



# Fiscal Incentives for Decreasing Deforestation: the Legal Limits on Export Taxes

Dr. Dylan Geraets

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# Overview

- Purpose of the contribution
- International Economic Law: limits on regulatory autonomy
- Export Duties and Taxes in International Economic Law
- Limits on Export Duties on Timber Products
  - WTO
  - (Bilateral or Plurilateral) Free Trade Agreements
    - EU
    - US
- Conclusions

# Purpose of the contribution

- Idea: impose a variable export tax / export duty, dependent on compliance with sustainability criteria
- Assessing the constraints on the ability of FIP member countries to impose export duties or taxes arising from international economic law
- What is International Economic Law?
  - Are FIP member countries bound by IEL?
  - Role of the WTO
  - Role of bilateral or plurilateral Free Trade Agreements
  - Role of timber importing countries: EU, US, Canada

# International Economic Law

- International Economic Law
  - Agreements concluded between states (or customs territories) limiting their sovereignty (“regulatory autonomy”) in respect of their ability to impose (non)-tariff measures on imports and exports of goods and services
    - Multilateral: World Trade Organization
    - Bi- or Plurilateral: Free Trade Agreements (FTAs)
  - Extend of limitations depends on whether a FIP Member Country
    1. Is Member of the WTO;
    2. Has concluded an FTA with one of the timber importing countries;
    3. Whether that FTA contains an obligation “not to impose export duties or taxes”; and
    4. Whether possible exceptions to such obligations exist.
  - Country-by-country analysis required

# Export Taxes / Export Duty

- A duty / tax that is due upon the exportation of a particular good. Exportation being typically defined as taking a good “out of the customs territory” of the state imposing the tax.
- Definitions of export duties / taxes in EU FTAs
  - “duties or taxes on exports or charges with equivalent effect”
  - “customs duties on exports”
  - “duties or taxes imposed on or in connection with the exportation of goods”
  - “any tax or charge on the exportation of a good to the other Party that is in excess of the tax imposed on that good when destined for domestic consumption” (EU-Mexico FTA, 2018)
  - “duties or taxes in connection with the exportation of goods to the other Party that are in excess of those imposed on like products destined for internal sale”

# Export Taxes in International Economic Law

- **Not prohibited** under the rules of the World Trade Organization (“WTO”)
  - Requirement to apply them in a non-discriminatory manner, under the Most-Favoured Nation treatment obligation of Article I:1 of the GATT 1994
  - Some new WTO Members, that “acceded” after 1995, have had to accept “WTO-Plus” commitments in their Protocol of Accession
  - Some of these commitments relate to the elimination of export taxes. These commitments can be found in the Protocols of Accession of, f.e., China, Montenegro, and Russia
  - No FIP Member Countries have committed to eliminating export taxes in their WTO Protocol of Accession (Cambodia, Lao PDR, Nepal)

# Export Taxes in International Economic Law

- Large trading blocks (EU) and states (Canada, US) are – generally speaking – not keen on the use of export taxes, as they are perceived to be trade distortive
- They have therefore sought to include commitments on the elimination of export taxes in
  - Protocols of Accession to the WTO (see China, Russia, Montenegro, etc)
  - **FTAs concluded with third parties**
- The EU, Canada and the US have concluded numerous FTAs with FIP member countries
- **Some** of these FTAs contain an obligation on both parties to eliminate, or not (re-)introduce export taxes. These obligations typically relate to all products, but there are exceptions

# Export Taxes in International Economic Law

- FTAs with an obligation to eliminate or not (re-)introduce export taxes:
  - EU FTAs with FIP Member Countries: 17 / 23 (all **except** Bangladesh, Brazil, Cambodia, Indonesia, Lao PDR, and Nepal)
  - US FTAs with FIP Member Countries: 4 / 23 (Guatemala, Honduras, Mexico, Peru)
  - Canada FTAs with FIP Member Countries: 3 / 23 (Honduras, Mexico, Peru)
- Clear desire to make these obligations part of any future FTAs concluded between the EU, US, and Canada on the one hand, and trading partners (including FIP Member Countries, f.e. Indonesia, on the other)
- Exact legal scope of these obligations differs between FTAs and requires a country-by-country analysis
- EU has been, by far, the most active in seeking to include such obligations

# Export Taxes in International Economic Law

- EU – Economic Community of West African States (“ECOWAS”) Economic Partnership Agreement (“EPA”) (2014)
  - FIP Member Countries: Burkina Faso, Cote d’Ivoire, Ghana
- Article 13 Export duties and taxes
  1. No new duties or taxes on exports or charges with equivalent effect shall be introduced, nor shall those currently applied in trade between the Parties be increased from the date of entry into force of this Agreement.
  2. The duties, taxes on exports or charges with equivalent effect shall be no greater than the same duties and taxes applied to similar goods exported to any other countries that are not party to this Agreement.
  3. In exceptional circumstances, if the West Africa Party can justify specific needs for income, promotion for fledgling industry or **environmental protection**, it may, on a **temporary basis** and after **consulting the European Union Party**, introduce duties, taxes on exports or charges with equivalent effect on a limited number of additional goods or increase the impact of those that already exist.
  4. The Parties agree to review the provisions of this Article in the framework of the Joint Council of the EPA in accordance with the revision clause of this Agreement, taking full account of their impact on the development and diversification of the economy of the West Africa Party.

# Export Taxes in International Economic Law

## ARTICLE 13

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# Export Taxes in International Economic Law

- US - CAFTA-DR (Dominican Republic-Central America FTA)
  - FIP Member Countries: Guatemala and Honduras

- Article 3.11: Export Taxes

Except as provided in Annex 3.11, **no Party** may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless such duty, tax, or charge is adopted or maintained on any such good:

- (a) when exported to the territories of all other Parties; and
- (b) when destined for domestic consumption.

- No exceptions included in Annex 3.11 for Guatemala.

# Export Taxes in International Economic Law

- (Canada) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”)
  - FIP Member Countries: Mexico and Peru
- Article 2.15: Export Duties, Taxes or Other Charges

Except as provided for in Annex 2-C (Export Duties, Taxes or Other Charges), **no Party** shall adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on that good when destined for domestic consumption.

# Conclusions

- Ability to impose export taxes is constrained by International Economic Law
  - No prohibition under WTO law; but
  - Some WTO Members have agreed to a commitment not to impose new Export Taxes
  - Many FTAs include obligations to eliminate and not to (re-)impose Export Taxes
- EU, Canada and the US have been pro-active in trying to ensure that trading partners are not permitted to impose new export taxes
- Country-by-country analysis required in order to assess precise scope of limitations
- Wording of “export tax” obligation in **EU** FTAs seems to leave scope for negotiations between FIP Member Country and EU in order to find a compromise if the export tax is adopted for environmental reasons.
- However, this will – in any event – require extensive political activity between FIP Member Country in question and relevant trading partners such as the EU



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[dylan.geraets@kuleuven.be](mailto:dylan.geraets@kuleuven.be)

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