

# BOOK REVIEW

*EXPORT RESTRICTIONS AND EXPORT CONTROLS: FROM WTO TO THE REALM OF GLOBAL SECURITY*

(EDWARD ELGAR, 2023) ISBN 9781800889811, 390 PP

BY UMAIR HAFEEZ GHORI

Export restrictions and export controls have long been tools wielded by governments worldwide to pursue policy objectives, adopted for a multitude of reasons and rooted in a long-standing history. In recent years, however, there has been a notable trend towards the strengthening of export restrictions and controls, which are now widely employed by countries and regions. Umair Hafeez Ghori's new book *Export Restrictions and Export Controls: From WTO to the Realm of Global Security* is a focused study on export restrictions and controls against this background. Drawing on his personal experience of living in a developing country and his exhaustive research into the history of globalisation, Ghori undertakes an in-depth exploration of the evolution and reform of international economic law. As Professor Mary E Hiscock of Bond University aptly remarks, the book 'opens an entire field'.<sup>1</sup> This new book employs a diverse range of analytical methodologies, including literature reviews, case studies, comparative analysis, and historical research, and is supported by exceptionally rigorous evidential materials, thereby offering considerable informational value to its readership.

Ghori opens by addressing the conceptual ambiguity surrounding the two core terms. Export controls and export restrictions are broad and overlapping terms for measures to manage commodity outflows from one economy to another with the aim of achieving specific policy goals. Employing historical semantic analysis, he traces the evolution of these terms to highlight their distinct legal foundations, policy aims, and differing relationships with the General Agreement on Tariffs and Trade ('GATT') and the World Trade Organisation ('WTO') rules. According to the author, export restrictions fall within the remit of international economic law, as set out in GATT art XI and its exceptions. Export controls, by contrast, are grounded in domestic law, public international law, or international relations, and primarily serve national security and foreign policy objectives.

Chapter 1 offers a systematic review of existing scholarship on the subject, thereby defining both the research problem and the analytical framework for the whole book. In its first section, chapter 1 undertakes a detailed examination of the historical development and contemporary features of export restrictions,

---

<sup>1</sup> Umair Hafeez Ghori, *Export Restrictions and Export Controls: From WTO to the Realm of Global Security* (Edward Elgar, 2023) ix.

synthesising WTO disciplines and the existing academic literature on the topic. Initially, Ghori considers whether export restrictions constitute a novel or long-standing unresolved issue. Jacob Viner's observation in 1926 remains valid today: 'where a national monopoly is being exploited at the expense of the foreign consumer and under government auspices, the method used is usually the establishment of restrictions on export'.<sup>2</sup> This confirms that export restrictions are a long-standing phenomenon. Ghori adds that today's primary export controls and restrictions differ from their historical counterparts in that the restricted items have shifted from raw materials and basic manufacturing technologies to advanced technologies such as rare earths and semiconductors.<sup>3</sup> An analysis of the WTO's history reveals that it focused on reducing import tariffs and enhancing market access rather than regulating exports.<sup>4</sup> Consequently, despite numerous rounds of negotiations, WTO provisions governing export controls remain notably underdeveloped — a gap that lays the groundwork for the book's subsequent analysis. The chapter's second section turns to national security, another key basis for export controls. The national security concern compels policymakers to adopt measures that do not conform to the basic values of free trade, as discussed in chapters 2 and 3. The book divides national security into four realms: war, pre-war, competition, and governance, to analyse the varying intensity of national security policies. The extent to which national security justifications excuse non-compliance with WTO rules depends on the factual context.

Chapter 2 addresses controversies over WTO export restrictions, and its core content lies in presenting 'three lessons' for how export restrictions should be formulated under WTO law.<sup>5</sup> First, prior to imposing export restrictions, WTO Members must ground them in GATT arts XX or XXI and interpret such legal notions as 'necessary' and 'essential' in accordance with WTO jurisprudence. Second, according to recent WTO cases on China's natural resource export restrictions, the Appellate Body effectively endorsed an approach that requires proving exhaustibility and critical importance purely from a preservation point of view and not from a developmental one. Third, while the WTO encourages downstream development to benefit developing and least-developed Members, the use of export restrictions to establish downstream sectors receives scant backing from the WTO. GATT arts XVII 4(a) and (b) allow early-stage economies to make temporary rule deviations. However, part IV of the GATT — devoted to trade and development, and aimed at expanding market access for primary and processed goods from developing or least-developed countries — does not encompass the use

---

<sup>2</sup> Jacob Viner, 'National Monopolies of Raw Materials' (1926) 4(4) *Foreign Affairs*, 585, 587.

<sup>3</sup> Ghori (n 1) 4.

<sup>4</sup> Mitsuo Matsushita et al, *The World Trade Organization: Law, Practice, and Policy* (Oxford University Press, 3<sup>rd</sup> ed, 2015) 535–6.

<sup>5</sup> Ghori (n 1) 50.

of export restrictions to kick-start downstream industrial development.<sup>6</sup> In the context of WTO rules, developing countries' policymakers cannot reserve policy space for domestic industry development, and any preferential policies favouring an inward diversion strategy may face challenges before the WTO dispute settlement mechanism. These 'three lessons' summarise the key takeaways from GATT/WTO case-law for developing countries' policymakers to avoid retaliatory action by resource-importing countries, and delineate the policy space within which states may operate. Yet addressing the practical policy needs of developing countries will likely necessitate further reform of the WTO.

Chapter 3 sets out the key concept of 'local challenge' and argues that, within the WTO framework, sovereign states lack sufficient competence to address such challenges. 'Local challenges' encompass, inter alia, a nation's economic progress, job creation, environmental protection, and sovereignty maintenance. Such challenges primarily relate to economic, national, and climate security. Ghori coined the term to recognise that countries face unique local challenges due to their specific socio-economic and political environments when implementing development strategies. Ghori employs a structured analysis to show how WTO law often impedes the progress of developing countries, while the restrictive exception clauses within the WTO system are ill-suited for implementing development policies. A key focus of chapter 3 is the developmental space afforded by emergency measures and general exception clauses under WTO law, and how this space conflicts with the development needs of poorer nations. Taking the electric vehicle battery sector as a case study, the author argues that most commodity-dependent developing countries need the freedom to implement export restrictions to transform their development models. However, developed economies oppose such measures, citing WTO rules.

Notably, developed countries' efforts to control the narrative and pace of climate change negotiations, while retaining priority access to resources critical for emissions reduction, effectively constitute a new form of 'climate colonialism'.<sup>7</sup> This concept thereby exposes the predicament facing developing countries in pursuing green development: one rooted in their disparate developmental stages and unequal discursive authority within the existing international legal order. Although both developed and developing states undoubtedly share a responsibility to pursue a more sustainable global trajectory, the latter need greater policy space and a stronger voice in international forums if international law is to embody a genuinely collective vision of sustainable development. Only such a reorientation can ensure that future growth is substantively equitable. The author further examines the challenges and

---

<sup>6</sup> Julia Ya Qin, 'Reforming WTO Disciplines on Export Duties: Sovereignty over Natural Resources, Economic Development and Environmental Protection' (2012) 46(5) *Journal of World Trade* 1147, 1169.

<sup>7</sup> John Letzing and Minji Sung, 'What Does Colonialism Have to Do with Climate Change?', *World Economic Forum* (Commentary, 9 September 2022)  
<<https://www.weforum.org/stories/2022/09/colonialism-climate-change-pakistan-floods/>>.

opportunities that climate change brings to industrial development, pointing out that the WTO rules' regulatory rigidities make it difficult for developing countries to establish clean energy bases. He also discusses potential solutions, such as green subsidies, plurilateral agreements within the WTO framework, and a specialised export or tax agreement — none of which has yet garnered consensus.

Chapter 4 focuses on vaccine protectionism. It explores global supply chain security issues related to export controls and the production of essential medical/health products for developing and least-developed countries reliant on vaccine imports and local licensed production. Following a detailed analysis of the WTO's general and security exception clauses, Ghori highlights a systemic flaw in the WTO's exceptional clauses. While such clauses may justify WTO members' regulatory actions, a critical problem emerges: if all members invoke this framework to defend export restrictions, no state would be adequately equipped with medical supplies for future pandemics.<sup>8</sup> Ghori also questions the effectiveness of the WTO system, given that regional trade groups or blocs are increasingly raising the possibility of replacing the WTO in the global trade order — a trend that could lead to even more discriminatory export restriction measures.<sup>9</sup>

Chapter 5 explores export restrictions such as export bans, compulsory licensing, and prohibitively high levels of export taxes from the global food security perspective. In contrast to developed nations, agriculture and food security represent critical existential concerns for most developing countries and are fundamental to their national security.<sup>10</sup> Factors such as rising food prices, climate change, resource nationalism, and the adverse impacts of conflict, the COVID-19 pandemic, and natural disasters have all heightened countries' anxieties about food supply stability. Drawing on a brief overview of the WTO's framework governing export restrictions and agriculture, Ghori assesses the effectiveness of WTO rules in regulating export restrictions on agricultural products and staple crops, as well as previous efforts to reform the relevant WTO provisions. He then employs two case studies on export restrictions imposed on rice and wheat during the COVID-19 pandemic to demonstrate how major exporting countries disrupted global staple food markets. Furthermore, the author focuses on the Bali Peace Clause, linking it to India's rice export restrictions and highlighting its lack of effectiveness due to loopholes in WTO rules. Finally, based on projections regarding the impact of climate change on major food categories such as grains, meat, fruits and vegetables, oilseeds, and legumes, the author reiterates the need for reforming WTO rules.

Chapters 4 and 5 analyse WTO members' export restrictions on medical supplies and agricultural/food products during the COVID-19 pandemic from the

---

<sup>8</sup> Ghori (n 1) 152.

<sup>9</sup> Ibid 186–7.

<sup>10</sup> Raj Bhala, 'National Security and International Trade Law: What the GATT Says, and What the United States Does' (1998) 19(2) *University of Pennsylvania Journal of International Economic Law* 263.

dual perspectives of health and food security. For developing countries, threats to health and food security are acute national security priorities. While the cases examined by Ghori are not all the most recent or ongoing, they effectively expose the inadequacy of WTO rules in addressing these priorities; it may therefore be essential to look outside the WTO framework for complementary guarantees under international law to safeguard health and food security.

Unlike the preceding chapters, chapter 6 examines export controls that are invoked as a pretext for national security — rather than being driven by genuine national security concerns — against the backdrop of the ongoing trade war between the United States and China. Ghori argues that national security is clearly the justification for the growing push to impose additional export controls and restrictions, which aim to prevent strategic rivals from accessing advanced technologies. Masked by this pretext, such measures can be further deployed to advance the foreign policy interests of the implementing state and its allies. The author explores different dimensions of national security measures, dividing them into internal and external ones. The internal dimension is more secretive, as countries only consider domestic or perceived national security interests when applying export controls. The external dimension is broader and can be used to achieve common security goals of allies. This chapter focuses on the *Russia – Traffic in Transit* case to explore the historical evolution and latest dispute settlement practices of GATT art XXI (the ‘security exception’), emphasising the use of export controls on weapons and dual-use items. Chapter 6 also offers an in-depth analysis of the sanctions and counter-sanctions between the United States and China, highlighting that export controls have evolved from a purely international trade tool to a means of shaping new paradigms of globalisation and national security. It reveals the risk that overusing or abusing export controls may yield short-term political and economic gains, but will ultimately weaken the integrity of the global trade system, undermine WTO rules, and erode the existing international economic order.

Reforming the WTO is now a top priority in international economic law. Ghori’s volume innovatively proposes reform initiatives from the perspective of export restrictions and controls, and its research yields two key conclusions. First and foremost, WTO rules and exceptions afford scant latitude for developing countries to pursue industrial transformation and upgrading. This even undermines their national security and fuels a legitimacy crisis for the WTO among Global South states. Emerging challenges such as climate change and pandemics further underscore the urgency of WTO reforms to address practical global challenges. Second, export controls are shaping new paradigms of globalisation and national security. The global security environment is now being redefined by ‘geo-economics’: economic interdependence fostered by globalisation is increasingly perceived as a vulnerability, which in turn redefines national security and challenges the WTO’s existing security exception provisions. While the WTO must respond to these practical needs, it also has the

potential to drive reforms to the international economic order. Nevertheless, the divergent interests and priorities of developed and developing countries regarding export restrictions and controls constitute a barrier to WTO reform.

This book presents a rigorously argued and evidence-rich study of considerable scholarly value. By engaging extensively with WTO panel and Appellate Body jurisprudence, Ghori vividly illuminates the practical application of WTO disciplines on export controls and exposes the rigidity of existing WTO rules in affording policy space. Against this regulatory backdrop, the book provides states with a practical guide for designing lawful measures. The author also adopts a Global South perspective on the issues addressed, and the sympathetic stance towards developing countries in his arguments aligns with the United Nations ('UN')-endorsed Sustainable Development Goals — thus positioning the integration of developing-country priorities as a core priority for future WTO reform.

While the volume offers an incisive account of the predicaments besetting WTO disciplines on export controls, and documents how certain members resort to such measures for diplomatic purposes, it is somewhat lacking in constructive proposals: it neither elaborates a detailed blueprint for reforming the relevant WTO rules nor advances effective mechanisms to curb the abuse of such measures. Nevertheless, these shortcomings do not diminish its value, as the book provides a thorough analysis of export controls and restrictions under WTO rules amid current geopolitical tensions — offering rich insights for scholars, practitioners, and international trade law policymakers alike. The subjects explored by Ghori are of paramount importance and acute contemporary relevance in an era of intensifying global geopolitical rivalry. Through a comprehensive, multi-faceted analysis of the latest trends in export control and export restriction measures, the volume rigorously exposes the inherent limitations of the WTO legal framework — filling a notable gap in existing theoretical research. Crucially, as WTO reform has increasingly become an international consensus, the book's analysis — anchored in the perspective of export control — provides a conceptual framework for understanding gaps in WTO rules and for charting their subsequent refinement.

Against this backdrop, reforms to WTO rules governing export restrictions and controls should adhere to at least two fundamental principles: first, fairness, equality, and appropriateness must be placed at the core of WTO reforms. The goal of free trade cannot be divorced from industrial development, climate change considerations, and resource-owning states' right to freely utilise their resources. This is critical to maintaining the WTO's legitimacy and effectiveness. The second principle is that export restrictions and controls must not be overused; otherwise, the WTO system and the global economic order risk unravelling. We submit that the refinement of WTO rules on export controls admits of multiple pathways, which must simultaneously preserve adequate policy space for developing countries and curtail the abusive invocation of those rules, lest export controls be converted into instruments of unilateral economic

coercion. On the one hand, the WTO Secretariat and the UN Conference on Trade and Development could issue non-binding recommendations on export controls. This would steer the progressive development of such disciplines while enhancing the policy autonomy of developing members. On the other hand, bodies such as the International Law Commission could provide authoritative, albeit non-binding, interpretations of general international law that clarify the lawful limits of unilateral sanctions and alleviate the distortive effects of such measures. These interpretations would help uphold the original policy rationale of export controls, namely the protection of essential national security interests.

*Xuanli Chen, PhD Scholar  
Wei Shen, KoGuan Distinguished Professor of Law  
KoGuan School of Law  
Shanghai Jiao Tong University*