncomfortable areas and do more, especially to protect the most vulnerable countries in the trading system.

Examples abound

Export restrictions are not new. The worry is that they may be increasing in severity. Arising from a variety of triggers, a few examples illustrate the numerous challenges for the WTO.

In response to spiking commodity prices in 2007–11, countries restricted exports of a variety of agricultural products. This drove up world prices further, contributing to food insecurity. One positive policy result was the launch of the Agricultural Market Information System (AMIS) by the Group of Twenty (G20) agricultural ministers, which has led to better monitoring of global food stocks. While export restrictions in agriculture remain a perpetual concern, given a world facing climate and other shocks, that information has reduced uncertainty and limited the self-perpetuating cycles of export restrictions on farm products in the period since, despite multiple instances of pressures to do so, including the COVID-19 pandemic and Russia's invasion of Ukraine.

Historically, China has used various policies to restrict exports of raw materials and other critical inputs, sometimes in response to temporary price pressures at home. By diverting supplies to domestic markets, such restrictions gave an implicit subsidy to China's downstream industries, providing them an edge over their foreign competitors. China did this despite the commitment as part of its 2001 WTO accession to *not* restrict exports. It lost two formal WTO disputes over the issue and was facing a third in 2016 before the United

States abandoned its use of the dispute settlement system altogether.

In April 2021, India suddenly banned exports of COVID-19 vaccines. The public health motivation was understandable—India was going through a sudden and unexpected wave of infections at home. The problem was that India's production facilities, which had been subsidized by foreign entities, including the Bill and Melinda Gates Foundation, had promised to export hundreds of millions of doses to COVAX, the multilateral disbursement arm created to deliver vaccines to dozens of low-income countries. Those exports stopped, leaving COVAX high and dry, and the international funding that could have gone to support expedited vaccine production elsewhere was effectively commandeered.

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Russia weaponized exports of natural gas in 2022. Alongside its invasion of Ukraine, Russia withheld energy shipments to Europe through its pipelines, creating political-economic pressure for countries dependent on its gas. Noticing the implications of such a vulnerability, the response elsewhere has been to enact policies to reduce sourcing of similarly critical products from “countries of concern.” The most prominent example to date was the US decision in the Inflation Reduction Act of 2022 to offer discriminatory tax credit incentives in an attempt to shift the sourcing of inputs for batteries in electric vehicles outside Russia as well as China, which is costly, given that is where most current production takes place.

Finally, the United States and other industrialized economies have imposed export controls on high-technology products, with the argument that such actions are needed to protect national security. Sometimes these measures have been imposed ex post, such as after an act of war. Many countries

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banned exports of high-tech products to Russia, for example, in an attempt to end the war. Other times, the export controls are imposed proactively. Japan and The Netherlands, for example, agreed with the United States to jointly restrict exports of equipment used for production of advanced node semiconductors in response to Chinese President Xi Jinping's "military-civil fusion" policy.

Weak rules, limited experience

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Article XI of the General Agreement on Tariffs and Trade (GATT), for example, allows exceptions for "export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of

foodstuffs or other products *essential to the exporting contracting party*" (emphasis added). But "essential products" are not defined. Furthermore, Article XXI provides a national security exception that allows countries to invoke policies and justify them as needed to protect essential security interests.

In practice, the multilateral trading system that developed during the Cold War never really had to deal with hard questions involving export controls, military adversaries, and related sanctions. Those issues were mostly gone by the time countries like China (2001) and Russia (2012) joined the WTO—until now.

So how then can the WTO play a more useful role?

Outside of the national security realm, governments often implement new export restrictions when they lack information and fear a market shortage. The WTO should thus encourage additional market surveillance and transparency initiatives, like AMIS, wherever possible to reduce emergence of those instances.

The issue is more challenging for policy actions motivated by security-related concerns. The legal

rulings that have resulted from countries challenging such actions through formal WTO dispute settlement have done little but put additional strain on an already stressed multilateral system. Instead of litigation, in a recent statement before the WTO, the United States has thus suggested that adversely affected trading partners pursue what are called "non-violation" claims.

The idea is that, after a country invokes the national security defense for its policy, the dispute could then move immediately to arbitration, with concessions made to "rebalance" trade. The outcome would follow the WTO's reciprocity principle—if one country seeks to restrict its exports, then the expectation should be that trading partners do the same. Such retaliation would have the design benefit of preventing further escalation.

This cost would create additional incentives to discourage overuse of export restrictions for national security purposes in the first place. Especially if this move to arbitration were done quickly—as opposed to waiting years for the normal WTO legal process to play out.

New vulnerabilities

The variety of sanctions and export controls that have come up in the context of Russia's invasion of Ukraine have serious implications for "nonaligned" developing economies. How can the WTO help capacity-constrained countries navigate this new environment? In principle, many countries likely want to stay neutral. In practice, steps are needed to prevent countries from inadvertently doing something wrong and facing penalties in the form of secondary sanctions. Three different cases illustrate the complexity of the issue.

First, consider food and fertilizer, for which Russia is a major global supplier. Taking Russian wheat, for example, off world markets would harm global food security. From the beginning, sanctioning countries attempted to make clear that it was legally okay to trade those products. For these and other humanitarian goods, there would be carve-outs in sanctions.

Second, trade in crude oil and petroleum products is more complicated. Pulling Russian energy supplies off world markets would increase prices and put pressure on the global economy, so the Group of Seven (G7) economies developed a plan to

encourage countries to buy such Russian products, but only if the transactions fell below a price cap. Following that process is tricky. Potential buying countries need to keep up with more information. The price cap level might change. But the differential between countries able to transact at that price—well below the price of access to energy from other sources—could be quite substantial economically, and thus worth it, from the perspective of their economic development.

Third, there are other, dual-use goods whose trade is strictly controlled. Take high-tech inputs, like semiconductors, which are often quite small, embedded in other things, and that can have both civilian and military (“dual-use”) purposes. When the United States sends an export-controlled product to a third country, under US law that country is often prevented from reexporting that good elsewhere—such as to Russia or to specific military supplier end users in Russia.

Yet companies in third countries often face strong economic incentives to engage in arbitrage and facilitate that trade after all. But if their own government is not part of the coalition imposing the sanctions, they may not understand the full consequences of engaging in those transactions.

These countries likely need help understanding both their rights and the trade-offs they face for their choices. Their governments may, for example, want to establish domestic screening procedures to prevent their firms from reexporting such products. On the other hand, without access to legal counsel, they may overcomply. Not trading where it is legal also comes at a cost.

Looking out for the most vulnerable

The WTO system can help by drawing from its own experience.

First, the WTO has been supporting developing economy trade by reducing bureaucratic barriers through the Trade Facilitation Agreement. It could analogously work with border officials to help its members comply with sanctions. Because in the end, sanctions compliance—even if that means stopping a little bit of trade through a regulatory barrier—means keeping the rest of the country’s trade flowing, as it will not be penalized through secondary sanctions.

Second, is the question of impartiality, with lessons learned from the WTO’s sister organization, the Advisory Centre on WTO Law (ACWL). By providing highly subsidized legal assistance to poor countries, the ACWL has supported country efforts to follow WTO rules and represented them in dozens of formal WTO dispute settlement proceedings over more than 20 years.

Furthermore, the ACWL has established governance rules to address potential concerns over conflicts of interest. The ACWL has a system that allows it to support one developing economy as a complainant in one case and then a separate developing economy in a different case in which the first is the respondent. Thus, the ACWL has worked out how to provide sound legal advice, stay out of politics, and even sometimes support litigants with politically unpopular policy positions (just as in the domestic context, when public defenders must represent clients accused of heinous acts).

Providing subsidized legal assistance for sanction or export control compliance would be politically sensitive, of course. But for countries with limited capacity and few resources, ignoring the problem could have severe economic consequences. In the new geopolitical world with more sanctions and export controls, the trading environment inevitably becomes more expensive and legalistic. To continue to trade in support of their economic development, emerging market economies will need even more legal advice.

Other contexts

The Russian context is complicated, but it is only one. Moving beyond acts of war, it gets even more complex when the subject turns, for example, to export controls motivated by attempts to prevent future conflict. Imagine similar issues regarding export controls impacting sales to China.

These are the concerns now facing much of the world and much of the WTO’s membership. The WTO cannot interfere with countries implementing policies in the name of their national security. However, it can do more to help innocent bystanders remain innocent bystanders, to preserve and advance the gains from globalization. [FD](#)

CHAD P. BOWN is the Reginald Jones Senior Fellow at the Peterson Institute for International Economics.