

OBJECTIVES, EFFECTS AND LEGAL ADMISSIBILITY OF CREATING RESTRICTIONS ON EXPORT OF GOODS BY INDIVIDUAL EU MEMBER STATES VIS-À-VIS THIRD STATES

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KEYWORDS

restrictions on exports of goods, common commercial policy, third States, the principle of the free movement of goods, Treaty on the Functioning of the European Union, Regulation 2015/479

ABSTRACT

Export restrictions are measures applied by the Member States of the European Union with the aim of controlling the export of certain goods beyond their borders. Their application is, as a rule, prohibited under Article 35 TFEU, which guarantees the freedom to export goods between Member States as an element of the free movement of goods — a cornerstone of the internal market. However, this provision does not apply to restrictions on the free movement of goods between Member States and third countries. The regulation of such exports falls within the scope of the common commercial policy conducted by the European Union pursuant to Articles 206-207 TFEU.

The purpose of this article is to analyse export restrictions on goods that are applied unilaterally by individual EU Member States in their relations with third countries. The legal permissibility of establishing certain restrictions on the export of goods to third countries derives from Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports.

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Such restrictions may therefore be introduced only to the extent that the EU legislature — acting within the framework of the common commercial policy, which falls within the exclusive competence of the European Union — has authorised Member States to do so. This issue was recently confirmed, for the first time in the case law of the Court of Justice of the European Union, in its judgment of 13 November 2025 in *Commission v Hungary*, which will also be discussed in this article.

I. INTRODUCTION

In the European Union (EU), restrictions on exports of goods between the European Union Member States are prohibited under Article 35 TFEU, which stipulates that “Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.”¹ In conjunction with the prohibition of export duties and charges having equivalent effect (Articles 28² and 30³ TFEU) — as well as discriminatory practices of State commercial monopolies, insofar as they affect exports (Article 37⁴ TFEU) — this prohibition constitutes the legal basis for the freedom to export goods to other

¹ See consolidated versions of the Treaty on the Functioning of the European Union, which includes the changes introduced by the Treaty of Lisbon (of 2007), *OJ C 326, 26.10.2012, pp. 47-390* (TFEU). The content of this provision has not been changed since signing the Treaty of Rome (of 1957) establishing the European Economic Community (EEC Treaty); see Article 34, first paragraph, EEC Treaty.

² “1. The Union shall comprise a customs union which shall cover all trade in goods, and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries. 2. The provisions of Article 30 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.”

³ “Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.”

⁴ “1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States. The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others. 2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States. 3. If a state monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.”

Member States and, consequently, an integral part of the principle of the free movement of goods within the European Union. The freedom to export goods forms part of the core constitutional essence of the European Union's internal market.⁵

The export duties on goods; charges having equivalent effect; quantitative export restrictions; and discriminatory practices of State commercial monopolies affecting the export of goods are collectively referred to as “export restrictions of goods”. This concept is of an economic nature; the TFEU itself does not employ such a term. It denotes measures adopted by public authorities that exert an actual impact on international trade in goods, thereby reducing the volume of exports, regardless of their legal form. Examples include export bans and quotas; customs duties; export contingents; licensing systems; minimum export prices; State trading undertakings; and specific standards applicable to exported goods.⁶

The provisions of the TFEU require the Member States to abolish restrictions on the free movement of goods in their mutual relations — that is, within the internal market. However, neither Article 35 TFEU, nor the other provisions governing the free movement of goods, apply to restrictions on the movement of goods between the Member States and third countries. This situation therefore differs from those concerning the movement of capital and payments, where the TFEU rules on the free movement of capital and payments also extend to transactions between the Member States and third countries (Article 63 TFEU). The regulation of exports of goods from EU Member States to third countries falls within the scope of the Common Commercial Policy pursued by the European Union under Articles 206-207 TFEU. The Common Commercial Policy is subject to the Union's exclusive competence per Article 3(1)(a) TFEU, meaning that in this area only the Union may legislate and adopt legally binding acts, including the adoption or removal of export restrictions on goods between the EU and third countries. Member States may do so, but only if empowered by the Union or for the purpose of implementing Union acts, per Article 2(1) TFEU.

The aim of this article is to analyse export restrictions on goods imposed individually by EU Member States in their relations with third countries. The analysis will examine the objectives of such potential restrictions and their expected or likely effects, as well as the legal permissibility of their adoption by individual Member States, provided that such restrictive measures fall within the scope of the EU's Common Commercial Policy. The issue of export restrictions

⁵ The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties (Article 26(2) TFEU).

⁶ See J. Kim, *Recent Trends in Export Restrictions*, OECD Trade Policy Papers, No. 101, OECD Publishing 2010, 5-6; Case C-205/07 *Lodewijk Gysbrechts and Santurel Inter BVBA* EU:C:2008:730, paras 29-44.

adopted unilaterally by Member States in their relations with third countries has, up to now, received scarcely any comprehensive or in-depth attention in the legal literature, as discussions concerning export restrictions typically focus on measures adopted in relations between EU Member States — that is, within the EU internal market.

II. OBJECTIVES OF STATE-IMPOSED EXPORT RESTRICTIONS ON GOODS

Various forms of export restrictions relating to goods have been introduced and enforced by state authorities since antiquity. A brief overview is thus relevant, as it helps to better understand the rationale of contemporarily-introduced export restrictions on goods. Justifications or motives of past restrictions are often valid and are also invoked also regarding such restrictions currently put in place.

In ancient Egypt and Greece, export restrictions were applied with respect to some essential foods and materials, so as to restrict them to domestic production and consumption.⁷ In medieval England, export (tax) restrictions on raw wool and hides were introduced in the 13th century to support domestic textile manufacturing.⁸ The restrictions were subsequently expanded during the Tudor period, culminating in a complete ban on export of raw wool. This gave England a monopolistic position over the wool industry in Europe and formed a base for its future economic prosperity. Conversely, this ban had very negative consequences for textile industries in other parts of Europe, especially in Italy.⁹

Export restrictions were very common across Europe during the mercantilist era (17th and 18th century), when rulers tended to make profits from foreign trade and followed the doctrine of the favourable balance of trade, i.e. encouraging an excess of exports over imports.¹⁰ This prompted rulers to support the export of

⁷ Jimmy Weinblatt, 'Introduction, Summary, and Conclusions, in Jimmy Weinblatt' (ed), *The Economics of Export Restrictions: Free Access to Commodity Markets and the NIEO* (Routledge 2019), 1. The author gives an example of the law of ancient Athens, which made it criminal to export figs outside Attica. Commenting this prohibition, the author quotes David Hume's very famous statement that "figs ... being supposed a species of fruit so excellent in Attica, that the Athenians deemed it too delicious for the palate of any foreigner." David Hume, *Essays: Moral, Political, and Literary: Vol. I* (Longmans, Green, and Co. 1875), 331.

⁸ Ilaria Espa, *Export Restrictions on Critical Minerals and Metals: Testing the Adequacy of WTO Disciplines* (CUP 2015), 2.

⁹ Sophus A Reinert, 'The Italian Tradition of Political Economy: Theories and Policies of Development in the Semi-Periphery of the Enlightenment' in Jomo Kwame Sundaram and Erik S. Reinert (eds), *The Origins of Development Economics: How Schools of Economic Thought Have Addressed Development* (Tulika Books 2005), 27.

¹⁰ Lars Magnusson, *The Political Economy of Mercantilism* (Routledge 2015), 176.

domestically-produced manufactured goods rather than essential raw materials, which they did not want to share with other countries. The point was both economic and political: to develop domestic production based on those materials, and to avoid supporting foreign rivals' production (and re-export) of goods from these items.¹¹

In the nineteenth century, European countries started to gradually reduce or eliminate export restrictions on goods, but they never relinquished such instruments, instead applying them pointwise to ensure the expansion of domestic industries. Export restrictions were essential policy tools during the two World Wars, where, coupled with maritime blockades, they aimed to deny enemies the supply of goods critical for both waging war and human survival.¹²

In the decades following World War II, export restrictions on goods imposed by individual States functioned in the shadow of international arrangements aimed at limiting them — the General Agreement on Tariffs and Trade-GATT 1947; the EEC Treaty; and bilateral trade agreements.¹³ The EEC Treaty, which provided for an advanced type of inter-state economic integration in the form of a common market and the process of abolishing export restrictions between Member States occurring in the form of quantitative restrictions, was not without problems and delays. To achieve its aims, Member States needed more time than previously envisaged¹⁴ and prolonged certain restrictions so as to prevent market disruptions in some sensitive sectors.¹⁵ To a larger extent, the export restrictions on goods were applied by Member States under the auspices of common

¹¹ Peter M Lichtenstein, *Theories of International Economics* (Routledge 2016), 18-19.

¹² Ilaria Espa, *Export Restrictions on Critical Minerals and Metals: Testing the Adequacy of WTO Disciplines* (CUP 2015), 2.

¹³ For a detailed overview and analysis of national export restrictions on goods in post-World War II period see Ilaria Espa, *Export Restrictions on Critical Minerals and Metals: Testing the Adequacy of WTO Disciplines* (CUP 2015), 3-34.

¹⁴ According to Article 34, second paragraph EEC Treaty, all quantitative restrictions on exportation and any measures with equivalent effect in existence at the date of the entry into force of the EEC Treaty (1 January 1958) had to be abolished not later than on 31 December 1961, the end of the first stage of transitional period.

¹⁵ The products on which the Commission permitted Member States to temporarily preserve some export restrictions beyond the end of the first stage of transitional period were: leather; skins; wood; non-ferrous waste and scrap; unworked diamonds; and some agricultural products. In 1969, Council of the European Communities declared that exports of goods “are almost completely liberalised in all the Member States” (preamble to the Regulation 2603/69 of the Council of 20 December 1969 establishing common rules for exports [1969] OJ L324/25). Hence, although there was substantial progress in export liberalisation in the EEC, some quantitative restrictions in export of goods between Member States still existed at that time.

commercial policy in external relations with third countries¹⁶ with both political and economic agendas.¹⁷

It is remarkable that export restrictions grew significantly even in times of serious worldwide crises or market turbulences. Examples include shortages of critical goods, such as the Oil Shock of 1973-1974, and the food crisis of 2007-2008, during which some food commodities experienced price spikes on international markets and many countries (especially developing ones) restricted their export in an attempt to ensure food availability on the domestic market.¹⁸

Restrictions on the free movement of goods are still sometimes applied by individual countries, including EU Member States. Extraordinary — and fortunately, short-lived — export restrictions (mainly in the form of export bans) arose world-wide in the spring and summer of 2020 as many national governments mounted an emergency response to the scarcity of some medical products needed to tackle the Covid-19 pandemic.¹⁹ Less short-lived have been the export restrictions introduced by the U.S. and China in their current trade war, which started in March-April 2018 between these two countries — the world's biggest economies and largest exporters. Export restrictions implemented within this war have concerned mainly raw materials and technologies key to the industrial and technological advantage of either side, such as semiconductors. This trade conflict also has deeper roots — mainly geopolitical ones — that continue to drive the economic (trade) decisions of both parties.²⁰

¹⁶ On the origin and development of a common commercial policy in EEC/EC/EU see, e.g., Manfred Elsig, *The EU's Common Commercial Policy: Institutions, Interests and Ideas* (Routledge 2018), 25-45.

¹⁷ For example, during the Cold War, political reasons prompted EEC Member States to restrict exports of some strategic goods to the Soviet Union and its satellite countries. This was intended as either a form of retaliation following certain political incidents or as a hindrance to the technological and economic progress of a hostile political camp. However, such export restrictions on the part of EEC Member States were rarer phenomena than the analogous restrictions that were then being imposed by the United States. Chien-Huei Wu, *Law and Politics on Export Restrictions: WTO and Beyond* (Cambridge University Press 2021), 112-118.

¹⁸ Jimmy Weinblatt, 'Introduction, Summary, and Conclusions,' in *The Economics of Export Restrictions* *Free Access to Commodity Markets as an Element of the New International Economic Order* (Routledge 2019), 1-2.

¹⁹ As of 20 April 2020, there were already 76 governments around the that had introduced total or partial export bans on certain medical supplies. Simon J Evenett, 'Flawed prescription: Export curbs on medical goods won't tackle shortages,' in Richard E Baldwin and Simon J Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (CEPR Press 2020), 52-53.

²⁰ On this economic conflict and its implications for the global economy see, e.g., Matthew C Klein and Michael Pettis, *Wojny handlowe to wojny klasowe. Jak narastające nierówności zakłócają rozwój globalnej gospodarki i zagrażają pokojowi na świecie* [Trade Wars Are Class Wars. How Rising Inequality Disrupts the Global Economy and Threatens World Peace] (Warszawa 2024), 4.; Ka Zeng, Rob Wells, Austin Wilkins and Jingping Gu, 'Bilateral

Western European countries are traditionally rather reluctant to apply export restrictions on goods in response to international (geo)politics. Even during the Cold War, Western Europe did not introduce nearly as many export restrictions against Soviet bloc as did their main ally, the U.S., and often resisted pressure from the U.S. to extend such restrictions.²¹ Contemporarily, most of the EU Member States have been rather unwilling to join or imitate the U.S.'s restrictive export policy against China or to limit China's access to European goods²². This has not necessarily held true with regard to all of them, though; some more hawkish Member States would not hesitate to implement such policies. Individual States' positions policies in this regard, of course, are subject to change.

III. EFFECTS OF STATE-IMPOSED EXPORT RESTRICTIONS ON GOODS

From the above overview of past and current state practice, two broad categories of objectives emerge in states' motivations for imposing restrictions on the free export of goods: (1) political or geopolitical objectives linked to the conduct of foreign policy and (2) economic objectives. Economic objectives may include attaining beneficial terms of trade for a country; ensuring the domestic availability and affordability of certain goods for citizens; and supporting certain domestic economic sectors.²³

A separate issue is the actual effects of such restrictions when they are put into practice, which appear to be rather weak. The foreign-policy goals of restricting export of goods to other States – weakening economic, technological and military advancement of the targeted State, and/or affecting its behaviour on the domestic or international scene – can easily fail if the targeted State can still access the relevant goods elsewhere. In the contemporary world, this is usually

Tensions, the Trade War, and US-China Trade Relations, Business and Politics' Business and Politics vol. 24(4), 2022, 1-31 <<https://www.cambridge.org/core/journals/business-and-politics/article/bilateral-tensions-the-trade-war-and-uschina-trade-relations/4E4062F81F58DBAB715FF72C21AFE76F>> (last accessed 26 October 2025); P. Stolarczyk, 'Dynamika wojny handlowej USA-Chiny: Ewolucja i konsekwencje [The Dynamics of the U.S.-China Trade War: Evolution and Consequences]' *Mysł Ekonomiczna i Polityczna* vol. 79(4), 2023, 96-110 <<https://mysl.lazarski.pl/mysl/article/download/1942/1238/2015>> (last accessed 26 October 2025).

²¹ C.H. Wu, *Law and Politics on Export Restrictions: WTO and Beyond*, pp. 112-118.

²² Pepjin Bergsen, 'The EU's unsustainable China strategy' (Chatham House Research Paper, July 2021) <<https://www.chathamhouse.org/sites/default/files/2021-07/2021-07-07-eu-unsustainable-china-strategy-bergsen.pdf>> (last accessed 26 October 2025).

²³ See Jeonghoi Kim, 'Recent Trends in Export Restrictions' (OECD Trade Policy Papers 101), 11.

the case, especially with regard to new technologies or military goods.²⁴ Export restrictions applied as an element of sanctions against other States have proven ineffective in the vast majority of cases in the sense that they did not decisively change the behaviours of the targeted State. However, the effectiveness of export restrictions imposed as sanctions can be evaluated differently if we consider other goals, such as simple punishment for already-committed misbehaviour, or some expressive or symbolic objectives, such as promoting universal and humanitarian values.²⁵

Economically-motivated export restrictions on goods also quite often turn out to be ineffective in achieving States' aims, especially in the long run. Attaining beneficial terms by applying export restrictions may be problematic if the States affected by these restrictions develop efficient strategies to find substitutes for the affected supplies.²⁶ If such a strategy succeeds, however, the exporting State may simply lose its foreign markets. Increased availability and affordability of the restricted for domestic customers may result for some time. Many cases in which export restrictions of food or agricultural commodities were introduced demonstrate that such restrictions may ultimately have quite opposite effects, especially during price spikes for those commodities on international markets. This is because domestic investors and producers of the commodities in question, seeing prices soar in reaction, often respond by limiting their production, since their profitability is artificially diminished by the State's policy restricting the

²⁴ Joshua P Meltzer and Neena Shenai, 'The US-China economic relationship: A comprehensive approach,' (Brookings Institution & American Enterprise Institute Policy Brief, February 2019), 6, 21-22 <https://www.aei.org/wp-content/uploads/2019/02/US-China-Economic-Relationship_final.pdf> (last accessed 26 October 2025).

²⁵ Robert A Pape, 'Why Economic Sanctions Do Not Work,' *International Security*, vol 22(2), 1997, 90-136. Detailed analysis of 115 cases of economic sanctions (including export restrictions on goods) applied by States regarding other States in the period spanning 1914-1990 led the author to conclude that sanctions were truly successful — i.e., reaching their stated objectives and changing the questioned behaviour of the targeted State — in five of the cases. Commenting on this ineffectiveness, the author observes that it is unfounded to expect that "economic punishment can overwhelm a state's commitment to pursue important policy goals," because "[m]ost modern states... resist external pressure. Pervasive nationalism often makes states and societies willing to endure considerable punishment rather than abandon what are seen as the interests of the nation, making even weak or disorganized states unwilling to bend to the demands of foreigners. In addition, states that have modern administrative capabilities can usually mitigate the economic damage of sanctions through substitution and other techniques. Finally, even when such capabilities are lacking and ruling elites are unpopular, they can still often protect themselves and their supporters by shifting the economic burden of sanctions onto opponents or disenfranchised groups."

²⁶ The examples of such promising strategies in case of food and agricultural commodities, see Giovanni Anania, 'Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for Promoting Food Security?' (International Centre for Trade and Sustainable Development Issue Paper 50, November 2013), 9 <<https://www.files.ethz.ch/isn/173336/agricultural-export-restrictions-and-the-wto-what-options-do-policy-makers.pdf>> (last accessed 26 October 2025).

commodities' export. This, in turn, leads to lower availability and higher prices for domestic consumers.²⁷

Moreover, export restrictions of food or agricultural commodities increase their market prices globally. This exacerbates global inflationary processes; harms consumers in other countries; and, by negatively impacting producers in the exporting country, entails net losses for countries applying such restrictions.²⁸ There are good reasons to expect that lower domestic availability and higher prices are likely to occur not only when food or agricultural commodities are subject to export restrictions, but with other kinds of goods as well.²⁹

Insofar as export restrictions of goods decrease their availability and increase their price, as it is often the case, such restrictions cannot accomplish their other economic policy objectives, or do so only slightly. These objectives include subsidising input prices for downstream industries using those goods as input, and collecting additional public revenues from export taxes.

Export restrictions on goods have also shown limited effectiveness in addressing higher-minded goals. It has been observed, in particular, that export restrictions are not optimal policy tools for protecting the environment and natural resources. There are other, much more efficient mechanisms of addressing environmental issues, including positive regulations and standards relating to the

²⁷ Giovanni Anania, 'Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for Promoting Food Security?' (International Centre for Trade and Sustainable Development Issue Paper 50, November 2013), 8; Jeonghoi Kim, 'Recent Trends in Export Restrictions' (OECD Trade Policy Papers 101), 14; Ezequiel Garcia-Lembergman, Martin A Rossi & Rodolfo Stucchi, 'The Impact of Export Restrictions on Production: A Synthetic Control Approach,' *Economía* 2018, vol. 18(2), 2018, 147-173. The same effects of export restrictions on production and investments can also be observed with other kinds of goods subject to those restrictions; see Simon J Evenett, 'Flawed prescription: Export curbs on medical goods won't tackle shortages' (CEPR Press 2020), 54.

²⁸ William M Liefert, Paul Westcott and John Wainio, 'Alternative Policies to Agricultural Export Bans that are Less Market-Distorting,' *American Journal of Agricultural Economics* vol. 94(2), 2012, 435-441; Siddhartha Mitra and Tim Josling, 'Agricultural Export Restrictions: Welfare Implications and Trade Disciplines' (International Food & Agricultural Trade Policy Council Paper, January 2009), 8-12 <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.178.8866&rep=rep1&type=pdf>> (last accessed 26 October 2025).

²⁹ See Matteo Fiorini, Bernard Hoekman, & Aydin Yildirim, 'COVID-19: Export controls and international cooperation,' in Richard E Baldwin and Steven J Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (CEPR Press 2020), 78-80. The aforementioned authors observe that the lower domestic availability and higher prices of goods subject to export restrictions are caused not only by their producers' decisions to reduce investments and production in the country applying restrictions; they also occur because of panic buying, hoarding and speculation, phenomena that are all stimulated by those very restrictions. Moreover, domestic availability of those goods in a State restricting their export may be exacerbated when there is a shortage of foreign components necessary for their manufacture, and when other States emulate export restrictions, retaliate for them, or prohibit export of those components to the former State.

goods' stage of production rather than their international trade.³⁰ Quite recently, during the Covid-19 pandemic, many countries, including EU Member states, introduced export restrictions on medical goods that were motivated by public health considerations. These turned out to be ineffective and even counterproductive. Economically, their effects were indeed very poor. In contrast to theorists' and politicians' expectations, they did not strongly affect domestic deficits of relevant medical goods, and the prices of the latter on domestic markets sharply increased.³¹ As a consequence, these export restrictions contributed little to protecting health in the countries that applied them.³² At the same time, they strongly aggravated public health problems in many other countries, especially in the poor ones, where shortages of medical goods were much more acute. This sparked public discourse about more efficient methods of tackling shortages in medical supplies that are based on global cooperation, instead of national isolationism or protectionism.³³ In general, both in the exporting and the importing country, irrespective of their underlying objectives or motivations, export restrictions on goods lead to losses in economic efficiency and gross domestic product, as well as negatively affect the general welfare of societies.³⁴

Despite this rather discouraging evidence, individual EU Member States have not entirely refrained from adopting export restrictions, including in their relations with third (non-member) countries. Such attempts are even expected to become increasingly frequent as trade tensions and technological wars between states intensify, and as individual EU Member States, potentially under the influence of the United States, seek to participate by restricting third countries' access to certain key raw materials or technologies. As noted above, within the EU, such restrictions may be adopted only by the EU institutions under the Common Commercial Policy. Nevertheless, for certain specific categories of

³⁰ Jeonghoi Kim, 'Recent Trends in Export Restrictions' (OECD Trade Policy Papers 101), 10-11.

³¹ Marco Grassia, Giuseppe Mangioni, Stefano Schiavo and Silvio Traverso, '(Unintended) Consequences of Export Restrictions on Medical Goods During the Covid-19 Pandemic,' *Journal of Complex Networks* vol. 10(1), 2022, cnab045.

³² In this context, it has been observed that "a counterfactual analysis shows that even if individual countries restrained from imposing [export] restrictions while others continued to do so, very few of them would experience a sharp deterioration of their position [in access to medical goods]." M. Grassia, G. Mangioni, S. Schiavo and S. Traverso, *(Unintended) Consequences of export restrictions on medical goods during the Covid-19 pandemic*, cnab045. Despite this, unilateral export restrictions on medical goods may indeed have contributed to a more effective management of the Covid-19 pandemic in those countries that introduced them.

³³ Simon J Evenett, 'Flawed prescription: Export curbs on medical goods won't tackle shortages,' in Richard E Baldwin and Simon J Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (CEPR Press 2020), 49-61.

³⁴ Jeonghoi Kim, 'Recent Trends in Export Restrictions' (OECD Trade Policy Papers 101), 14.

goods (for example, rare earth elements or certain technological products such as semiconductor manufacturing equipment), reaching agreement and adopting common export restrictions at the EU level may prove impossible due to the conflicting interests of individual Member States.

In this context, the question arises as to what legal possibilities EU Member States currently have to adopt such export restrictions unilaterally in relation to third countries. Growing divergences in the policies of individual Member States — at times exacerbated by pressure from United States skilfully targeted at specific EU countries — render legally relevant the extent to which Member States may independently restrict the export of goods to non-member countries.

IV. LEGAL ADMISSIBILITY OF EXPORT RESTRICTIONS CREATED BY INDIVIDUAL EU MEMBER STATES WITH REGARD TO THIRD COUNTRIES

Acting within the framework of the Common Commercial Policy, the EU legislature has established that the export of products from the Union to third countries is free. This means that it is not subject to quantitative restrictions except for those applied in accordance with the relevant provisions of the applicable EU regulation. This stipulation is set out in Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports (codification)³⁵ (hereinafter “Regulation 2015/479”). From the provisions of Regulation 2015/479, it follows that Member States have, in principle, two legal avenues available if they wish to impose export restrictions on certain goods destined for third countries that are applicable solely by the individual Member State concerned, rather than by all EU Member States collectively.

First, a Member State may request that the European Commission adopt export restrictions on goods. This regulatory option is available “in order to prevent a critical situation arising on account of a shortage of essential products or to remedy such a situation, and where the interests of the Union require immediate intervention” (Article 5 of Regulation 2015/479). If such a situation arises in a given Member State, that State may request the European Commission to take appropriate action. The Commission, taking into account the nature of the products concerned as well as other specific features of the transactions at issue, may then make the export of the product subject to the presentation of an export authorization that has been granted in accordance with the rules and within the limits established by the Commission under the relevant procedure (Article 5 of Regulation 2015/479). Such an export restriction may apply to exports of goods

³⁵ Dz.U. L 83 z 27.3.2015, pp. 34.

to certain third countries, and to exports from certain regions of the Union (Article 5(3) of Regulation 2015/479). Interestingly, the European Commission interprets this provision as allowing it to establish export restrictions on goods to third countries upon the request of a Member State for the purpose of protecting the needs of that single Member State. The aforementioned restrictions may therefore potentially concern, upon a single Member State's request, the export of goods from that State. This is not precluded by the requirement that such safeguard measures be adopted "in the interest of the Union" (Article 5 of Regulation 2015/479).³⁶ It may indeed be in the Union's interest to establish export restrictions applicable only within a single Member State — for example, if only that particular Member State possesses certain goods, or if a critical shortage of certain essential products (within the meaning of Article 5 of Regulation 2015/479) arises solely in relation to that Member State. As a result, although export restrictions adopted pursuant to Article 5 of Regulation 2015/479 are formally enacted by the European Commission, it is nevertheless legally permissible for such measures to be adopted at the request of a given Member State in light of the particular circumstances prevailing in that State, and for their application to be limited exclusively to that Member State. The Commission may also decide in such situations to extend the scope of the restriction to other Member States, should the circumstances at the relevant time so require.

The export-restrictive measures provided for in Article 5 of Regulation 2015/479 are of an urgent nature, meaning that they are adopted where the interests of the Union require immediate action and that they must be taken within a maximum of five working days from the date on which the Commission receives the Member State's request. Within 12 days of the date of such an urgent measure's entry into force, the Commission must also determine whether the appropriate measures provided for in Article 6 of Regulation 2015/479 should be adopted.

Export-restrictive measures adopted pursuant to Article 6 of Regulation 2015/479 do not have an urgent character; they are, as it were, ordinary measures. The Commission may adopt such measures for the purpose of (a) preventing or remedying a critical situation arising on account of a shortage of essential products or (b) enabling the fulfilment of international obligations undertaken by the Union or by all Member States, in particular in the field of trade in raw materials (Article 6(1) of Regulation 2015/479).

Similarly to the measures adopted under Article 5 of Regulation 2015/479, the measures adopted under Article 6 of that Regulation may also be limited to certain third countries and to exports from certain regions of the Union. They

³⁶ Such an interpretative position was advanced by the European Commission in proceedings before the Court of Justice in *Commission v Hungary* — see the Judgment of the Court of Justice of 13 November 2025 in Case C-499/23, *Commission v Hungary*, ECLI:EU:C:2025:875, para 93.

may, moreover, be restricted a single Member State in their scope of application to. Although such measures are formally adopted by the Commission, the procedure under Article 6 of Regulation 2015/479 may effectively constitute a continuation of the procedure under Article 5 (see above). Consequently, the Member State concerned may play a decisive role in the adoption of these measures, insofar as it has previously requested the Commission to impose export restrictions on certain goods (destined for third countries) pursuant to Article 5 of Regulation 2015/479.

Second, the provisions of Regulation 2015/479 allow individual Member States to apply certain export restrictions to third countries independently and on their own initiative. This possibility is derived from Article 10 of Regulation 2015/479, which provides as follows: “Without prejudice to other Union provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security, or of protection of health and life of humans, animals and plants, of national treasures possessing artistic, historic or archaeological value, or of industrial and commercial property”. Export restrictions justified on these grounds may thus be adopted autonomously by individual EU Member States based on those States’ own legislative, regulatory or administrative measures, without the need to seek the consent of the European Commission. Such restrictions may be of an urgent nature, but they may also be applied for a longer period, or even on a permanent basis — provided, of course, that the conditions laid down in Article 10 of Regulation 2015/479 continue to be fulfilled, and that the principle of proportionality is respected.

The contents of Article 10 of Regulation 2015/479 lead to the evident conclusion that this provision is, in substance, virtually identical to Article 36 TFEU, which has long permitted Member States to introduce restrictions on the export, transit and import of goods in their mutual relations — that is, within the EU internal market. In this context, the question arises whether the entire body of case law developed under Article 36 TFEU may also be applied by analogy to Article 10 of Regulation 2015/479, and whether the latter should therefore be interpreted and applied in the same manner as Article 36 TFEU. *Prima facie*, the matter is far from straightforward. Export restrictions applicable in relations between EU Member States on the one hand, and those applicable in relations between Member States and third countries on the other hand, constitute qualitatively distinct phenomena, given the specific legal regime of the internal market and the degree of economic integration achieved within it. The degree of this integration is incomparable to that existing in the Union’s relations with third countries.

The Court of Justice recently provided an authoritative answer to this highly significant question in its judgment of 13 November 2025 in *Commission v*

Hungary. In doing so, the Court relied on the Opinion of the Advocate General³⁷ ECJ, which held that the similar wording of Article 10 of Regulation 2015/479 and Article 36 TFEU suggests that the Union legislature intended to extend to exports to third countries. It also held that under the same conditions, it intended to extend the power conferred on a Member State by Article 36 TFEU to restricting exports within the Union.³⁸ This means that the concept of “public security”, as employed in Article 10 of Regulation 2015/479 and Article 36 TFEU, must be accorded an identical scope in both instruments.³⁹ With regard to its earlier case law on the notion of public security within the meaning of Article 36 TFEU — and taking into account the facts of the case — the Court of Justice held that an export restriction for third countries imposed by Hungary concerning construction materials for critical infrastructure could not be justified on grounds of public security, and relied on its established and strict interpretation of the concept of public security under Article 36 TFEU.⁴⁰

Since the Court of Justice held that export restrictions applicable to third countries may, under Article 10 of Regulation 2015/479, be adopted “under the same conditions” as restrictions adopted in relations between Member States pursuant to Article 36 TFEU, it follows that such restrictions may be imposed only where the following conditions are satisfied: (1) the justification invoked must correspond to one of the values listed in Article 10 of Regulation 2015/479, which are identical to those set out in Article 36 TFEU and must be understood in the same manner; (2) those values must be interpreted strictly, precluding reliance on this derogation for purely economic purposes;⁴¹ and (3) the Member State, when introducing such restrictions, must comply with the principle of proportionality.⁴²

It must be borne in mind that Member States may not impose export restrictions on goods vis-à-vis third countries by acting directly based on Article

³⁷ Opinion of Advocate General Szpunar of 6 February 2025 in Case C-499/23, *European Commission v. Hungary*, ECLI:EU:C:2025:61, para 61.

³⁸ Judgment of the Court of Justice of 13 November 2025 r., ECLI:EU:C:2025:875, para 106.

³⁹ *Ibid.* para. 107.

⁴⁰ *Ibid.* paras. 69-86 and 108-110.

⁴¹ With regard to the exclusion of the possibility of relying on Article 36 TFEU for purely economic purposes, see Marek Szydło, *Swobody rynku wewnętrznego a reguły konkurencji. Między konwergencją a dywergencją* [Internal market freedoms and competition rules. Between convergence and divergence] (Toruń 2005), 477-482.

⁴² With regard to the principle of proportionality in EU law, see, for example, Tor-Inge Harbo, *The Function of Proportionality Analysis in European Law* (Leiden-Boston, 2015); Malcolm Jarvis, ‘The Proportionality Test: Constructive Dialogue between the English and Scottish Courts,’ in Panos Koutrakos, Niamh Nic Shuibhne, Phil Syrpis (eds), *Exceptions from EU Free Movement Law: Derogation, Justification and Proportionality* (Oxford-Portland 2016), 265-277.

36 TFEU. They may, however, do so directly based on Regulation 2015/479 — that is to say, to the extent that the Union legislature, acting within the framework of the Common Commercial Policy, has authorised them to do so. Such Member State-level export restrictions satisfy the condition laid down in Article 2(1) TFEU that, in areas falling within the Union’s exclusive competence, EU Member States may adopt legislative or regulatory measures only if empowered by the Union, or for the purpose of implementing Union acts. When establishing export restrictions on goods in their relations with third countries, EU Member States must also respect the law of the World Trade Organization (WTO).⁴³ This latter issue is outside the scope of the present article, however, which focuses only on EU law.

V. CONCLUSIONS

Individual EU Member States have, on numerous occasions, been tempted to introduce export restrictions on goods, and both historical experience and contemporary practice attest to this. Such restrictions may serve the pursuit of various objectives that Member States consider worthy of protection, such as political and geopolitical objectives — that is, objectives linked more broadly to foreign policy or security policy. They may also encompass economic objectives, such as attaining terms of trade that are beneficial for a country; ensuring the domestic availability and affordability of a given good for citizens; or supporting certain domestic economic sectors.

In this article, drawing on the economic literature, it has been argued that the effects of such export restrictions are not particularly encouraging, and at times are even counterproductive, reducing the general economic welfare. EU Member States are reluctant to abandon entirely the possibility of exceptionally introducing such restrictions on their own, despite such restrictions’ fundamentally harmful nature, under the belief that they may thereby achieve desired outcomes within their political or economic agendas.

This article has focused primarily on export restrictions imposed unilaterally by EU Member States in their relations with third countries — an issue that has been overlooked in the EU law literature. The legal permissibility of export restrictions in this particular constellation of actors may be practically relevant in situations where, within the framework of the Common Commercial Policy, the Member States and the EU institutions, owing to divergences in their respective interests, are unable to reach a unified position at Union level on whether certain

⁴³ See Article XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994). GATT 1994 is contained in Annex 1A to the Marrakesh Agreement Establishing the WTO; see https://www.wto.org/english/docs_e/legal_e/legal_e.htm#anx1a.

export restrictions towards third countries should be adopted. The adoption of such restrictions may be of particular importance to certain Member States in the current era of ongoing global trade tensions and technological wars.

This article has highlighted that the legal permissibility of imposing certain export restrictions on goods destined for third countries derives from the provisions of Regulation 2015/479. Such restrictions are therefore possible only to the extent that the Union legislature (acting within the framework of the Common Commercial Policy, an area of exclusive EU competence) has authorised their adoption by Member States. To a certain extent, the provisions of Regulation 2015/479 employ wording and formulations that mirror those found in Article 36 TFEU. This opens up the possibility of drawing upon the Court of Justice's extensive body of case law developed under Article 36 TFEU when interpreting Regulation 2015/479. The legal permissibility of such interpretative reliance was recently confirmed by ECJ in its judgment of 13 November 2025 in *Commission v. Hungary*, which addressed this issue for the first time in the Court of Justice's case law. For that reason alone, this decision warranted closer examination in the present article. The factual circumstances and detailed reasoning considered by the Court in that case demonstrate that export restrictions on goods created by individual EU Member States in their commercial relations with third States constitute an integral part of the current complex political and economic reality, and that they may become a great (political) challenge for the EU law and policy in coming years.

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