



Memorandum

An Analysis of Export Restriction Rules and Proposals Under the WTO

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Abstract

This memorandum is a redacted version of a confidential research paper on export restriction negotiations in relation to food security under the auspices of the World Trade Organization (WTO). The complete version of this paper has two components: the first provides a sketch of the existing legal framework and negotiation proposals on export restriction; the second provides negotiation proposals. Due to confidentiality considerations, only the first component of analysis is publicly available and presented here. This memorandum is organized into three parts. The first part elaborates on the most relevant WTO treaties, namely the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Agriculture (AoA). It discusses how ambiguity in the terms in these treaties poses challenges to effective regulation of export restriction. The second part presents proposals from several WTO Members that seek to clarify the ambiguities or fill the void in the existing regulatory schemes. The third part discusses regional trade treaties, including Transatlantic Trade and Investment Partnership (TTIP), Comprehensive Economic and Trade Agreement (CETA), and Trans-Pacific Partnership (TPP), along with other less prominent WTO agreements.

Keywords: Qatar; food security; export restriction; WTO; GAT; AoA; TTIP; CETA; TPP

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مذكرة

تحليل قواعد ومقترحات القيود المفروضة على الصادرات تحت منظمة التجارة العالمية (WTO)

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الجهة المنتفعة: منظمة التجارة العالمية (WTO)

ملخص

هذه المذكرة هي نسخة منقحة عن ورقة بحثية سرية حول القيود المفروضة على المفاوضات ذات الصلة بالأمن الغذائي تحت رعاية منظمة التجارة العالمية (WTO). تتألف النسخة الكاملة لهذه الورقة من عنصرين: يمنح العنصر الأول خطة للإطار القانوني القائم ومقترحات التفاوض على قيود الصادرات. أما العنصر الثاني، فهو يمنح مقترحات التفاوض. وبسبب السرية، إن العنصر الأول فقط متاح للعامة وسيتم عرضه في هذه المذكرة. تتمحور هذه المذكرة حول ثلاثة أقسام حيث يتناول القسم الأول أهم معاهدات منظمة التجارة العالمية (WTO)، وبالأخص الاتفاقية العامة للتعرفة والتجارة الدولية ١٩٩٤ (GATT 1994) واتفاقية الزراعة (AoA). كما أنه يناقش كيف يسهم التباس المصطلحات في هذه المعاهدات في خلق التحديات على صعيد التنظيم الفعال لقيود الصادرات. أما القسم الثاني، فهو يعرض المقترحات العديدة لأعضاء منظمة التجارة العالمية (WTO) والتي تهدف إلى توضيح الالتباسات أو ملء الثغرات في المخططات التنظيمية القائمة. ويناقش القسم الثالث المعاهدات التجارية الإقليمية بما فيها شراكة التجارة والاستثمار عبر الأطلسي (TTIP)، اتفاقية الاقتصاد والتجارة الشاملة (CETA)، والشراكة عبر المحيط الهادئ (TTP)، بالإضافة إلى اتفاقيات أخرى أقل شهرة لمنظمة التجارة العالمية (WTO).

الكلمات المفتاحية: قطر، الأمن الغذائي، القيود على الصادرات، منظمة التجارة الدولية، الاتفاقية العامة للتعرفة والتجارة الدولية، اتفاقية الزراعة، شراكة التجارة والاستثمار عبر الأطلسي، اتفاقية الاقتصاد والتجارة الشاملة، الشراكة عبر المحيط الهادئ

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I. The WTO Framework:

This section discusses the most relevant WTO Agreements in relation to food security: GATT 1994¹ and AoA.²

GATT Article XI

Article XI of GATT 1994 prohibits the application of quantitative restrictions except when they are applied temporarily to prevent or relieve a critical shortage. The article provides, in part:

1. 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.
2. 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.³

With respect to paragraph 1, the phrase “prohibitions or restrictions” is used in a very broad manner, and it is understood to refer to a “legal ban on the trade or importation of a specified commodity”. In *Colombia-Ports of Entry*, the panel concluded that the term “restrictions” refers to “measures that create uncertainties and affect investment plans, restrict market access for imports, or make importation prohibitively costly.”⁴ The panel in *India-Quantitative Restrictions* concluded that the term “restrictions” is “broad”, and in terms of its ordinary meaning, is “a limitation on action, a limiting condition or regulation.”⁵

Paragraph 2 of GATT Article XI is an exception that allows for the use of any export restrictions under limited circumstances for a limited time. Paragraph 2 also contains many undefined and ambiguous terms. Therefore, it may lead exporting countries to use different interpretations of the same word, depending on the interpretations that best suit the interpreters. The discussion below will point out some ambiguous terms.

“Temporarily”

The treaty does not delineate the period that can be counted as “temporarily”. Subsequently, in *China-Raw Materials*, China claimed that the term “temporarily” should be counted in relation to the duration required to relieve the critical shortage: “China submits that the time period will be defined in relation to the time required to prevent or relieve the critical shortage.”⁶ On the other hand, both of the complainants (the United States and the European Union) and third parties (Brazil and Canada) argued that a temporary measure must have an expiry date. To support their argument, Brazil defined the term “temporarily

1 General Agreement on Tariffs and Trade, 14 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter *GATT 1994*]. GATT 1994 consists of a number of documents and agreements. For a list of its constituent parts and explanatory notes, see https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm.

2 Agreement on Agriculture, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 410, https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm [hereinafter *AoA*].

3 GATT 1994, *supra* note 1, art. XI, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_05_e.htm.

4 Panel Report, *Colombia-Indicative Prices and Restrictions on Ports of Entry*, WTO Doc. WT/DS366/R (adopted 27 April 2009), https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=75079,74367&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True, cited in Panel Report, *Measures Related to the Exportation of Various Raw Materials*, WTO Docs. WT/DS394/R, WT/DS395/R, WT/DS398/R (adopted 5 July 2011), VII.206: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=55573,108753,96753&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True [hereinafter *China-Raw Materials*].

5 *India-Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WTO Doc. WT/DS90/R (adopted 6 April 1999), https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=22369&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True, cited in *China-Raw Materials*, *supra* note 4, VII.206.

6 *China-Raw Materials*, *supra* note 4, VII.251.

applied” as “lasting or meant to last for a limited time only; not permanent; made or arranged to supply a passing need.”⁷ Furthermore, in this case, the panel defined “temporarily” as “for a time (only)” and “during a limited time.”⁸ The term “limited time” means “appointed, fixed” and “circumscribed within definite limits, bounded, restricted.”⁹

“Critical shortage”

In addition, the article states that “the restriction is applied temporarily to prevent or relieve critical shortage” without specifying the amount or percentage of the shortage of food that could be considered a critical shortage. Moreover, the article does not differentiate between an actual and a potential critical shortage, creating an area of ambiguity that came up in the *China-Raw Materials* case. One side can argue that the phrase “critical shortage” refers to a preventive action that should occur before the critical shortage and, if that interpretation is correct, raise the question of what signs will allow preventive measures. The other side can argue that the more-inclusive phrase “relieve critical shortage” indicates that the shortage must have already occurred before restrictions can follow. In the *China-Raw Materials* case, both sides raised these arguments in accordance with their interests. The panel settled the conflict by determining that the term “critical” indicates that a shortage must be of “decisive importance” or “grave”, or even rising to the level of a “crisis” or catastrophe. Article XI: 2(a) states that measures in the form of restrictions or bans may be used on a temporary basis to either outright “prevent” or otherwise “relieve” such a shortage.¹⁰

“Essential”

Likewise, “essential” is not well-defined. China, in the *China-Raw Materials* dispute, considered that for a product to be essential, it must be “material, important or requisite for the exporting Member.”¹¹ In addition, China submitted that Article XI:2(a) does not limit the types of “other products” that may be subject to restrictions, except that the products must be “‘essential’ to the exporting Member.”¹² The opposing parties contended that such a broad approach “ignores the fact that the term ‘essential’ serves to limit the scope of ‘products.’”¹³ However, the panel interpretation was broad and did not resolve the disagreement, which further demonstrates that the article is not well-defined.¹⁴

In conclusion, thus far, most of the terms of the provision have been interpreted in only one dispute, leaving inadequate guidance as to how these terms should be applied to a food security situation.

GATT Article XX

GATT Article XX allows WTO Members to be relieved of their obligations under the GATT under a list of justifications, including matters involving public morals, health, prison labor, and national historic/cultural treasures.¹⁵ “Such measures cannot constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”¹⁶

Subject to the requirement that such measures are not applied in a manner which would constitute a

7 *China-Raw Materials*, *supra* note 4, VII.254.

8 *Id.* VII.255.

9 *Id.*

10 *Id.* VII.296.

11 *Id.* VII.262.

12 *Id.*

13 *Id.* VII.267.

14 *See id.* 273-82.

15 GATT 1994, *supra* note 1, art. XX, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm#article20 [hereinafter *Article XX*].

16 WTO ECampus, *Exceptions to WTO Rules: General Exceptions, Security Exceptions, Regional Trade Agreements (RTAs), Balance-of-Payments (BOPs) & Waivers*, Introduction (n.d.), https://ecampus.wto.org/admin/files/Course_382/Module_537/ModuleDocuments/eWTO-M8-R1-E.pdf (last visited 16 January 2018).

means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

. . .

- (i) involving restrictions on exports of 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; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this subparagraph not later than 30 June 1960.¹⁷

A number of questions could be raised about the application of this article. In light of the prohibition of departure from the provisions relating to non-discrimination at the end of sub-paragraph (i), what if a country wanted to export its internal materials and increase the price for the benefit of its income? Sub-paragraph (j) suggests that the meaning of “equitable” refers to any given circumstance in which the WTO Member diverts an excessive share of its supply to individual countries and will be contrary to the principle of equitable distribution. In that light, what if the contracting parties had a dispute about the shares of the international supply for such product? Is there a limit that the WTO states are obliged to not exceed in order to limit the share of each country? In addition, does the reference to “general or local short supply” in sub-paragraph (j) apply to cases where a product, although in the international short supply, is not necessarily in short supply in all markets throughout the world? Also, the language does not appear to be used in the sense that every country that is importing a commodity is in short supply. This would require the contracting parties to have some flexibility to take trade restrictive action when a certain product becomes temporarily scarce. Even if those who have the flexibility take restrictive action, will it not affect the others? Further, the flexibility in this situation is constrained by the requirement imposed to respect the principle of equitable shares for the members.

GATT Article XXI

Article XXI includes Security Exceptions that allow a contracting party to take measures to protect its security interests.¹⁸

Article XXI

Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

. . .

(iii) taken in time of war or other emergency in international relations;

or . . .¹⁹

¹⁷ Article XX, *supra* note 15, sub-paras. (i)-(j).

¹⁸ GATT 1994, *supra* note 1, art. XXI, https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf.

¹⁹ *Id.* sub-para. (a) & (b)(iii).

Importantly, Article XXI does not define “essential security interests”. When the “US notified the contracting parties of an Executive Order 12513 of May 1, 1985, that is prohibiting all imports of goods and services of Nicaraguan origin and all exports from the US of goods to or destined for Nicaragua. Nicaragua stated that the text of Article XXI made it clear that the contracting parties were competent to judge whether a situation of “war or other emergency in international relations” existed and requested that a panel be set up under Article XXIII:2 to examine the issue. The United States stated that its actions had been taken for national security reasons and were covered by Article XXI:(b)(iii) of the GATT and that this provision left it to each contracting party to judge what action it considered necessary for the protection of its essential security interest. The panel stated that, the dispute agreed upon both parties in the United States had acted contrary to certain trade-facilitating provisions of the General Agreement but was disagreed on the question of whether the non-observance of these provisions was justified by Article XXI(b) (iii). Therefore, the panel did not consider the question of whether the terms of Article XXI precluded it from examining the validity of the United States’ invocation of that Article. It concluded that as it was not authorized to examine the justification, it could find that the United States neither to be complying with its obligations under the General Agreement nor to be failing to carry out its obligations under that Agreement. The panel further noted that, in the view of Nicaragua, this provision should be interpreted in the light of the basic principles of international law and in harmony with the decisions of the United Nations and of the International Court of Justice and should, therefore, be regarded as merely providing contracting parties subjected to an aggression with the right of self-defense. The panel also noted that, in the view of the United States, Article XXI applied to any action which the contracting party taking it considered necessary for the protection of its essential security interests and that the panel, both by the terms of Article XXI and by its mandate, was precluded from examining the validity of the United States’ invocation of Article XXI.”²⁰

Furthermore, the self-judging nature of the provision of section (b) could lead to an arbitrary decision.

The United States embargo on trade with Cuba, which was imposed by means of Proclamation 3447 by the President of the United States, dated 3 February 1962,²¹ was not formally raised by the contracting parties but notified by Cuba in the inventory of non-tariff measures. The United States invoked GATT Article XXI as justification for its action. Also, section b:(i), mentioned “relating to ‘fissionable materials’ or the materials from which they are derived.”²²

Criteria are needed to clarify the meaning.

AoA Article 12

This article lists the procedures that should be applied when a country intends to apply the exception in GATT Article XI(2)(a) that allows applying restrictions on exportation. According to the WTO,

In principle, all WTO agreements and understandings on trade in goods apply to agriculture, including the GATT 1994 and WTO agreements on such matters as customs valuation, import licensing procedures, pre-shipment inspection, emergency safeguard measures, subsidies, and technical barriers to trade. However, where there is any conflict between these agreements and the Agreement on Agriculture, the provisions of the Agreement on Agriculture prevail.²³

20 World Trade Organization, *Analytical Index of the GATT, Section II: Interpretation and Application of Article XXI*, 601, 603-04 (n.d.), https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf (last visited 21 January 2018) [hereinafter *GATT Analytical Index*].

21 John F. Kennedy, President of the United States, *Proclamation 3447-Embargo on All Trade with Cuba*, The American Presidency Project (3 February 1962) (US Presidential document archive project, U.C. Santa Barbara, Gerhard Peters & John T. Woolley, Archivists), <http://www.presidency.ucsb.edu/ws/?pid=58824>.

22 GATT Analytical Index, *supra* note 20, at 605.

23 World Trade Organization, *Agriculture: Explanation*, Introduction, https://www.wto.org/english/tratop_e/agric_e/ag_intro01_intro_e.htm (last visited 21 January 2018).

The text of Article 12 is as follows:

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:
 - (a) The Member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing member food security.
 - (b) Before any Member institutes an export prohibition or restriction, it shall 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, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.
2. The provisions of this Article shall not apply to any developing country Member unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.²⁴

Paragraph 1 of this article does not clarify the relevant consideration. In addition, the article states that “it shall give notice in writing”, which obligates the Member instituting export restriction to produce written notice. Nevertheless, the article does not specify a detailed period for such a notice, necessary information to be included in the notice, or actions that could be taken if the importing Member disapproves the request. “The group of ‘net food-importing developing countries’ is well defined in the WTO legal context, but no such definition exists for the “net-food exporting developing countries” mentioned in Paragraph 2 of AoA Article 12.”²⁵

In conclusion, both the GATT and AoA, the most relevant agreements in relation to export restrictions, contain ambiguous terms and incomplete descriptions of obligations, which constrains the effectiveness of the existing WTO framework. As Qatar is a net food-importing country, the ambiguities in these provisions are disadvantageous to Qatar.

II. Proposals

In this part of our memorandum, we will examine a number of proposals that suggest amending or revising some of the provisions of relevant WTO agreements. They were proposed by Switzerland, Cairns Group, Jordan, the Democratic Republic of the Congo, the Republic of Korea, the United States, and Japan.

Switzerland

Switzerland submitted its opening ideas concerning the directions governed by Article 20 of the Agreement on Agriculture.²⁶ Switzerland offered a number of dicta relating to this agreement. Regarding export restrictions, “Switzerland propose[d] the elimination of all export restrictions on agricultural products and the binding at zero of all export tariffs.”²⁷ Additionally, Switzerland suggested that tariffs “should be negotiated on a product-by-product and case-by-case basis in the framework of an application/offer procedure supplemented, where appropriate, by a tariff reduction formula.”²⁸

²⁴ AoA, *supra* note 2, art. 12, https://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#articleXII.

²⁵ Giovanni Anania, *Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for promoting Food Security?* 16 (Int’l Ctr. For Trade and Sustainable Dev., Issue Paper No. 50, November 2013), <https://www.ictsd.org/downloads/2013/11/agricultural-export-restrictions-and-the-wto-what-options-do-policy-makers.pdf>.

²⁶ See World Trade Organization, Committee on Agriculture Special Session, *WTO: Negotiations on Agriculture-Proposal by Switzerland*, WTO Doc. G/AG/NG/W/94 (21 December 2000).

²⁷ *Id.* § 6.4.

²⁸ *Id.* § 7(4).

The Republic of Korea

The proposal submitted by Korea was a result of its concern on the food security of the country as a net-food importing country. Its proposal advocated “that the Uruguay Round was not successful in reflecting in a balanced manner the interests of both developed and developing countries, as well as exporting and importing countries . . . and that the food security situation of developing countries is still unstable.”²⁹ Moreover, Korea proposed to strengthen the disciplines in the following areas: “to prohibit exporting countries from imposing export restrictions and prohibitions arbitrarily; to prohibit the use of export tax for the purpose of export restriction; to secure transparency in the operation of state trading enterprises and to prevent their circumventing of reduction commitment in export subsidy.”³⁰

The Democratic Republic of the Congo

The proposal of the Democratic Republic of the Congo³¹ only stated the issues that they thought needed to be considered. Regarding export subsidies, Congo emphasized the need for the elimination of export subsidies of all types; “an initial reduction by 60 per cent of the final Uruguay Round commitments”; the need for food aid, without attached trade conditions, to developing countries, and the need to abolish export taxes.³²

Jordan

In the Jordanian proposal of the negotiation process that began in March 2000,³³ Jordan stated that it “follow[ed] a strict economic adjustment leading to internal and external trade liberalization” and that its “average bound tariff” was thirty percent.³⁴ In comparison to the other trading partner countries, Jordan proposed abolishing “all forms of export subsidies” and that such “should be bound to zero rates.”³⁵

Cairns Group

“With a view toward providing increased certainty of supply for food importing countries and a particular focus on the least developed and developing net-food importing countries,”³⁶ the Cairns Group “proposed improved disciplines on export restrictions and taxes and eliminate tariff escalation, preserve Article 12.2 of the Agreement on Agriculture, and provide additional special and differential treatment provisions to address the legitimate needs of developing countries, including the least developed and net-food importing developing countries.”³⁷

The United States

The United States submitted its proposal “[i]n accordance with the long-term objective of establishing a fairer, more market-oriented agricultural trading system and procedures agreed at the March meeting of the Committee on Agriculture.”³⁸

29 World Trade Organization, Committee on Agriculture Special Session, *Proposal for WTO Negotiations on Agriculture: Submitted by the Republic of Korea*, Introduction § 2, WTO Doc. G/AG/NG/W/98 (9 January 2001), https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=898,14989,6198,694,66169,62719,48712,46973,44957,3145&CurrentCatalogueIdIndex=8&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

30 *Id.* § B(c)(25).

31 See World Trade Organization, Committee on Agriculture Special Session, *Negotiating Proposals by the Democratic Republic of the Congo*, WTO Doc. G/AG/NG/W/135 (12 March 2001), file:///D:/Downloads/NGW135.pdf.

32 *Id.* § 3.

33 See World Trade Organization, Committee on Agriculture Special Session, *WTO Agriculture Negotiations: Proposal by Jordan*, WTO Doc. G/AG/NG/W/140 (22 March 2001), file:///D:/Downloads/NGW140.pdf.

34 *Id.* § 1 (Introduction).

35 *Id.* § 2.2.

36 See World Trade Organization, Committee on Agriculture Special Session, *WTO Negotiations on Agriculture-Cairns Group Negotiating Proposal: Export Restrictions and Taxes*, 1, WTO Doc. G/Ag/NG/W93* (21 December 2000), https://www.wto.org/english/tratop_e/agric_e/negs_bkgnd02_prop1_e.htm (follow link to G/AG/NG/W/93*).

37 *Id.* at 1.

38 See World Trade Organization, Committee on Agriculture Special Session, *Proposal for Comprehensive Long-Term Agricultural Trade Reform*, WTO Doc. G/AG/NG/W/15 (23 June 2000), file:///D:/Downloads/NGW15.pdf.

The proposal summarized a two-phase process for trade reform. The first phase eliminates export subsidies and reduces worldwide tariffs and trade-distorting domestic support over a 5-year period. This would be accomplished by harmonizing tariffs and trade-distorting domestic support at substantially lower levels than what is currently allowed. The second phase is the eventual elimination of all tariffs and trade-distorting support by a specific date to be established in these negotiations. The United States proposed “to strengthen substantially WTO disciplines on export restrictions to increase the reliability of global food supply”³⁹ and “to prohibit the use of export taxes, including differential export taxes, for competitive advantage or supply management purposes.”⁴⁰

Japan

Japan’s negotiating proposal was based upon the fundamental philosophy of coexistence of agriculture.⁴¹ Japan reported itself as “actively engaged in the agricultural negotiations in accordance with Article 20 of the AoA.”⁴² Its proposal incorporated views and comments from a wide range of the society, “including not only agricultural producers but also the consumers themselves.”⁴³ More specifically, Japan proposed the following:

4.2 Export prohibitions/restrictions, export taxes

- (a) Ensuring food security for its population is an important responsibility of each government. Export prohibitions and restrictions, which an exporting country will take temporarily, can severely affect the food security of an importing country, even if it can be considered a necessary measure for the exporting country in view of ensuring its own food security.
- (b) With regard to imports, all border measures, other than tariffs, have been replaced by tariffs in principle. On the other hand, Members can freely take export prohibitions and restriction measures under the current Agreement. Japan thus proposes that all export prohibitions and restrictions be tariffed (i.e. replaced by the export taxes).
- (c) All import tariffs are bound and commitment has been made to reduce them under the current Agreement, even though there exists no provision concerning export taxes. It is necessary, therefore, to bind the level of all export taxes, including those possibly introduced in the future. With regard to products subject to the export tax, it is also necessary to establish quotas in which exports equivalent to a certain proportion of domestic production will be exempt from the export tax. Disciplines in this regard should be defined.
- (d) Furthermore, clarification of the disciplines on export restrictions is necessary in order to prepare for a situation where an exporting country, if export taxes have not been introduced, faces an urgent need to restrict exports.⁴⁴

Japan proposed that all export prohibitions and restrictions should be tariffed (i.e. replaced by the export taxes). Also, export rules and disciplines should be strengthened, since it is necessary to ensure the stability and predictability of exports in order to ensure food security in importing countries. Export state trading could affect the entire international market of a specific agricultural product, as well as the food security of importing countries. Therefore, disciplines on export state trading should be clarified in order to improve its transparency and predictability.

³⁹ *Proposal for Comprehensive Long-Term Agricultural Trade Reform*, *Supra* note 38, at 6.

⁴⁰ *Id.* at 3.

⁴¹ World Trade Organization, Committee on Agriculture Special Session, *Negotiating Proposal by Japan on WTO Agricultural Negotiations*, WTO Doc. G/AG/NG/W/91 (21 December 2000). The text can be found at the Ministry of Foreign Affairs of Japan, *Negotiating Proposal by Japan on WTO Agricultural Negotiations* (21 December 2000), <http://www.mofa.go.jp/policy/economy/wto/agri0012.html>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

III. Treaties

(i) Regional Trade Agreements

The paper will now discuss the Transatlantic Trade and Investment Partnership (TTIP), the Comprehensive Economic and Trade Agreement (CETA), and the Trans-Pacific Partnership (TPP), as well as the North American Free Trade Agreement (NAFTA), the Canada-Chile free trade agreement, and the Canada-Costa Rica Free Trade Agreement.

TTIP (In Progress)

The Transatlantic Trade and Investment Partnership (TTIP) agreement is being negotiated between the United States and the European Union. TTIP negotiations began in June 2013⁴⁵ and are currently taking place behind closed doors. In relation to food security, the European Union's proposal for legal text on "Agriculture" in TTIP was made public on 21 March 2016.⁴⁶ It stated, in part:

Cooperation in Multilateral and other Fora

...

2. The Parties recognize the efforts undertaken in international fora to enhance global food security and nutrition and sustainable agriculture and commit to actively engage in cooperation in those fora. To this end, the Parties shall:

(a) refrain from undertaking export restrictions as well as the use of export taxes, which might exacerbate volatility, increase prices and have a detrimental effect on critical supplies of agricultural goods to the Parties and to other trading partners, and seek a coordinated approach in the relevant fora.⁴⁷

...

CETA

CETA, an agreement between the European Union and Canada, seeks to "boost trade, strengthen economic relations and create jobs."⁴⁸ The provisions relevant to food security state:

Article 2.6 Duties, taxes or other fees and charges on exports

A Party may not adopt or maintain any duties, taxes or other fees and charges imposed on, or in connection with, the export of a good to the other Party, or any internal taxes or fees and charges on a good exported to the other Party, that is in excess of those that would be imposed on those goods when destined for internal sale.⁴⁹

Article 2.11 Import and Export Restrictions

1. Except as otherwise provided in this Agreement, a Party shall not adopt or maintain any prohibition or restriction on the importation of any goods of the other Party or on the exportation or sale for export of any goods destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994. To this end Article XI of the GATT 1994 is incorporated into and made a part of this Agreement.

45 See European Commission, *Member States endorse EU-US trade and investment negotiations* (14 June 2013), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=918&title=Member-States-endorse-EU-US-trade-and-investment-negotiations>.

46 European Union, *TTIP-Draft Chapter on Agriculture* (21 March 2016), http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154371.pdf.

47 *Id.* art. X.3(2)(a).

48 Dominic Webb, *CETA: the EU-Canada free trade agreement* 5 (House of Commons Library Briefing Paper No. 7492, 12 September 2017), file:///D:/Downloads/CBP-7492.pdf; see also: European Commission, *The benefits of CETA: The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada* (2016), http://trade.ec.europa.eu/doclib/docs/2016/july/tradoc_154775.pdf; European Commission, *CETA - Summary of the final negotiating results* (February 2016), http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152982.pdf.

49 For the full text, see European Commission, *CETA chapter by chapter*, art. 2.6, <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter> (last visited 19 January 2018).

2. If a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a third country of a good, that Party may:
 - (a) limit or prohibit the importation from the territory of the other Party of a good of that third country; or
 - (b) limit or prohibit the exportation of a good to that third country through the territory of the other Party.
3. If a Party adopts or maintains a prohibition or restriction on the importation of a good from a third country, the Parties, at the request of the other Party, shall enter into discussions with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in the other Party.
4. This Article does not apply to a measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:
 - (a) the export of logs of all species. If a Party ceases to require export permits for logs destined for a third country, that Party will permanently cease requiring export permits for logs destined for the other Party;
 - (b) for a period of three years following the entry into force of this Agreement, the export of unprocessed fish pursuant to Newfoundland and Labrador's applicable legislation;
 - (c) Canadian excise duties on absolute alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions annexed to the Marrakesh Protocol (Schedule V), used in manufacturing under the provisions of the Excise Act, 2001, S.C. 2002, c. 22; and
 - (d) the importation of used vehicles into Canada that do not conform to Canada's safety and environmental requirements.⁵⁰

Under the rules of CETA, all export duties and other export restrictions will be prohibited in accordance with Article XI of the GATT. Nevertheless, a Member might request consultations on occasions where they feel that their interests are or could be harmfully affected by such a measure by the other Party.

TPP

The TPP is a trade agreement among twelve of the Pacific Rim countries, not including China.⁵¹ Several articles of this agreement are relevant to this topic:

Article 29.2 Security Exceptions

Nothing in this Agreement shall be construed to

- (a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.⁵²

This article echoes GATT Article XXI with the term "essential security interests", which allows other member to self-judge the scope of the exception.

⁵⁰ CETA chapter by chapter, *supra* note 49, art. 2.11

⁵¹ Office of the United States Trade Representative, Executive Office of the President, *Summary of the Trans-Pacific Partnership Agreement* (October 2015), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership> [hereinafter, *TPP Summary*]. For the full text as of the beginning of 2016, see Trans-Pacific Partnership, New Zealand Foreign Affairs & Trade, *Text of the Trans-Pacific Partnership* (26 January 2016), <https://www.tpp.mfat.govt.nz/text> [hereinafter *TPP Full Text*].

⁵² *Id.* art. 29.2.

Article 2.4 Elimination of Customs Duties

1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

. . . ⁵³

“TPP Parties agree to eliminate and reduce tariffs and non-tariff barriers on industrial goods and to eliminate or reduce tariffs and other restrictive policies on agricultural goods,”⁵⁴ which will enhance food security. “In addition, they agree not to impose WTO-inconsistent import and export restrictions and duties.”⁵⁵ Furthermore, “if TPP Parties maintain import or export license requirements, they will notify each other about the procedures so as to increase transparency and facilitate trade flows.”⁵⁶

Article 2.10 Import and Export Restrictions

1. Unless otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

. . . ⁵⁷

According to a summary of the TPP:

To ensure that countries do not maintain or expand other discriminatory trade barriers at the same time that they are eliminating tariffs or invent new barriers to circumvent TPP’s obligations; the ‘Goods Chapter’ incorporates the broad World Trade Organization (WTO) obligations regarding import and export restrictions into TPP as the fundamental framework for trade in goods between the Parties. In addition, the Goods Chapter prohibits import licensing based on performance requirements, as well as prohibiting requirements that exporters establish contractual relationships with domestic distributors as a condition of importation. For example, an exporter of U.S. made farm equipment cannot be required by law in a TPP party to use a local distributor to import its product into a TPP country.⁵⁸

Article 2.24 Export Restrictions - Food Security

1. Parties recognize that under Article XI:2(a) of GATT 1994, a Party may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of GATT 1994 on preventing or relieve a critical shortage of foodstuffs, subject to meeting the conditions set out in Article 12.1 of the Agreement on Agriculture.
2. In addition to the conditions set out in Article 12.1 of the Agreement on Agriculture under which a Party may apply an export prohibition or restriction, other than a duty, tax or other charge, on foodstuffs:
 - (a) a Party that:
 - (i) imposes such a prohibition or restriction on the exportation or sale for export of foodstuffs to another Party to prevent or relieve a critical shortage of foodstuffs, shall in all cases notify the measure to the other Parties prior to the date it takes effect and, except when

⁵³ TPP Full Text, *supra* note 51, art. 2.4.

⁵⁴ TPP Summary, *supra* note 51, § 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ TPP Full Text, *supra* note 51, art. 2.10(1).

⁵⁸ AmCham Singapore, *Chapter Summaries of the Trans-Pacific Partnership Trade Agreement* 15, available through a link from AmCham Singapore, *TPP Task Force Second Meeting Summary* (13 October 2015), <http://www.amcham.org.sg/tpp-task-force-second-meeting-summary>.

the critical shortage is caused by an event constituting force majeure, shall notify the measure to the other Parties at least 30 days prior to the date it takes effect; or

(ii) as of the date of entry into force of this Agreement for that Party, maintains such a prohibition or restriction, shall, within 30 days of that date, notify the measure to the other Parties.

(b) A notification under this paragraph shall include the reasons for imposing or maintaining the prohibition or restriction, as well as an explanation of how the measure is consistent with Article XI:2(a) of GATT 1994, and shall note alternative measures, if any, that the Party considered before imposing the prohibition or restriction.

(c) A measure shall not be subject to notification under this paragraph or paragraph 4 if it prohibits or restricts the exportation or sale for export only of a foodstuff or foodstuffs of which the Party imposing the measure has been a net importer during each of the three calendar years preceding the imposition of the measure, excluding the year in which the Party imposes the measure.

(d) If a Party that adopts or maintains a measure referred to in subparagraph (a) has been a net importer of each foodstuff subject to that measure during each of the three calendar years preceding imposition of the measure, excluding the year in which the Party imposes the measure, and that Party does not provide the other Parties with a notification under subparagraph (a), the Party shall, within a reasonable period of time, provide to the other Parties trade data demonstrating that it was a net importer of the foodstuff or foodstuffs during these three calendar years.

3. A Party that is required to notify a measure under paragraph 2(a) shall:

(a) consult, on request, with any other Party having a substantial interest as an importer of the foodstuffs subject to the measure, with respect to any matter relating to the measure;

(b) on the request of any Party having a substantial interest as an importer of the foodstuffs subject to the measure, provide that Party with relevant economic indicators bearing on whether a critical shortage within the meaning of Article XI:2(a) of GATT 1994 exists or is likely to occur in the absence of the measure, and on how the measure will prevent or relieve the critical shortage; and

(c) respond in writing to any question posed by any other Party regarding the measure within 14 days of receipt of the question.

4. A Party which considers that another Party should have notified a measure under paragraph 2(a) may bring the matter to the attention of that other Party. If the matter is not satisfactorily resolved promptly thereafter, the Party which considers that the measure should have been notified may itself bring the measure to the attention of the other Parties.

5. A Party should ordinarily terminate a measure subject to notification under paragraph 2(a) or 4 within six months of the date it is imposed. A Party contemplating continuation of a measure beyond six months from the date it is imposed shall notify the other Parties no later than five months after the date the measure is imposed and provide the information specified in paragraph 2(b). Unless the Party has consulted with the other Parties that are net importers of any foodstuff the exportation of which is prohibited or restricted under the measure, the Party shall not continue the measure beyond 12 months from the date it is imposed. The Party shall immediately discontinue the measure when the critical shortage, or threat thereof, ceases to exist.

6. No Party shall apply any measure that is subject to notification under paragraph 2(a) or 4 to food purchased for non-commercial humanitarian purposes.⁵⁹

The previous article adopted many obligations from GATT Article XI 2(a), with additional clarification. Paragraph 5 of the mentioned article limits export restrictions on foodstuffs to six months and requires notification of other TPP members in advance. Where a country imposes such restrictions and mandates consultation with interested TPP importing countries, the restriction remains in place for more than 12 months.⁶⁰

As this provision is intended to discourage countries from imposing export restrictions on food and agricultural products, its implementation is a means of protecting domestic markets from changes in the world market. When countries do so with respect to staple food products like rice and wheat, poorer countries relying on the international market to import food can suffer damaging restrictive access to food. TPP's commitment in this area will help improve the stability of regional farm markets in general and stipulate additional food security to lower-income countries in the region such as Cambodia, Papua New Guinea, and Bangladesh.⁶¹

(ii) Other agreements

North American Free Trade Agreement (NAFTA)

According to McBride and Sergie, NAFTA⁶²

is a three-country accord negotiated by the governments of Canada, Mexico, and the United States that entered into force in January 1994 . . . [It] provided for the elimination of most tariffs on products traded among the three countries. Liberalization of trade in agriculture, textiles and automobile manufacturing was a major focus.⁶³

Canada-Chile Free Trade Agreement (CCFTA)

"The CCFTA [has been] the cornerstone of Canada's strong and growing trade and investment relationship with Chile" since it came into force in 1997.⁶⁴

Canada-Costa Rica Free Trade Agreement (CCRFTA)

"The Canada-Costa Rica Free Trade Agreement (CCRFTA) is a first-generation agreement that focuses mainly on trade in goods."⁶⁵ It has been into force since November 2002.⁶⁶

The three agreements in this section of the paper (NAFTA, CCFTA, and CCRFTA) all include, with some differences in labeling and organization, the same provision regarding export restrictions.⁶⁷

Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI

59 *TPP Full Text*, *supra* note 51, art. 2.24.

60 National treatment and market access for goods, at 4.

61 *Id.* at 5.

62 NAFTA Secretariat, *North American Free Trade Agreement* (2014), <https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/North-American-Free-Trade-Agreement> [hereinafter *NAFTA*].

63 James McBride & Mohammed Aly Sergie, *NAFTA's Economic Impact*, Council on Foreign Relations (last updated 4 October 2017), <http://www.cfr.org/trade/naftas-economic-impact/p15790>.

64 Government of Canada, *Canada-Chile Free Trade Agreement* (last modified 26 May 2017), <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/info.aspx?lang=eng> [hereinafter *CCFTA*]. For the text of the agreement, see <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/index.aspx?lang=en>.

65 Government of Canada, *Canada-Costa Rica Free Trade Agreement* (last modified 51 February 2017), http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/costa_rica/fta-ale/background-contexte.aspx?lang=eng [hereinafter *CCRFTA*]. For the text of the agreement, see http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/costa_rica/fta-ale/index.aspx?lang=en.

66 *Id.*

67 NAFTA, *supra* note 62, art. 309; CCFTA, *supra* note 64, art. C-08; CCRFTA, *supra* note 65, art. III.7.

of the GATT 1994, including its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made a part of this Agreement.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.
3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:
 - a. limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or
 - b. requiring as a condition of export of such good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.
4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on request of the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.
5. Paragraphs 1 through 4 shall not apply to the measures set out in [specific cross-reference depends on the agreement in question].

According to Korinek and Bartos,

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), XX(g), XX(i), or XX(j), it must meet two conditions. First, the restriction must not reduce the proportion of total export shipments available to the other RTA parties relative to the total supply of the good from the party using 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 share of exports to the other parties in the RTA. Second, the restriction cannot disrupt normal channels of supply or normal shares of other specific goods supplied to other RTA parties. In Canada-Chile, however, copper, Chile's main export, is exempt from this Article.⁶⁸

Further,

These provisions aim to protect importers from any negative impacts of export restrictions, 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.⁶⁹

The approach that those agreements took "is an effective approach to disciplining their use,"⁷⁰ unlike the WTO agreements, which lack discipline. In these regional agreements, food security is more ensured because they restrict the application of any measures that can threaten the net-food importing countries.

68 Jane Korinek & Jessica Bartos, *Multilateralising Regionalism: Disciplines on Export Restrictions in Regional Trade Agreements*, in Organisation for Economic Co-operation and Development (OECD), *Export Restrictions in Raw Materials Trade: Facts, fallacies and better practices*, chapter 5, at 11 (2014), https://www.oecd.org/tad/events/Chapter_5_Final.pdf.

69 *Id.* at 11-12.

70 *Id.* at 12.

(iii) WTO-Covered Agreements

Apart from GATT and AoA, TRIPS is also relevant for food security.

TRIPS (*Trade-Related Aspects of Intellectual Property Rights*) Agreement

Article 27

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

...

3. Members may also exclude from patentability:

...

(b) Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.⁷¹

TRIPS “mandates the protection of plant varieties, allowing several options: ‘patents, an effective sui generis regime or a combination of both.’”⁷² “The patentability requirements (particularly the inventive step) seem not only unsuited to plant varieties but also, given the scope of rights generally granted under patents, may deter further research and breeding on protected materials and erode the rights of farmers to save and reuse seeds.”⁷³ TRIPS could affect the food security of the importing countries, as the monopoly enshrined in patents relating to plant and particularly seeds could cause a rise in the international markets prices.

In conclusion, this paper has looked into some of the proposals that have been submitted by different countries in order to suggest clarification of ambiguous terms in the GATT and the AoA. Furthermore, it presented a numbers of treaties within and outside the WTO framework, focusing on the articles that are related to the export restrictions and examining and comparing the similarities and differences between the agreements.

Questions

To clarify the ambiguities in the existing WTO Covered Agreements, the authors propose a number of questions, accompanied by and referenced to the relevant GATT and AoA provisions that could help kick-start the negotiation process and test Members’ reactions.

1. What is the maximum duration considered under “temporarily”? [Art. XI: 2(a), GATT, 1994].
2. What are the criteria that constitute “critical shortage of food staff?” [Art. XI: 2(a), GATT, 1994].

⁷¹ World Trade Organization, *Uruguay Round Agreement: TRIPS*, § 5, art. 27, subdivs. (1) & (3), https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm (last visited 21 January 2018) [hereinafter *TRIPS*].

⁷² Carlos Correa, *TRIPS flexibility for patents and food security: options for developing countries*, 2 Int’l Ctr. for Trade & Sustainable Dev. (ICTSD): Bridges Africa (17 June 2013) (quoting *TRIPS*, § 5, art. 27, subdiv. (3)(b)), <http://www.ictsd.org/bridges-news/bridges-africa/news/trips-flexibility-for-patents-and-food-security-options-for>.

⁷³ *Id.*

3. What is the percentage that could be considered as a reason to prevent a critical shortage of food staff? [Art. XI: 2(a), GATT, 1994].
4. What is the principle that the country should rely on to prove the critical shortage? [Art. XI: 2(a), GATT, 1994].
5. What action can be taken against countries that will increase the price of the domestic materials for their benefit in accordance with article XX? [Art. XX: (i), GATT, 1994].
6. Is there a principle that a country can rely on to apply the security exceptions? [Art. XXI, GATT, 1994].
7. Does the importing member have the right to object to the new restriction measure instituted by the exporting country, if such measure will affect the food security of the importing country? [Art. 12, AOA].
8. Which circumstances could be considered as a breach of essential security interest? [Art. XXI, GATT, 1994].
9. What is the maximum duration of the action that will be taken in accordance with security interest? [Art. XXI, GATT, 1994].
10. Please provide an indicative list of the emergency situations that Members consider justifiable under the National Security Exception [Art. XXI, GATT, 1994].

Qatar proposal

Background

Qatar is a developing country and one of the smallest Gulf countries in terms of population and geographical area. Qatar is highly dependent on oil and gas as income resources because it has the second largest gas reserves in the world, representing more than 5% of the world total. The Qatar National Food Security Program (QNFSP) is in line with the principles of the Qatar National Vision 2030.⁷⁴ QNFSP's objective is to develop a sustainable food security policy for Qatar by increasing and enhancing domestic agricultural production and strengthening the reliability of food imports from abroad. Qatar, as a net-food importing country, faces many challenges when it comes to the export restriction measures governed by the WTO agreements. Therefore, the Qatar Proposal will focus on promoting the net-food importing countries' interests and decreasing the challenges they are facing.

The proposal:

First, as discussed in previous sections, a number of terms in the GATT relating to food security are ambiguous, including "temporarily" and "critical shortage", and thus should be clarified. Second, while the WTO Committee on Agriculture⁷⁵ currently does not impose special mechanisms to discipline perceived violations, it could actively monitor and regularly publish its observations so as to incur reputational cost for any violations.

With a view towards strengthening the discipline of export restrictions and the exceptions, the authors present some concrete proposals below.

Transparency:

1. Concerning the maximum duration for the term "temporarily" in GATT 1994 Article XI (2)(a), eighteen months should be set as the maximum duration for the application export restrictions. In addition, this duration should be divided into three periods of six months. Further, the member who instituted the measure should submit two reports to the Committee on Agriculture every six months addressing the progress and explaining the need for extending the duration for another six months if such an extension

⁷⁴ See General Secretariat for Development Planning, *Qatar National Vision 2030* (n.d.), file:///D:/Downloads/Qatar_National_Vision_2030.pdf (last visited 18 January 2018).

⁷⁵ See World Trade Organization, *The Agriculture Committee*, https://www.wto.org/english/tratop_e/agric_e/ag_work_e.htm (last visited 19 January 2018).

is necessary.

2. Concerning the percentage that should be considered as a “critical shortage of foodstuff” in GATT 1994 Article XI (2)(a), the percentage should be a deficiency that represents twenty-five percent of a member’s annual production.
3. The maximum duration and parameters of the emergency situations that qualify under the National Security Exception under GATT 1994 Article XXI should be specified. In particular, the Committee on Agriculture should issue a decision that lists emergency situations justifiable under the National Security Exception.
4. A subcommittee within the Committee on Agriculture that will regularly look into the potential violations and publish the results should be created.
5. The member applying export restrictions should submit a formal request to the Committee on Agriculture before the application of the measure, and set up consultations with importing members that could be affected by the measure, to determine the legality, scope, and duration of the measure. Additionally, the member must act in accordance with any agreements reached during the consultations and must re-negotiate the agreement if it wishes to change the terms of the initial measure.

Transparency plus:

1. The export tax rates should be restricted qualitatively and quantitatively, such as through tariff schedules.
2. The obligations of developing countries, those whose export does not exceed five percent of the global market or fifteen percent of their national income, should be reduced.

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