

**Legality of Export Tariffs (additional note)**

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*This advice is provided in response to Q240 - Legality of Export Tariffs (additional note)*

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**Query:**

1. Taking into account the recent WTO decision on China's export tariff on several kinds of high carbon and high polluting materials, are export duties on carbon intensive goods illegal under the WTO regime?
2. Can the exceptions under Article XX GATT - normally granted on import restrictions for specific environmental purposes - be applied to export restrictions?

**Advice:**

The GATT does not prevent any country from imposing export duties. They may be imposed for any reason without needed resort to Article XX or any other exceptions.

However, Article II GATT can apply to bindings of export duties should any WTO Member wish to make such commitments. This is extremely rare in practice, but possible. Furthermore, WTO Members may make such commitments as part of their accession protocols. This was the case for China, which recently lost a case on export duties, among other things (WT/DS394/AB/R). Again, this varies from Member to Member, but is more common for recently acceding members. Finally, free trade agreements with developed countries frequently contain a ban on export restrictions. Again, this varies from country to country.

In sum, it is not possible to give an answer of general applicability. It depends entirely on the country at issue. But if the idea is to negotiate export duties, as in the accompanying article<sup>1</sup>, it is even less likely that there could be any legal difficulty.

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<sup>1</sup> Benito Müller and Anju Sharma, *Trade tactic could unlock climate negotiations*, 17 Junly 2005  
<http://www.oxfordclimatepolicy.org/publications/documents/Tradetacticunlockclimate.pdf>