

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Text-Based Proposal for Negotiation on Enhanced Transparency
on Export Restrictions

Communication from Japan

Addendum

The following communication, dated 13 April 2006, is being circulated at the request of the delegations of Japan.

I. INTRODUCTION

1. Japan has been promoting for enhanced transparency on export restrictions.¹ The issue was initially identified with respect to export restrictions on mineral resources, but it actually had a horizontal expanse since similar experiences of difficulty in importation in a stable manner due to export restrictions have been pointed out by other Members, in the field such as wood and wood products. It later turned out that it was a systemic issue since the WTO agreement appears to lack sufficient rules for transparency on export restrictions.

2. Through informal meetings, Members have examined the desired rules on this issue.² The essence of these desired rules can be summarised as follows:

- procedures for publication of the rules and administration of export restrictions;
- notification procedures to a Committee
- publication of relevant statistics, such as domestic production

3. This paper proposes a concrete text which aims to establish a new Agreement in order to embody the above rules. The Doha Ministerial Declaration on 14 November 2001 gives us the mandate to eliminate non-tariff barriers by modalities to be agreed,³ and the July framework notes that such modalities include horizontal approaches.⁴ This proposal surely falls within horizontal approaches. Hong Kong Ministerial Declaration, adopted in December 2005, noted the need for specific negotiating proposals in the NAMA negotiations, and encouraged participants to make such submissions as quickly as possible.⁵ This proposal responds to the encouragement by the Declaration.

¹ The concept paper has been documented as JOB(06)/14.

² The progress report has been documented as JOB(06)/21/Rev.1.

³ WT/MIN(01)/DEC/W/1, at paragraph 16.

⁴ WT/L/579, at Annex B, paragraph 14.

⁵ WT/MIN(05)/W/3/Rev.2, at paragraph 22.

4. It should be emphasised that this proposal does not intend to strain any legitimate export restriction which complies with the WTO Agreement, or to introduce new substantive rules. It is proposed merely from the viewpoint of procedural transparency.

5. On the basis of this proposal, Japan would like to take the lead of the discussion with a view to establish fair and equitable Agreement taking fully into account of specific needs and interests of developing and least-developed Members. The draft text is prepared for discussion purpose and without prejudice to all Members' formal positions. The text may be modified in the course of discussion in order to reflect interests and respond to concerns of Members as much as possible.

II. THE OUTLINE OF THE TEXT

6. The text is based on the present Agreement on Import Licensing Procedures, and the parts which have been modified from the original Agreement are indicated with underlines or crossing lines. Footnotes had been included in the original Import Licensing Agreement. Explanatory notes have been inserted at the end of each Article.

7. The summary of the text is as follows:

The preamble explains the background and objectives of this text.

Article 1 and 1 bis (General Provisions) sets up general principles which govern export restrictions, such as publication of rules, exceptions for security measures and confidential information. The principle stated in paragraphs 2 and 5 of the GATT XIII, that Members should make effort to maintain the shares of distribution of trade in imposing export restriction is strengthened.

Article 2 (Automatic Export Licensing) provides for principles which apply to automatic export licensing, such as prohibition on restrictive administration of automatic licensing procedures. Grace period of two years will be provided to all the developing Members.

Article 3 (Non-Automatic Export Licensing) provides for principles on non-automatic export licensing, such as publication of overall amount of quotas. Providing information on relevant measures and specific statistics upon the request, such as statistics on the amount expected to be produced, have been newly proposed.

Article 4 (Institutions) provides that the existing Import Licensing Committee will also be in charge of the operation of the procedures for export restrictions.

Article 5 (Notification) provides for notification procedures, such as requirement to notify the committee with lists of products subject to export restrictions. No change from the Import Licensing Agreement has been made except that references to importation have been replaced with exportation.

Article 6 (Consultation and Dispute Settlement) and **Article 8 (Final Provisions)** provides for the ground of dispute settlement and final provisions such as reservations. No change from the Import Licensing Agreement has been made regarding these provisions.

Article 7 (Review) provides for review mechanism by the committee. An internet-based registry of notifications is newly proposed.

The text is provided in the following pages.

DRAFT AGREEMENT ON EXPORT LICENSING PROCEDURES

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994;

Taking into account the particular trade, development and financial needs of developing country Members;

Recognizing the usefulness of automatic ~~exim~~port licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that ~~exim~~port licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of GATT 1994;

Recognizing the provisions of GATT 1994 as they apply to ~~exim~~port licensing procedures;

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

Recognizing that the flow of international trade could be impeded by the inappropriate use of ~~exim~~port licensing procedures;

Convinced that ~~exim~~port licensing, particularly non-automatic ~~exim~~port licensing, should be implemented in a transparent and predictable manner;

Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby *agree* as follows:

Article I
General Provisions

1. For the purpose of this Agreement, eximport licensing is defined as administrative procedures⁶ used for the operation of eximport licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for eximportation ~~from into~~ the customs territory of the eximporting Member.
2. Members shall ensure that the administrative procedures used to implement eximport licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.⁷
3. The rules for eximport licensing procedures shall be neutral in application and administered in a fair and equitable manner.
- 4.(a) The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, in the sources notified to the Committee on ExImport Licensing provided for in Article 4 (referred to in this Agreement as "the Committee"), in such a manner as to enable governments⁸ and traders to become acquainted with them. Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to eximport licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the Secretariat.
- (b) Members which wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Member shall give due consideration to these comments and results of discussion.
5. Application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application.
6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of licence applications. Where there is a closing date, this period should be at least 21 days with provision for extension in circumstances where insufficient applications have been received within this period. Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

⁶Those procedures referred to as "licensing" as well as other similar administrative procedures.

⁷Nothing in this Agreement shall be taken as implying that the basis, scope or duration of a measure being implemented by a licensing procedure is subject to question under this Agreement.

⁸For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Communities.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed ~~exim~~ports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to ~~differences occurring during shipment, differences incidental to bulk loading and other~~ minor differences consistent with normal commercial practice.

~~9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.~~

~~910.~~ With regard to security exceptions, the provisions of Article XXI of GATT 1994 apply. This means, inter alia, that nothing in this Agreement shall be construed to require any Member to furnish any information the disclosure of which it considers contrary to its essential security interests.

~~1011.~~ The provisions of this Agreement shall not require any Member to disclose confidential information 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.

Note:

- **[Paragraph 8] Part of the carriage outside of the territory of the exporting Member comes after the export procedures and thus irrelevant**
- **[Former paragraph 9] Foreign exchange restriction will not be a problem in the context of export restriction.**
- **[New paragraph 9] Security exceptions have been clarified.**
- **[New paragraph 10] Confidential information is not to be disclosed against legitimate commercial interests of particular enterprises.**

Article 1 bis

Non-discriminatory Administration of Quantitative Restriction

In applying export restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions.

Note:

- **[Article 1 bis] The principle stated in GATT XIII.2&5 is strengthened.**

Article 2

Automatic ~~Exim~~port Licensing⁹

6. Automatic ~~exim~~port licensing is defined as ~~exim~~port licensing where approval of the application is granted in all cases, and which is in accordance with the requirements of paragraph 2(a).

⁹Those ~~exim~~port licensing procedures requiring a security which have no restrictive effects on ~~exim~~ports are to be considered as falling within the scope of paragraphs 1 and 2.

7. The following provisions¹⁰, in addition to those in paragraphs 1 through 10 of Article 1 and paragraph 1 of this Article, shall apply to automatic eximport licensing procedures:

- (a) automatic licensing procedures shall not be administered in such a manner as to have restricting effects on eximports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade-restricting effects unless, *inter alia*:
 - (i) any person, firm or institution which fulfils the legal requirements of the eximporting Member for engaging in eximport operations involving products subject to automatic licensing is equally eligible to apply for and to obtain eximport licences;
 - (ii) applications for licences may be submitted on any working day prior to the customs clearance of the goods;
 - (iii) applications for licences when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days;
- (b) Members recognize that automatic eximport licensing may be necessary whenever other appropriate procedures are not available. Automatic eximport licensing may be maintained as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

Note:

- **Grace period of 2 years will be provided for all the developing Members. (footnote 10)**

Article 3
Non-Automatic Eximport Licensing

1. The following provisions, in addition to those in paragraphs 1 through 10 of Article 1, shall apply to non-automatic eximport licensing procedures. Non-automatic eximport licensing procedures are defined as eximport licensing not falling within the definition contained in paragraph 1 of Article 2.

2. Non-automatic licensing shall not have trade-restrictive or -distortive effects on eximports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licences.

¹⁰A developing country Member, ~~other than a developing country Member which was a Party to the Agreement on Import Licensing Procedures done on 12 April 1979,~~ which has specific difficulties with the requirements of subparagraphs (a)(ii) and (a)(iii) may, upon notification to the Committee, delay the application of these subparagraphs by not more than two years from the date of entry into force of the WTO Agreement for such Member.

4. Where a Member provides the possibility for persons, firms or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information published under paragraph 4 of Article 1 as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which requests would be considered.
- 5.(a) Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning:
- (i) the administration of the restrictions;
 - (ii) the eximport licences granted over a recent period;
 - (iii) the distribution of such licences among importing~~supplying~~ countries;
 - (iv) where practicable, recent available import statistics (i.e. value and/or volume) on the amount expected to be produced, actually produced, and actually exported with respect to the products subject to eximport licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account such as to set up new statistics only for this purpose;
 - (v) if any, measures taken in conjunction with export licensing, such as restrictions on domestic production or consumption, a governmental stabilizataion plan;
- (b) Members administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof, within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;
- (c) in the case of quotas allocated among importing~~supplying~~ countries, the Member applying the restrictions shall promptly inform all other Members having an interest in importing~~supplying~~ the product concerned of the shares in the quota currently allocated, by quantity or value, to the various importing~~supplying~~ countries and shall publish this information within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;
- (d) where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in paragraph 4 of Article 1 should be published within the time-periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;
- (e) any person, firm or institution which fulfils the legal and administrative requirements of the eximporting Member shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reason therefore and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the eximporting Member;
- (f) the period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than 30 days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than 60 days if all applications are considered simultaneously. In the latter case, the period for processing applications shall be considered to begin on the day following the closing date of the announced application period;

- (g) the period of licence validity shall be of reasonable duration and not be so short as to preclude ~~ex~~imports. ~~The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short term requirements;~~
- (h) when administering quotas, Members shall not prevent ~~ex~~importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of quotas;
- (i) when issuing licences, Members shall take into account the desirability of issuing licences for products in economic quantities;
- (j) in allocating licences, the Member should consider the ~~ex~~import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licences have not been fully utilized, the Member shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. ~~In this regard, special consideration should be given to those importers importing products originating in developing country Members and, in particular, the least developed country Members;~~
- (k) in the case of quotas administered through licences which are not allocated among ~~importing~~supplying countries, licence holders¹¹ shall be free to choose the destinations of exports~~sources of imports~~. In the case of quotas allocated among ~~importing~~supplying countries, the licence shall clearly stipulate the country or countries;
- (l) in applying paragraph 8 of Article 1, compensating adjustments may be made in future licence allocations where ~~ex~~imports exceeded a previous licence level.

Note:

- **[sub-paragraph (a)] Specific statistics and information on relevant measures are added to be required.**
- **[sub-paragraph (g)] Importation from distant sources situation with respect to validity period of import licensing will not be relevant in the context of export licensing.**
- **[sub-paragraph (j)] Special consideration for importation from developing Members with respect to import licensing will not be relevant in the context of export licensing.**

Article 4
Institutions

~~There is hereby established a Committee on Import Licensing composed of representatives from each of the Members. The Committee shall elect its own Chairman and Vice Chairman and shall meet as necessary for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.~~

There is hereby established a Committee on Export Licensing composed of the same Chairman, Vice-Chairman and other representatives from each of the Members as the Committee on Import Licensing established under the Agreement on import licensing procedures. The Committee shall meet as necessary for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

¹¹ Sometimes referred to as "quota holders".

Note:

- **This Article aims to let the existing Import Licensing Committee also in charge of the export licenses.**

Article 5
Notification

1. Members which institute licensing procedures or changes in these procedures shall notify the Committee of such within 60 days of publication.
2. Notifications of the institution of ~~exim~~port licensing procedures shall include the following information:
 - (a) list of products subject to licensing procedures;
 - (b) contact point for information on eligibility;
 - (c) administrative body(ies) for submission of applications;
 - (d) date and name of publication where licensing procedures are published;
 - (e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;
 - (f) in the case of automatic ~~exim~~port licensing procedures, their administrative purpose;
 - (g) in the case of non-automatic ~~exim~~port licensing procedures, indication of the measure being implemented through the licensing procedure; and
 - (h) expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.
3. Notifications of changes in ~~exim~~port licensing procedures shall indicate the elements mentioned above, if changes in such occur.
4. Members shall notify the Committee of the publication(s) in which the information required in paragraph 4 of Article 1 will be published.
5. Any interested Member which considers that another Member has not notified the institution of a licensing procedure or changes therein in accordance with the provisions of paragraphs 1 through 3 may bring the matter to the attention of such other Member. If notification is not made promptly thereafter, such Member may itself notify the licensing procedure or changes therein, including all relevant and available information.

Article 6
Consultation and Dispute Settlement

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

Article 7
Review

1. The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement, taking into account the objectives thereof, and the rights and obligations contained therein.

2. As a basis for the Committee review, the Secretariat shall prepare a factual report based on information provided under Article 5, responses to *the annual questionnaire on ~~ex~~import licensing procedures*¹² and other relevant reliable information which is available to it. This report shall provide a synopsis of the aforementioned information, in particular indicating any changes or developments during the period under review, and including any other information as agreed by the Committee.

3. Members undertake to complete the annual questionnaire on ~~ex~~import licensing procedures promptly and in full.

4. The Committee shall inform the Council for Trade in Goods of developments during the period covered by such reviews.

5. *A registry of notifications for export licensing measures shall be established. The registry shall record and make available to public through the internet the information notified by Members under this Agreement.*¹³

Note:

- **Paragraph 5 aims to form part of the attempt to establish a central registry of notifications by the Decision on Notification Procedures at the Uruguay Round.**

Article 8
Final Provisions

Reservations

1. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Domestic Legislation

¹² ~~Originally circulated as GATT 1947 document L/3515 of 23 March 1971.~~

¹³ *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 5.*

- 2.(a) Each Member shall ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.
 - (b) Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.
-