

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**

Revised Submission on Export Taxes

*Communication from the European Communities*

The following communication, dated 16 January 2008, is being circulated at the request of the delegation of the European Communities.

A. INTRODUCTION

1. All import-dependent WTO Members are sensitive to the measures imposed by a few countries that restrict exports. In the extreme case, export taxes may be set at prohibitive levels and, hence, be tantamount to export restrictions or even export prohibitions. Export taxes can thus have serious distortive effects on global commodity trade when applied by major suppliers. In addition, when used for industrial or trade policy purposes, export taxes can serve as indirect subsidization of processing industries and influence international trading conditions of these goods. As in the case of import tariffs, export taxes have similar effect to tariff escalation. Thereby, the measures may obstruct the aspirations of WTO Members, in particular developing countries, to build new (infant) processing industries in specific sectors where export taxes by other countries are prevalent on the raw materials or other inputs (as illustrated by the Joint Statement by the leather associations of West Africa and the EU previously submitted by the EC to the NGMA). Furthermore, export taxes can serve to displace imports on the market of the country imposing the taxes, both for imported goods in direct competition with the taxed products and for imported processing products. In such cases, export taxes are similar other forms of NTBs on imports.

2. These various negative effects of export taxes are not new. But among the reasons for the growing importance of export taxes today are *inter alia*:

- the recent proliferation in the use of these instruments, which is possible under the weaker WTO rules on export taxes compared to those on import restrictions or other forms of NTBs; and
- the short global supply of some specific commodities, despite their abundance in a few countries – a situation that is aggravated by export taxes in key supplying countries.

3. Finally, it should be underscored that the current proliferation of export taxes and their increased distortions to global trade are in contradiction to the developments on import barriers. Serious efforts are underway in DDA to reduce duties, eliminate tariff escalation and minimise NTBs on import. In contrast, very little progress has so far been made on export taxes.

B. EC POSITION ON EXPORT TAXES

4. The EC proposal on export taxes in the NAMA negotiations tabled in April 2006, and the subsequent legal draft tabled in March 2007, aims to fully reflect the importance of establishing balanced and proportionate WTO rules for Members' use of export taxes. The main elements of the EC proposal on export taxes are threefold:

- (1) 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 and especially on developing countries. In line with core objectives of the WTO and GATT, this would prevent "beggar thy neighbour" practices. In particular, the approach proposed builds upon existing GATT rules on export duties and charges, *inter alia* GATT Articles I, VII, VIII and XVII, as well as incorporates other key elements of the GATT acquis. Under the EC proposal, this also includes a number of legitimate situations under existing GATT rules where export taxes could be maintained or introduced, such as financial crises, infant industry, environment (preservation of natural resources) and local short supply.
- (2) Incorporation of additional flexibility for small developing country Members and least-developed country Members to maintain or introduce export taxes in other situations, i.e. over and beyond what would be allowed through the strict application of GATT rules to export taxes.
- (3) Limitation of the GATT disciplines for export taxes to non-agricultural products in recognition of the mandate for NAMA (hence, agricultural products are excluded where export taxes are currently in force in many developing countries).

5. Thereby, the EC proposal seeks to establish a workable compromise in the area of export taxes between those many countries affected by the "beggar thy neighbour" measures adopted by a few major suppliers and other large economies, and the use of export taxes by small economies, which includes the majority of developing countries. Nothing in the EC proposal prejudices the use of export taxes for legitimate policy reasons under relevant GATT provisions. As such, it should be recalled that the current proposal represents a major refinement of the initial EC submission on export taxes in NAMA in 2003, in reflection of the constructive engagement by and discussions with many Members, not least small and vulnerable developing countries.

C. POSSIBLE FURTHER REVISIONS OF THE EC PROPOSAL

6. The EC remains ready to explore with Members other approaches, whether alternative or complementary, for addressing the global trade problems caused by export taxes. Of course, in doing so, the EC considers that any revised proposal would still have to provide appropriate remedies to the specific problem related to the use of export taxes as "beggar thy neighbour" instruments. As for possible horizontal approaches to NTBs in line with paragraph 14 of the July Framework, the EC also believes that any negotiated solution for export taxes would have to build upon existing GATT concepts and rules. Therefore, any revised approach should ensure, as a minimum, increased transparency and predictability.

7. Concerning transparency, it is a core objective of the WTO to ensure that Members are fully informed of measures taken by any other Member that may influence trade. In this context, it is also worth recalling that all WTO Members have already agreed to notify export taxes, as well as other export measures. The Ministerial Decision on Notification Procedures adopted on 15 December 1993 establishes that the introduction or modification of such measures is subject to the notification

undertakings of the Understanding Regarding the Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 (BISD 26S/210). On the other hand, the Ministerial Decision of 1993 has had little, if any, practical effect on Members' level of transparency. Hence, the EC believes that future transparency provisions on export taxes would need to ensure that existing obligations are made operational and enforced in a satisfactory manner. The Uruguay Round Understanding on the Interpretation of Article XVII of GATT 1994, which pertains to the notification requirements of Members' state trading enterprises that influence the level or direction of imports and exports, could serve as a point of reference in this respect. Finally, the EC considers that all WTO Members would be able to comply with such basic transparency commitments, in line with what already applies for other trade policy instruments, although appropriate special and differential treatment should be envisaged for developing country and least-developed country Members.

8. Regarding predictability, it is a core objective of the WTO to ensure that Members can reasonably expect what measures any other Member may impose that influence trade. Therefore, EC considers that scheduling and binding of Members' export taxes could offer an appropriate route of ensuring adequate predictability. Under such a negotiated solution, similar to import duties, the EC deems that export taxes would have to be bound at a level that "reduce or eliminate tariff peaks, high tariffs, and tariff escalation" in line with paragraph 16 of the DDA mandate. Moreover, in accordance with the spirit of the July Framework and in recognition that export taxes have to date only been scheduled or bound by a few Members, the EC would be ready to support specific flexibilities for small and vulnerable economies.

9. Thereby, this revised approach would represent a shift from a general prohibition of export taxes, albeit with exceptions based on GATT rules, to the establishment of rules on transparency and predictability based on WTO objectives, concepts and principles. In practical terms, besides maintaining the right of WTO Members to apply export taxes when exceptional circumstances under GATT rules are invoked, the approach would imply that:

- (1) WTO Members should notify the introduction or modification of export taxes;
- (2) WTO Members should 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, except that:
  - (a) Least-developed countries would undertake to schedule export taxes but may maintain these export taxes unbound; and
  - (b) Paragraph 6 countries would schedule export taxes but may maintain these export taxes unbound for a certain number of tariff lines (the number is to be negotiated), in reflection of their specific developmental interests and concerns.

#### D. CONCLUDING REMARKS

10. Finally, the EC would like to underline that, in line with paragraph 16 of the DDA mandate, Members have agreed to "to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries". Hence, no matter how Members may want to define export taxes, tariffs and non-tariff barriers are included in the DDA mandate, which has no reference as to whether such measures are imposed on imports or exports. As clearly demonstrated in the introduction, apart from other effects including distortions to global trade, export taxes also often displace exports of other WTO members through the artificial price advantage provided to domestic industries. Therefore, the EC considers claims that export taxes are a priori excluded from

negotiations to be in contradiction with the mandate. Such claims could set a dangerous precedent for other mandated parts of the negotiations on non-agricultural market access. However, the EC fully recognizes that Members' positions may differ on the appropriate level of ambition and approach to export taxes. To respond to Members' different interests and concerns, the EC is thus prepared to thoroughly revise its proposal following the general parameters set out above and to consult with all interested Members on specific legal drafting.

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