

WORLD TRADE ORGANIZATION

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Negotiating Group on Market Access

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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Enhanced Transparency on Export Licensing

*Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu;
Japan; Republic of Korea, Ukraine and the United States*

Revision

The following communication, dated 7 September, 2009, is being circulated at the request of the delegations of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Japan; Republic of Korea, Ukraine and the United States.

Protocol on Transparency in Export Licensing to the General Agreement on Tariffs and Trade 1994

Members,

Desiring to ensure that export licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994;

Convinced that export licensing should be implemented in a transparent and predictable manner; and;

Desiring to bring transparency to the procedures and practices related to export licensing so as to inform traders and Members and facilitate trade in these products;

Convinced that access to information on export licensing measures benefits traders in both developed and developing country Members;

Recognizing that the obligations set out in this Protocol are without prejudice to a Member's rights and obligations under Article XX of GATT 1994;

Hereby agree as follows:

¹ The only change introduced to this version of the document in comparison to the previous one is the inclusion of Ukraine as a co-sponsor.

Article 1: Definition of Export Licensing

For the purposes of this Protocol, export licensing means any administrative procedures involving the submission of an application or other documentation (i.e., other than that required for customs purposes) to the relevant administrative body or bodies as a prior condition for exportation from the customs territory of the exporting Member.

Article 2: Notification

1. Within 60 days after the entry into force of this Protocol, each Member shall notify, in writing, the [Committee on Market Access] (referred to in this Protocol as ["the Committee"]) of its existing measures on export licensing, if any. Thereafter, each Member shall notify the [Committee] in writing of any new measures on export licensing or modification to an existing measure on export licensing within 60 days after the effective date of the new measure or modification thereof.

2. Members shall include in a notification under Paragraph 1 the:

- (a) list of products subject to the licensing procedure, including to the extent possible by HS number;
- (b) description of the procedures for the submission of applications or other documentation, including eligibility criteria for applicants (including any criteria that reflect requirements that differ from those applied to products that are exported without a requirement of a license (e.g., requirements for an activity license, investment or a particular form of establishment in the exporting Member, or other similar requirements));
- (c) contact point for information on eligibility;
- (d) administrative body(ies) to which applications must be submitted;
- (e) date and name of publication(s) in which the licensing procedure is published;
- (f) description of the measure, if any, being implemented through the export license and the reasons for the measure;
- (g) expected duration of the export licensing if this can be estimated with some probability, and if not, reason(s) why this information cannot be provided;
- (h) overall amount of the quota to be applied by quantity and/or value and the opening and closing dates of the quota if a Member administers a quota by means of export licensing; and
- (i) possibility, if any, for persons, firms or institutions to request exceptions or derogations from an export licensing requirement, as well as information on how to make such a request and a description of the circumstances under which requests would be granted.

3. When a Member notifies a new or existing measure on export licensing or modification thereto, the Member shall provide a copy of the relevant measure (e.g., law and implementing regulations) to the [Committee].

4. Any interested Member which considers that another Member has not notified a new or existing measure on export licensing or modification thereto in accordance with the provisions of Paragraphs 1 and 2 may bring the matter to the attention of such other Member. If notification is not

made promptly thereafter, the interested Member may itself notify the measure on export licensing or changes therein, including all relevant information.

Article 3: Requests for Information

1. A Member shall provide to any Member, upon request:
 - (a) all relevant information concerning:
 - (i) the administration of the measure on export licensing , including the information listed in Paragraph 2 of Article 2;
 - (ii) the export licenses granted over a recent period; and
 - (iii) measures, if any, taken in conjunction with export licensing, including but not limited to restrictions on domestic production or consumption, and governmental stabilization plans for a good; and
 - (b) where available, all relevant information concerning:
 - (i) the distribution of such licenses among importing countries, including importing countries' shares, i.e., by quantity and/or value as relevant, of any quota currently allocated; and
 - (ii) the most recent available statistics (i.e., value and/or volume) on the amount expected to be produced, actually produced, expected to be exported, and actually exported with respect to the product subject to export licensing.

Article 4: Confidential Information

1. Nothing in this Protocol shall be construed to require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. Nothing in this Protocol shall be construed to require any Member to furnish any information the disclosure of which it considers contrary to its essential security interests.

Article 5: Review

1. The [Committee] shall review as necessary, but at least once every two years, the implementation and operation of this Protocol, taking into account the objectives thereof, and the rights and obligations contained therein.
2. To facilitate the [Committee]'s review and to help ensure that interested parties can become acquainted with each Member's requirements, if any, for export licensing, the [Committee] shall establish a registry of notifications submitted pursuant to Article 2.
3. The Secretariat shall record in the registry and make available to the public, through the internet or other electronic means, the information notified by Members under this Protocol.²

² The URL (Uniform Resource Locator) of the official internet site where relevant information of such measure is sufficiently available may be recorded alternatively, but this is without prejudice to the notification obligation under the Article 2.