CHAPTER 7

Rules applicable to exports

Summary

GATT rules permit an export product to be relieved of all indirect taxes borne by it in the exporting country. The rules further allow countries to levy duties on exports if these are necessary to control exports or to achieve any other policy objective. As with imports, the rules prohibit export restrictions except in a few specified situations.

The Guide has so far described the GATT rules applicable predominantly to imported products. This chapter briefly discusses the rules on exports.

Export incentives providing for the reimbursement of indirect taxes

GATT 1994, Annex I, Ad Article XVI. Agreement on SCM, Footnote to Article 1 and Annexes I to III

GATT rules permit countries to relieve a product to be exported of:

- Customs duties and other indirect taxes levied on inputs used and consumed in its manufacture;
- Indirect taxes on the exported product; and
- Indirect taxes on the production and distribution of the exported product.

Agreement on SCM, Annex I: footnote 58

The term 'indirect taxes' covers such taxes as "sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes". The Agreement on Subsidies and Countervailing Measures (SCM), which provides that foregoing by governments of the taxes that are due and payable constitutes an export subsidy, clarifies that:

> Exemption of an exported product from duties or indirect taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

It is important to note the reasons for these rules. Under GATT's national treatment rule, a country may levy on an imported product, in addition to customs duties, all indirect taxes that it imposes on like products produced domestically, provided the duties are not levied at rates higher than those applied to domestic products. Unless therefore the exported product is either relieved or exempted from the indirect taxes payable in the exporting country, it becomes subject to double taxation – in both the exporting and importing country.

The rules, however, allow an exported product to be relieved of indirect taxes only. It may not be relieved of the direct taxes (such as income tax and taxes on profits) payable by producing enterprises. The SCM Agreement clarifies that "exemption, remission or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable" by the producing enterprise constitute a

prohibited export subsidy. The economic rationale for this rule arises from the assumption that the burden of indirect taxes is generally shifted to the product and is reflected in its price, while direct taxes are not so shifted, but are generally absorbed by the tax payer producer.

Almost all countries today have incentive schemes. These schemes make it possible for exporting enterprises to claim exemption from, or drawback of, customs duties paid on inputs used in the manufacture of export products and the reimbursement of indirect taxes borne by such products. Further, in order to ensure that exporting enterprises are not disadvantaged in selling in outside markets, countries rarely impose taxes on exports.

Rule governing export control measures

GATT rules, however, recognize that in certain situations countries may have to take measures to control exports. As with imports, countries are required in such situations to give preference to price-based measures. The rules thus permit countries to use export taxes but prohibit restrictions on exports unless they can be justified under one of the exceptions.

Export taxes

Revenue considerations have led some developing countries to levy export duties. Today, these countries are reducing their dependence on these duties because of their adverse effects on the export trade.

However, apart from revenue considerations, export duties may also be levied to attain certain other policy objectives. They may, for example, be temporarily imposed immediately after a devaluation if the lower export prices in foreign currency terms do not bring about the expected rise in exports while providing undue benefit to exporters.

Duties are levied by countries exporting primary commodities to improve their terms of trade. They may also be used to control exports in order to increase the availability of resources to the domestic processing industry or to control for environmental or ecological reasons further exploitation of the country's natural resources.

One of the major advantages of export duties over export restrictions is that they provide governments with additional revenue. Governments often use such revenue to assist the producers of the taxed commodities and products.

GATT 1994, Article I:1

The basic GATT rule requiring countries to extend MFN treatment applies to duties on both imports and exports. The MFN principle also applies to:

- The method of levying such duties, and
- All rules and formalities connected with exportation.

Export restrictions

The GATT provisions prohibiting restrictions on imports also apply to exports. There are, however, a few exceptions to this rule. Thus it is open to a country to restrict or prohibit exports, if this is necessary:

GATT 1994, Article XI:2(b)

- To implement standards or regulations on the classification, grading or marketing of commodities in international trade, and

GATT 1994, Article XI:2(a)

- To prevent or relieve critical shortages of foodstuffs or other essential products.

In addition, the rules prevent countries from imposing restrictions:

- On raw materials in order to protect or promote a domestic fabricating industry.
- To avoid competition among exporters.

Business implications

It is important for the business person to note that GATT rules permit the reimbursement of customs duties paid on production inputs as well as the refund of the indirect taxes borne by exported products. As regards customs duties, the practice in most countries is either to exempt inputs imported for use in export production from payment of duties, or to permit exporters to claim a duty drawback after export. Most countries also have incentive schemes allowing exporters to claim the reimbursement of indirect taxes borne by the exported product. As relief from such taxes on products exported is granted by almost all countries, enterprises in countries that do not provide such a relief may find themselves at a disadvantage on foreign markets. It is necessary to ensure that the amount reimbursed does not exceed the actual incidence of the customs duties on inputs and of the indirect taxes on the exported product. Any payment in excess of the actual incidence would amount to an export subsidy.

As is explained in chapter 8, countries are prohibited from granting export subsidies. Developing countries have a transitional period of eight years (i.e. up to 1 January 2008) to phase out their existing export subsidy schemes. The rules do not permit these countries to grant during the transitional period subsidies on products that have not benefited from them earlier. Furthermore, the rules permit the refund only of indirect taxes borne by the exported product. Any exemption or payments to exporters to compensate for direct taxes payable on export earnings are not allowed.

GATT's basic approach that exported products should be relieved of all indirect taxes also implies that, where in special situations countries levy export duties, the need for maintaining them should be kept under continuous review. It is important for the business person to know that such duties, like import duties, can be applied by governments only on an MFN basis. It is not open to a country to levy a higher export duty on exports to one destination and lower or no duty on exports to other destinations.