

Global Challenges at the Intersection of Trade, Energy and the Environment

Conference Draft, 21st October 2009

Export Taxes and Dual Pricing – How to Tackle Trade Distortive Government Practices?¹

*Reinhard Quick*²

¹ Background note and questions prepared for **Panel 5 Subsidies and Pricing**, of the Conference *Global Challenges at the Intersection of Trade, Energy and the Environment* 22nd and 23rd October 2009, Organised by the Centre for Trade and Economic Integration (CTEI) at the Graduate Institute of International and Development Studies, Geneva, in collaboration with the World Trade Organization.

² Reinhard Quick is Director of the Brussels office of German Chemical Industry Association, vice-chairman of the WTO Working Party and chairman of the Trade and the Environment Working Group of BUSINESSEUROPE. In 2006 he has been appointed honorary professor for international economic law at Saarland University, Saarbrücken where he teaches a course on trade and environment. He gives lectures on specific WTO subjects at the London School of Economics and at the Université Libre de Bruxelles.

Export Taxes and Dual Pricing – How to Tackle Trade Distortive Government Practices?

Reinhard Quick³

Background note and questions⁴

The DDA mandate explicitly refers to the reduction or elimination of tariff escalation. Tariff escalation is the practice of charging higher import tariffs on processed goods than on unprocessed goods. It has long been held that tariff escalation in developed countries may hinder the development of high value-added industry in developing countries. Yet, given the already low average tariffs on industrial goods in developed countries it is doubtful whether the degree of tariff escalation still existing today may discourage the development of a processing industry in developing countries.

With reference to tariff escalation in the developed world, developing countries have justified export duties or export taxes for certain commodities.³⁴ These measures are thought to promote the development of downstream processing industries and encourage foreign direct investment whilst at the same time being a reliable source of revenue. As mentioned above, export duties have been notified as NTBs in the DDA NAMA negotiations. Export duties or export taxes are customs duties on exports often levied on commodities by exporting developing countries for fiscal or industrial policy reasons. Economically speaking they are the reverse-side of tariff escalation since they make it more difficult for developed countries to process these commodities.

WTO disciplines on export duties are not clearly defined, hence the discussions in the DDA.³⁵ On the other hand, these measures are prohibited by some regional trade agreements and have also been dealt with in some accession negotiations (e.g. China and most recently Russia).³⁶

The economic implications of export duties are well known:³⁷

‘The economic effects of export duties need to be assessed with regard to their objectives as well as their overall effects on the economies of the trading partners concerned.

³ Reinhard Quick is Director of the Brussels office of German Chemical Industry Association, vice-chairman of the WTO Working Party and chairman of the Trade and the Environment Working Group of BUSINESSEUROPE. In 2006 he has been appointed honorary professor for international economic law at Saarland University, Saarbrücken where he teaches a course on trade and environment. He gives lectures on specific WTO subjects at the London School of Economics and at the Université Libre de Bruxelles.

⁴ Excerpt from “Further Liberalization of Trade in Chemicals – Can the DDA Deliver? A Summary of the Chemical Industry’s Positions on the Doha Development Agenda” by Reinhard Quick, published in Global Trade and Customs Journal Vol.1, issue 1 (2006), p. 1 et seq. with some amendments dated 21 October 2009.

When the purpose of export duties is essentially revenue, it may be asked whether alternative internal taxation measures could be equally effective and also less trade distortive. In making such an assessment it should be recognised that developing and least developed countries may need technical assistance to help modernise and improve the efficiency of their tax systems.

When the objective is primarily the promotion of downstream industries, the economic implications vary according to the extent to which the exporting country can affect the world market price of the taxed product. However, whether or not there is such an effect, an export duty would create a differential between a price available to domestic processors and the price charged to foreign processors. This differential would provide a competitive advantage to domestic downstream processors. This could be justified by the “infant industry” argument, i.e. to provide an initial incentive for the development of a processing industry. It would also improve the overall terms of trade of the country, benefiting its balance of payments. However the net result could be a welfare loss in that it would penalise exporters of the taxed product while benefiting downstream processing industries which in turn would have a reduced incentive to become truly competitive internationally. In this sense an export duty acts as an implicit subsidy for the domestic processing industries, providing them with an artificial competitive advantage both in the domestic markets of the country and in export markets.’

Given these negative effects it is not astonishing that the European Union attacks export duties as ‘beggar-thy-neighbour’ policies and insists that these measures be first bound, then substantially reduced and eventually eliminated.³⁸ The European business community fully supports this approach. It is difficult to predict whether the DDA will eventually agree on some discipline concerning export duties given the WTO membership’s fundamental disagreement on the issue.³⁹ Yet it is clear that the conceptual justification in favour of export taxes (in the developing world) with the existence of tariff escalation (in the developed world) is difficult to make when the average tariff for industrial products (in the developed world) is as low as it is.

Dual pricing schemes for natural resources are another non-tariff trade barrier which have considerable trade distortive effects. These measures are practiced in particular by Russia and Saudi Arabia with respect to natural gas. A dual pricing scheme consists in providing the natural resource cheaper internally than after export:⁴⁰ since the government has a monopoly over the natural resource it can fix the price. The economic effects of a dual pricing system are the same as those of an export duty. The countries practising these schemes justify them as being a WTO-compatible investment incentive. In fact the dual pricing system of Saudi Arabia has triggered many capital intensive investments in the petrochemical sector. The capacities already built in Saudi Arabia and those expected over the next years exceed the demand of the region by far. They are aimed at supplying the world market⁴¹ and can thus be seen as a threat to the European petrochemical industry.

The European Union has attacked these practices for a long time, but it failed to have them eliminated in its bilateral WTO accession treaties with both countries: in 2003 the European Union concluded an agreement with Saudi Arabia⁴² and in 2004 one with Russia.⁴³ Initially the issue looked as though it might have a positive outcome with Saudi Arabia,⁴⁴ i.e. a commitment undertaken by Saudi Arabia to eliminate dual pricing. However in the negotiations with Russia the European Union did not insist on such elimination. As a consequence Saudi Arabia⁴⁵ withdrew its original commitment in the final WTO accession negotiations. This means that both countries can continue to practise a dual pricing system. The EU's lack of enthusiasm to combat dual pricing practices in the context of WTO accession can only be explained in political and geopolitical terms. WTO membership of Russia and Saudi Arabia was considered more important than solving the petrochemical industry's problems with dual pricing.⁴⁶

The trade distortions caused by these schemes persist and are now being addressed in the DDA negotiations. It is interesting to note that both the European Union and the United States consider dual pricing schemes as an issue to be dealt within the 'rules-' and not in the NAMA negotiations.⁴⁷ Legally speaking dual pricing schemes are not specific subsidies within the meaning of the WTO Agreement,⁴⁸ but rather confer a general benefit; therefore they cannot be attacked under the existing WTO regime.⁴⁹ Given their intrusive nature and the trade distortions they create, both the European Union and the United States have suggested categorizing these schemes as prohibited subsidies. This would solve the issue of specificity, since prohibited subsidies are irrebuttably presumed to be specific.⁵⁰

34 See OECD Document TD/TC/WP(2002)54/Final of 31 January 2003, *Analysis of Non-tariff Measures: the Case of Export Duties*, p. 14.

35 See for example WTO/TN/MA/W/46/Add.12 of 24 May 2005, *Non-tariff Barrier Notifications, Addendum by the European Communities*, p. 2.

36 See note 34 above, p. 11, note 20 which reads: 'In the accession process of Russia export duties on minerals, petrochemicals, natural gas, raw hides and skins, ferrous and non-ferrous metals and scraps are discussed. Members argue that in the case of dominant supplier in Russia, third country buyers would suffer from increased cost and encounter the insufficient supply of the goods. They point out that the loss of relative competitiveness in the global market for downstream products *vis-à-vis* Russian products should be taken into account.'

37 Ibid, p. 15. A recent WTO study also supports these findings. See Roberta Piermartini, *The Role of Export Taxes in the Field of Primary Commodities*, WTO 2004.

38 See WTO/TN/MA/W/11 Add. 6 of 27 April 2006, *Negotiating Proposal on Export Taxes, Communication from the European Communities*.

39 India for example considers that export duties are not part of the Doha mandate; *Note by the Secretariat*, as note 30 above, p. 13. The EU's proposal on export taxes, see note 38 above, was sharply criticized by several developing countries including Argentina, Brazil, India, Indonesia, Malaysia and Venezuela. See *Bridges Weekly Trade News Digest*, Vol. 10, No. 14 of 26 April 2006, p. 8.

40 See for example WTO/WT/ACC/SAU/61 of 1 November 2005, *Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization*, p. 12-13. See also Ulrich Klaus, *Russlands Erdöl und Erdgas im Kontext der WTO Rechtsordnung*, in *Der Beitritt Russlands zur Welthandelsorganisation*, Christian Tietje (Ed.), Beiträge zum Transnationalen Wirtschaftsrecht, Heft 44, 2005, Martin-Luther-Universität, Halle-Wittenberg, p. 48.

41 See *CHEManager*, 5/2006 p. 1-3. See also *Chemistry and Industry*, Issue 6 of 20 March 2006, p. 16.

42 EU Press Release IP/03/1188 of 30 August 2003: *Accession of Saudi Arabia to the WTO: Conclusion of the EU-Saudi Arabia Bilateral Market Access Deal*.

43 EU Press Release IP/04/673 of 21 May 2004: *Russia – WTO, European Union Russia Deal Brings Russia One Step Closer to WTO Membership*.

44 See note 42 above. The Press Release clearly refers to the elimination of the dual pricing practice by Saudi Arabia.

45 WTO Press/420 of 11 November 2005, *WTO General Council successfully adopts Saudi Arabia's terms of Accession*.

46 The issue of dual pricing amply demonstrates the difficulty of bridging the gap between the external aspects of competitiveness and general political considerations. On this issue see UNICE Position Paper dated 9 March 2005 on *Competing for Growth and Jobs in a Global Market*, UNICE's Preliminary Views on the External Dimension of the Lisbon Agenda, p. 3 at: <www.unice.org>.

47 WTO/TN/RL/W/78 of 19 March 2003, *Subsidies Discipline Requiring Clarification and Improvement*, Communication from the United States, p. 3; see also WTO/RL/GEN/94 of 16 January 2006, *Expanding the Prohibited 'Red Light' Subsidy Category*, Paper from the United States; or the Submission of the European Communities on Subsidies, WTO/TN/RL/GEN/135 of 24 April 2006.

48 On the specificity requirement of the Subsidies Code, see Christian Pitschas, *Das Übereinkommen über Subventionen und Ausgleichsmaßnahmen*, in *WTO Handbuch*, Hans-Joachim Priess, Georg Berrisch (Eds), München 2003, pp. 457 et seq.; see also Marc Benitah, *The Law of Subsidies under the GATT/WTO System*, The Hague, London, New York, 2001 pp. 87 et seq., p. 88 footnote 191.

49 'In the EC's experience, the current ASCM discipline does not permit these practices to be tackled effectively... To that effect, a possible solution would be to introduce a specific prohibition'. See *EC Submission*, as note 46 above. See also Klaus, as note 40 above, p. 48.

50 See Pitschas, as note 48 above p. 458.

Questions for the Discussion:

- Are dual pricing practices subsidies?
 - OECD: "any measure that keeps prices for consumers below market levels, or for producers above market levels, or that reduce costs for consumers and producers"
- Are dual pricing practices in violation of WTO subsidy rules?
 - (a) financial contribution, (b) benefit
 - Prohibited export subsidy?
 - Specificity
 - *De facto* specificity
- Are dual pricing practices in violation of the WTO TRIMs Agreement?
 - Local content requirements?
- Do we need rules in the WTO dealing with the issue of access to raw materials?
 - The relationship between natural resources and the concepts of comparative advantage and the international division of labour?
 - Are WTO members entitled to an equitable share of the international supply of raw materials?
 - Article XX (j): "providedthat all contracting parties are entitled to an equitable share of the international supply of such products".
- How to solve the issue?
 - Negotiations of new rules? Definition of "equitable share of the international supply"
 - Prohibited export subsidies
 - Prohibition in accession negotiations, FTAs? Exceptions for environmental or societal (social, environmental) reasons?

The Graduate Institute's **Centre for Trade and Economic Integration** fosters world-class multidisciplinary scholarship aimed at developing solutions to problems facing the international trade system and economic integration more generally. It works in association with public sector and private sector actors, giving special prominence to Geneva-based International Organisations such as the WTO and UNCTAD. The Centre also bridges gaps between the scholarly and policymaking communities through outreach and training activities in Geneva. Its goal is to provide an innovative research basis for solutions that address the medium-term challenges facing the world trade system broadly defined and economic integration more generally.