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**Chien-Huei Wu, *Law and Politics on Export Restrictions. WTO and Beyond*,  
Cambridge University Press, Cambridge: 2021, pp. 300**

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At heart of the reviewed book are measures restricting the export of goods. The author aims to systematically examine the role they play within the world trade system, thus the book is centred around the GATT/WTO regime. Considerations are not, however, limited by that framework, as links to public international law as well as to international investment and competition law are also investigated. The author applies a dualistic approach, conducting his analysis not only legally, but also, if not most importantly, politically, with particular emphasis on the international political economy. Consequently, the book provides a multifaceted picture of, firstly, the role the export restrictions theoretically play within the global trade system, and secondly of practical effects and difficulties in their application (and sometimes non-application) beyond the WTO, particularly with respect to their intersection with other regulatory regimes of international law. The book's importance and contribution are reinforced by the fact that disciplines with respect to export restrictions in the GATT/WTO are very limited, and in the scholarship the subject remains largely unexplored. Furthermore, the uniqueness of the adopted measure-specific approach (instead of a sector-specific one) makes the book an even more comprehensive, thought-provoking and fascinating read.

The introductory chapter clearly maps out the crucial pillars of the book and provides clarity with respect to the adopted definitions and approaches. The author establishes a background for the further reflections by providing a definition of export restrictions, a justification for the applied approaches, and most importantly by showing practical examples, which directly correspond with the topics discussed in subsequent sections of the book. Each one illustrates a different challenge brought

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about by a specific export restriction regulation. The chapter is centred around the export sphere of the GATT/WTO international trading system, with its “built-in export bias”,<sup>1</sup> almost instantly moving to considerations whether export tariffs can be included in the definition of “commerce” under Art. II:1(a) GATT; and thus whether the fundamental Most Favoured Nation treatment obligation (MFN) is applicable to them. The fact that the GATT/WTO system is based on its “built-in export bias” constitutes the core thesis of the book and manifests itself in the abundance of WTO rules on the liberalization of import restrictions, simultaneously with minimal regulation of restrictions relating to exports. Instead of relying on the commonly used terms of “export control” and “export restraint”, in his investigations the author uses the term “export restriction”, as it is regularly used in the legal texts of WTO agreements. Deriving from the Panel Report in *China – Raw Materials*, an export restriction is defined through its “limiting effect on exportation”, regardless of the type of product, as well as through its potentially adverse effect on exportation, which is considered a decisive element of export restrictions.<sup>2</sup> This fundamental term is interpreted broadly in the book, wherein any measures which directly or indirectly limit exportation are subject to investigation.

The author uses a practical approach to describe the regulation of ‘export restrictions’ under the WTO regime, identifying the challenges in the application of specific export restrictions, each one directly corresponding with an issue investigated in detail later in the book. Firstly two – ultimately not adopted – proposals aimed at disciplining the export restrictions which particularly exacerbated food security are presented in an attempt to illustrate the growing attention of WTO Members to export restrictions.<sup>3</sup> Additionally, the author portrays the challenges and potential consequences of export restrictions by referring to *China – Raw Materials*, where the WTO dispute settlement bodies examined restrictions imposed by China on rare earths’ exported to Japan, and examines their consistency, or inconsistency, with related WTO rules, particularly with the general exception provided in Art. XX GATT 1994. A different practical issue, which is highlighted as particularly

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<sup>1</sup> Chien-Huei Wu, *Law and Politics on Export Restrictions. WTO and Beyond*, Cambridge University Press, Cambridge: 2021, p. 2.

<sup>2</sup> *Ibidem*, pp. 4, 18.

<sup>3</sup> 1. Draft declaration submitted by the European Union together with other members to the 2011 Ministerial Conference, which regarded the food export barriers which restricted humanitarian aid and thus penalized the most needy. The draft included a proposal to remove food export restrictions or extraordinary taxes for food which was purchased for non-commercial humanitarian purposes by the World Food Programme, together with a declaration not to impose such restrictions in the future. 2. Declaration submitted by the African and Arab groups “WTO Work Programme to Mitigate the Impact of the Food Market Prices and Volatility on WTO Least-Developed and Net-Food Importing Developing Members” for the purpose of exempting the least developed countries (LDCs) and net food importing developing countries (NFIDCs) from export restrictions potentially imposed by the food-exporting WTO members in order to protect the LDCs’ and NFIDCs’ food supplies.

important in the geopolitical context, concerns the invocation of national security exceptions for the justification of otherwise illegal export restrictions. This kind of states' practice, which is often aimed at achieving geostrategic and geopolitical goals, creates a series of important questions which author strives to answer later in the book. In particular, the relationship between export restrictions under the WTO trade regime and export control measures provided by public international law, as well as WTO adjudicators' potential jurisdiction over cases concerning national security, are investigated. The latter issue, introducing another key part of the book, relates to supply chain security. The Covid-19 crisis pushed many states to rapidly restrict the export of many goods critical for domestic supply, simultaneously endangering the global market.

As was already mentioned above, both international investment and competition law are considered by the author as highly influential on export restrictions, and thus constitute an important context for the presented analysis. Their links with export restrictions, such as instances when an export restriction may lead to an indirect expropriation claim under international investment law and thus result in compensation, as well as their unquestionable blending within the global supply chain, justify the author's decision to incorporate them into his investigations in order to present a comprehensive picture of the role of export restrictions within the global trade system. For that same reason, as was also briefly mentioned above, the book takes a measure-specific approach and the analysis is not limited to the natural resources sectors. This perspective contributes fundamentally to book's value and uniqueness, which further enhances its contribution to the debate; as the sector-oriented approach is commonly applied in works regarding export restrictions.

The book is composed of five chapters. Apart from the introductory one, each chapter focuses on export restrictions, either from a different legal or political perspective or describes a particular practical challenge linked with the application of export restrictions. Chapter 2 is centred around the WTO framework and provides an analysis of the WTO regulation of export restrictions, additionally taking a look at the accession protocols and working party reports, as well as investigates the regional trade agreements in search for provisions of an export-restricting nature. In Chapter 3, which combines a legal analysis with perspectives of political economy, attention is given to the governance-related aspects of export restrictions, particularly the question whether the WTO's exceptions can be applied to and justify the imposition of export restrictions by the states, with particular emphasis on national security. Chapter 4 expands the investigation into different regimes of international law, i.e. investment and competition law and policy, especially in the context of the global supply chain. In Chapter 5, which concludes the book, the author includes the post-Covid 19 perspectives and offers a look into the future of the global supply

chain. All of the chapters combined create a comprehensive and systematic picture of the role that export restrictions play in the global trade system. Each of the practical issues, briefly portrayed in the introductory chapter, are mirrored in an individual chapter, which develops the already-highlighted challenges, constituting at the same time a separate part of the book, as discussed later in this review.

Chapter 2, titled “WTO Rules on Export Restrictions”, constitutes a theoretical framework, albeit not without practical insights, for the further and more detailed analyses included in subsequent parts of the book. As the title itself indicates, at the chapter’s core are the WTO provisions of the WTO agreements relating to export restrictions. The analysis covers Art. XI of the GATT 1994, including two exceptions provided in Arts. XI:2(a) and XI:2(b), as the presented analysis departs from the two notions underlying the GATT/WTO regime, i.e. the liberalization of import barriers and, as a result, the elimination of quantitative restrictions.<sup>4</sup> Next the author takes a closer look at Art. 12 of the Agreement on Agriculture; Art. 11 of the Agreement on Safeguards (ASG); as well as all the relevant provisions of the Agreement on Subsidies and Countervailing Duties (ASCM). With regard to the latter, the author investigates its premises and argues that the export restrictions constitute subsidies, and potentially may result in anti-subsidy investigations and, consequently, also anti-dumping investigations. Additionally, the regulation of grey-area measures, particularly Voluntary Export Restraints (VERs), is also touched upon. The legal analysis leads the author to the very practical and most interesting part of the chapter, where he illustrates, in general, how WTO Members use the analyzed WTO rules relating to export restrictions to negotiate with acceding countries for their own future benefit; and secondly how the proposals of the WTO Members in the Doha Development Agenda could potentially put a leash on the export sphere of global trade. Based on the example of Russia’s and China’s accession to the WTO, the author demonstrates that voids in the systematic export restrictions’ regulation under the WTO regime are being filled by bilateral rule-making at the stage of accession negotiations. Following Hardeep Basra,<sup>5</sup> the author argues that negotiation processes are not rule-based, but governed by “power politics”, as the acceding country has to essentially buy/negotiate itself a “ticket of admission”.<sup>6</sup> The price is their commitment, more often than not, to provide a market access that is higher than that which is reciprocally offered by

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<sup>4</sup> The analysis relies on WTO dispute cases such as: *Canada – Measure Affecting Exports of Unprocessed Herring and Salmon*; *India – Quantitative Restrictions*; *India – Autos*; *Columbia – Port of Entry*; *US-COOL*; *China – Raw Materials*.

<sup>5</sup> H. Basra, *Increased Legalization or Politicalization? A Comparison of Accession under the GATT and WTO?* 46 *Journal of World Trade* 937 (2012), pp. 937-938.

<sup>6</sup> In the book (p. 64) the quote is cited from J.H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, The MIT Press, Cambridge, MA: 1994, p. 45.

WTO Members. Using the example of China's Accession Protocol, and following Russia's Working Party Report, the author demonstrates in detail why the WTO-plus obligations challenge the interpretative exercise of the Appellate Body and panels, particularly with regard to the applicability of a general exception. Later in the chapter the analysis focuses on WTO Members' proposals, which can possibly discipline the regulation of export restrictions. With regard to the Non-Agriculture Market Access, the author highlights proposals by Japan and the United States (US) which aim for more transparency in export restrictions, as well as an initiative from European Union (EU). The chapter concludes with the examination of different regulatory frameworks relating to export restrictions, particularly within the EU and NAFTA 2.0.

Chapter 3, "Governing Export Restrictions: National Security and International Political Economy" can be divided into three parts, each one unravelling the complexities of the connections between international political economy and international law with export restrictions. The chapter begins with a historical and evolutionary analysis of export restrictive measures in the post-war liberal international economic order, with a particular emphasis on the political and economic rationales of the Coordinating Committee for Multilateral Export Controls (COCOM). Based on a historical analysis and drawing from political economy and international relations, the author portrays and compares the domestic laws and policies on export control of the EU and United States, as they are considered to be, both historically and currently, key actors in disciplining export restrictions. The second part of the chapter is centred around the challenges of WTO governance, particularly because national security exceptions proliferate. The author investigates whether Art. XXI GATT 1994 provides sufficient controls for preventing the abuse of national security for protectionist reasons, allowing WTO members to adopt protection measures allegedly aimed at protecting essential security interests. In this part of the chapter, the author tackles two important problems: whether the national security exception is a self-interpreting clause; and whether application of a measure for the purpose of a political objective can be justified under the WTO regime. He also links the national security debate with the rather difficult relationship between "sovereign nations as masters of treaties and adjudicators as treaty-interpreters".<sup>7</sup> The third and concluding part of the chapter is devoted to recent cases relating to export restrictions, such as China's tourism embargo against South Korea; the diplomatic crisis in Qatar; as well as the EU's sanctions against Russia.

At heart of Chapter 4, entitled "Export Restrictions in the Global Supply Chain: Investment and Competition", is the global supply chain, its security, and supply

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<sup>7</sup> Wu, *supra* note 1, p. 191.

chain risk management (SCRM). As a starting point, the author claims that in the present times, when multiple jurisdictions are part of the production process, export restrictions are a real threat to the security of global supply chains. In this chapter he explores how investment and competition law and policy can serve as a “remedy” to a potential disruption of global supply chains, and how they can effectively minimize the danger the export restrictions pose to production processes. Such export controls are investigated both in the vertical (buyers and suppliers) and horizontal (suppliers and suppliers) contexts.<sup>8</sup> The author points out that export restrictions can result in investment diversion, as countries with an abundance of natural resources may use such measures for the purpose of attracting foreign direct investment, creating a “comparative advantage vis-à-vis domestic downstream processors” through establishing a price differential with regard to specific materials.<sup>9</sup> Simultaneously however, export restrictions may serve the completely opposite purpose of preventing the market access of foreign entities, especially when combined with domestic measures such as the currently widespread foreign investment screening mechanisms. Another important issue highlighted here concerns both intermediate forms between governmental and private restrictions, such as instances when private trade barriers, are “approved, encouraged or tolerated by the government”,<sup>10</sup> which may create challenges under competition law. Lastly, the author takes a look at export restrictions, especially export cartels, from the perspective of competition law. US anti-trust law, which is not applied if an export cartel has no adverse effect on the US domestic market, as well as the EU’s competition law with respect to vertical agreements, including export bans to third countries with no effect on either trade or competition with internal market, are offered as examples.

In Chapter 5 – “Conclusion. Reconfiguring the Global Supply Chain in the Post-COVID-19 Era” – the author concludes his investigation with reflections on the future of the global supply chain in the new economic reality shaped by the Covid-19 pandemic. He identifies three key elements of fundamental importance to the new world. Firstly, he examines “beggar-thy-neighbour”, which exposes the flaws of the WTO’s export-biased regime whereby rich or resource-rich countries such as the US or China can impose export restrictions which in the long run endanger global supply chains and serve as means for achieving domestic policy goals, often invoking national security exceptions. Secondly, he focuses on economic security, which is in fact a response to deep economic interdependencies created by years of economic integration and trade liberalization. Thirdly he points out the decoupling of the US-China economy, which will most probably result in continuous efforts

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<sup>8</sup> *Ibidem*, p. 203.

<sup>9</sup> *Ibidem*, p. 259.

<sup>10</sup> *Ibidem*.



on the part of the US to create a global supply chain only with its trusted allies and partners.<sup>11</sup> The book ends with the conclusion that in the upcoming years the securitization of international economic relations and dependence on export restrictions will increase even further.

The book presents a vivid and multifaceted picture of the role export restrictions play in a global trade system and does so in innovative, unique and comprehensive ways, which makes it a thought-provoking, intriguing and truly fascinating read. As the author has succeeded in analysing even the most complicated and detailed issues in a clear and easily understandable way, the book is beneficial for a broad category of readers. While undoubtedly practitioners will appreciate both the measure-specific approach and the practice-oriented analyses, at the same time the book can be equally enlightening for anyone interested in barriers to trade, broadly understood, as well as in any of the more specific issues presented in the different chapters. Consequently, this book would be of interest to lawyers, economists, and anyone professionally involved, or simply interested in, the WTO/GATT regime and its governance; investment law; competition law; national security exceptions; and supply chains as well as their risk management, not only from the legal point of view but also from the perspective of political economy. Undoubtedly readers and practitioners with advanced knowledge and understanding of the WTO/GATT system and its legal and political complexities will find the book both insightful and very interesting, while at the same time the author very often provides an introductory background to the more complicated or detailed issues, allowing readers with limited or no knowledge of the WTO regime or international trade law to benefit from reading this innovative and unique position. Additionally, inasmuch as the book offers an abundance of references to both the EU and the US, the book would be of great value to anyone legally or politically interested in their regulatory regimes.

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<sup>11</sup> *Ibidem*, p. 262.