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**International Regulation of Export Restrictions and Legal
Issues Facing the Emerging Markets with Specific
Reference to China**

By

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Abstract

Export restrictions imposed on critical raw materials and rare earth elements (REE), which are generally perceived as indispensable ingredients and inputs for the cultivation and promotion of a nation's downstream processing industries, especially the burgeoning strategic industries in respect of renewable energy and high-tech green technologies, are attracting considerable attention on the international forum. With fierce competition for these scarce natural resources in the international market and the consequent potential risk of national supply security, governments are increasingly intervening in primary commodity market to secure domestic supply and preserve the reserves of exhaustible resources by means of export restrictions. With regard to rationales and effects, these export restrictive policies and measures are principally launched by lower-middle and lower income economies to achieve the intended objectives of lowering domestic prices, stabilizing domestic supply chains, promoting downstream industries, increasing government revenues, as well as other non-economic aims. However, in the long run, export restrictions may have unintended and undesired implications, as they risk international trade distortions and discriminatory market competitive order.

Despite that many import-dependent countries are lobbying for the curtailment and exclusion of export restrictions under the WTO legal mechanism, it's widely recognized that the WTO law on export restrictions is an area of 'under-regulation', compared with its regulations of import restrictions. As per Article XI of General Agreement on Tariffs and Trade (GATT), all prohibitions and quantitative restrictions on exports are explicitly eliminated from the general rules of WTO with some recognized exceptions. However, export duties, taxes and charges are not as such prohibited. As a matter of fact, there are few disciplines on export duties within the WTO/GATT framework, provided that they are administered on basis of Most Favoured Nation principle in a uniform, impartial, reasonable and transparent manner according to Article I and X of GATT. Worse still, other than the general rule of transparency as prescribed in Article X, no obligation or requirement of scheduling or notification is ever applicable to export duties. On the other hand, even though export restrictions and prohibitions are much more strictly disciplined and inhibited, they are challenged for the lack of legal clarity and consistency in defining the circumstances that justify quantitative export restrictions within the existing WTO jurisprudence. In addition, there also exist legal uncertainties in the 'WTO-plus' commitments as they relate only to a few WTO Members. Therefore, in the absence of legal clarity and definiteness under the GATT/WTO regime, it's

crucial to explore contemporary approaches in order to remedy the legal deficiencies in the GATT/WTO Agreements, thus more effectively curtailing and eliminating the adverse effects of export barriers.

Thereupon, agreements and arrangements at bilateral and regional levels, viz. Free Trade Agreement (FTA)/ Preferential Trade Agreement (PTA), are worth our further study as the most potential orientation for strengthened multilateral disciplines. In view of the fact that such bilateral/regional cooperation arrangements/structures are increasingly proliferating throughout the international community, from Asian Infrastructure Investment Bank and the Silk Road Economic Belt & the 21st-Century Maritime Silk Road initiated and advocated by China in the past two years, to Trans-Pacific Strategic Economic Partnership Agreement that has just made a historic breakthrough in its negotiation and conclusion in October 2015, it's clear that this FTA/PTA pattern could be the priority area for attempts to effectively reinforce disciplines and regulations on the use of export restrictions, setting a positive example for promoting free trade order and constraining export restraint abuse.

Apart from the theoretical research, this thesis makes a comprehensive analysis of two relevant cases which have been brought before the GATT/WTO Dispute Settlement Body (DSB). These two cases, China—Measures Related to the Exportation of Various Raw Materials and China—Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, contest China's export restrictive measures that were accused of being trade-distorting and inconsistent with its legal obligations stipulated in GATT and WTO Accession Protocol, which has been long expected, given the current monopoly position of China in the global primary market. This thesis scrutinizes the DSB's interpretations of critical legal terms contained in Article XI and XX of GATT, which sheds light on certain emerging legal issues regarding export restrictions—their legal boundaries, their relationship with the intended objectives justified under GATT exceptions, as well as the long-term tension between WTO's free trade principle and legitimate environmental & resource conservation measures. Besides, the conflict of law between GATT and China's Accession Protocol is also under examination. Through the case law analysis, this thesis evaluates the incompatibility between China's current export restraint regime and WTO rules, and identifies potential hurdles that may impair the policy space enjoyed by other emerging countries to impose export restrictions under relevant GATT disciplines for environmental protection and resource conservation. It's envisaged that the case study on export restraint dispute informs the urgency for WTO Members to make future reform efforts in this field, so as to better control and balance the

relationship between industrialized and emerging markets, as well as between environmental & resource conservation and WTO law abidance.

Key Words: Export Restrictions, Export Duties, Quantitative Restrictions, Raw Materials, Rare Earth Elements, GATT, PTA, FTA, WTO Accession Protocols, Environmental Protection, Natural Resource Conservation, Emerging Markets.



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