

Fliess, B. (2014), "Transparency of Export Restrictions: A Checklist Promoting Good Practice", *OECD Trade Policy Papers*, No. 164, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/5jz417hqk38q-en>



OECD Trade Policy Papers No. 164

# Transparency of Export Restrictions

A CHECKLIST PROMOTING GOOD PRACTICE

Barbara Fliess

JEL Classification: F13, F53, F55, K33

## **OECD TRADE POLICY PAPERS**

The OECD Trade Policy Paper series is designed to make available to a wide readership selected studies by OECD staff or by outside consultants. This series continues that originally entitled OECD Trade Policy Working Papers.

This paper is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and the arguments employed herein do not necessarily reflect the official views of OECD member countries.

The publication of this document has been authorised by Ken Ash, Director of the Trade and Agriculture Directorate

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This document has been declassified on the responsibility of the Working Party of the Trade Committee under the OECD reference number TAD/TC/WP(2013)35/FINAL.

Comments on the series are welcome and should be sent to [tad.contact@oecd.org](mailto:tad.contact@oecd.org).

**OECD TRADE POLICY PAPERS**  
are published on [www.oecd.org/trade](http://www.oecd.org/trade)

© OECD (2014)

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org).

---

## Abstract

### **Transparency of export restrictions: A checklist promoting good practice**

The incidence of export taxes, prohibitions and other measures that raise export prices, limit export quantities or place conditions on exporting is on the rise. Transparency can help mitigate the negative effects of export restrictions by enabling affected stakeholders to better understand and anticipate policy change and adjust their activities. This paper develops a checklist of good practice in transparency which can serve as a tool for self-evaluation by governments and for promoting better and more consistent transparency practices in this area. The items of the checklist are drawn from norms and practices found in WTO and regional trade agreements and good governance guidelines. Additionally, feedback was sought through a small business survey. The list provides guidance with respect to such questions as what, when and how information about export restrictions governments ought to make public. It assembles relevant principles for keeping stakeholders and the general public informed at different stages of developing and implementing export restrictions and identifies information content for an effective information policy. Transparency moreover depends on the ease with which information can be obtained and on the extent to which stakeholders have an opportunity to make their views known when a measure is still on the drawing board.

**Keywords:** transparency, information, trade policy, exports, export restrictions, WTO, GATT, minerals, business survey, good practice, rule-making, raw materials.

**JEL classification:** F13, K33, F53, F55

#### ***Acknowledgements***

This report was written by Barbara Fliess, Senior Trade Policy Analyst, under the supervision of Frank van Tongeren, Head of the Policies in Trade and Agriculture Division. The author wishes to thank the Business and Industry Advisory Committee to the OECD for helping carry out the business survey, and colleagues in the Trade and Agriculture Directorate and the Directorate for Public Governance and Territorial Development as well as the Working Party of the OECD Trade Committee for input and feedback received at various stages of work.

### *Table of contents*

1. Introduction .....	5
2. Identifying elements for inclusion in the final checklist .....	6
3. Public access to information and specific information requirements.....	8
a) Accessibility of information .....	8
b) Information requirements with respect to final measures.....	9
4. Transparency of measures under preparation .....	12
a) Information requirements at the planning stage.....	12
b) Transparency and public consultation.....	13
5. Transparency in the application of the measure.....	16
6. Conclusions .....	19
Bibliography.....	21
Annex A. Constructing the Checklist .....	24
Annex B. Survey questionnaire and survey responses.....	26

### **Boxes**

Box 1. Checklist of Good Transparency Practice for Export Restrictions.....	7
Box 2. Norms related to prior publication or notice of final measures .....	11
Box 3. Publication requirements covering draft measures.....	12
Box 4. Examples of provisions on stakeholder consultation.....	14
Box 5. South Africa develops export controls for scrap metal .....	16
Box 6. Handling applications.....	17
Box 7. Publishing obligations with respect to administration.....	18

## EXECUTIVE SUMMARY

Transparency and openness of decisions on trade policy and practices is a key principle underpinning the multilateral trading system. Transparency of trade restrictions placed on exports is a weak spot in today's international trade environment. Governments have considerable freedom in deciding how much and when information about export restrictions ought to be made public, with the result that in this trade policy field the level of transparency is uneven across countries. As businesses and policy makers have voiced concerns about the increasingly restrictive and unpredictable environment of trade in raw materials, which has witnessed a rise in these measures over the last decade, the OECD has explored ways of addressing the issue of transparency as part of its broader work on export restrictions in raw materials trade.

This paper develops a checklist of good practices as a practical tool for assessing and comparing national transparency policies with respect to export restrictions and for promoting higher standards globally. The good practices are derived from normative transparency provisions found in GATT/WTO and preferential trade agreements, as well as from important work leading to specific guidelines to assist governments to enhance the transparency of domestic regulatory frameworks undertaken by OECD and APEC. Elements of the checklist have been validated through a small survey of business stakeholders.

Transparency in trade policies relates both to measures already in place and to measures under consideration. Development and implementation of policies that restrict exports are consistent with good practice when the following principles are observed:

- Information is provided about the final measure;
- Information is provided about the draft measure;
- Stakeholders are consulted;
- Administration of the measure is consistent, impartial and reasonable;
- Decisions can be challenged;
- The information made available is easily accessible.

To be effective, information policy must satisfy the information needs of markets. Towards that end, the information available about export restrictions ought to include sufficient detail and be timely, meeting the following conditions:

- Information delivers what stakeholders need to know, including the type of measure, what products are affected, which authorities decide and what contact point to address;
- Stakeholders are able to learn about a measure when it is still under consideration and not yet adopted, as well as when a measure is decided but before it enters into force.

The checklist offers flexibility of use. Governments can use the list as a diagnostic tool for self-assessment and as a roadmap for making improvements. The list can also inform policy dialogues that promote transparency as a way to facilitate trade at the regional or international level and pay attention to export restrictions and their effects on trade in raw materials or other goods.

## **Transparency of export restrictions: A checklist promoting good practice**

### **1. Introduction**

Transparency of trade restrictions placed on exports is a weak spot in today's international trade environment. Many border and domestic measures that restrict exports are not systematically notified to trading partners under existing multilateral trade rules. Information published on governmental websites is often spotty and not up to date. The relative opacity of export taxes and other export restrictions compared to restrictions taken on the import side compounds a situation where resort to such restrictions has become more frequent.

Drawing on good-practice standards, this paper develops a checklist of principles and information requirements for transparent use of export restrictions, when resorting to such restrictions is deemed indispensable. The paper does not advocate that governments use such measures. Regardless of whether applied for economic, social or political reasons, export restrictions always have economic costs for user countries which can easily outweigh achievable benefits. Moreover, export restrictions hurt trading partners and distort the global market. They raise the price of the products affected for foreign consumers and importers and potentially reduce global supply. Alternative policies to the use of export restrictions that avoid these costs are available, which some governments have pursued with impressive results (Korinek, 2013, 2014).

Transparency can help mitigate some of the negative effects of export restrictions – measures that raise export prices, limit export quantities or place conditions on exporting – by enabling affected stakeholders to better understand and anticipate such measures and adjust their activities. As it is, international disciplines on the use of export restrictions are relatively weak and governments have considerable leeway in managing them, including in deciding how much and when policy information ought to be made public. A survey of countries that regulate minerals exports through export restrictions found that information published on official websites about restrictions applied varied across countries and often was poor (Agatiello and Fliess, 2013).

The checklist developed by this paper expands on a more limited, tentative list proposed in Agatiello and Fliess (2013). The final version of the list is presented in the following section. Sections 3 through 5 explain how existing transparency norms and practices along with feedback received from stakeholders have guided the construction of the checklist. Section 6 concludes.

The principles and standards of the checklist are applicable to all types of export restrictions, in any goods sector.<sup>1</sup> The list can serve as a practical and pragmatic tool for self-evaluation by governments and for promoting better and more consistent transparency

- 
1. The OECD is contributing to greater *ex post* transparency of export restrictions that governments apply through its Inventory of measures that restrict the export of raw materials. The Inventory provides a comprehensive account of the universe of export taxes, export quotas, export bans and other types of export restrictions in the raw materials sector, including agricultural commodities <http://qdd.oecd.org/subject.aspx?subject=8F4CFFA0-3A25-43F2-A778-E8FEE81D89E2>.

practices across countries. It is proposed without prejudice of transparency commitments that countries may have adopted in this regard through their membership in the WTO, regional or other preferential trade agreements.

## 2. Identifying elements for inclusion in the final checklist

Making trade measures transparent, including export restrictions, requires that national information policies frame these measures from development to application. The important first step of informing stakeholders is the publication of measures **in advance of their enforcement**. A step further, making information available when measures are still **under consideration and not yet adopted** helps market participants to get acquainted with the state of play, allowing them take informed decisions on their actual or prospective economic activity. Finally, the transparency of export restrictions is further enhanced when, once a measure is adopted and announced, sufficient information about the **administrative procedures** through which it is being implemented is made publicly available.

Agatiello and Fliess (2013) reviewed transparency norms and practices found in WTO and regional trade agreements and non-binding good governance guidelines and developed a tentative list of information elements that make export restrictions transparent for stakeholders. The information relates to already implemented measures; the list therefore promotes *ex post* transparency. For the present paper the research was expanded with a view to incorporating additional good practice elements so that stakeholder information needs are satisfied at all stages of preparing, introducing and implementing export restrictions.

More information about the tentative checklist and the work leading to the final version is provided in Annex A. The final checklist has benefited from feedback from a business survey. The questionnaire along with the survey responses is shown in Annex B.

The final version of the checklist is shown in Box 1. The checklist sets forth five **general principles** that aim to cover all important dimensions of transparency. Two of the principles specifically address the issue of information requirements with respect to draft and final measures, which the checklist subsequently develops in greater detail. The principles also take account of the transparency enhancing role of public consultation and opportunities for stakeholder comments at the planning stage. The normative provisions in the WTO and other trade agreements and guidelines for good public policy converge in recognising the benefits of these procedures.

The information requirements listed differentiate between **two stages of the policy process**: (a) when a measure is under development but not yet adopted and (b) after the measure is adopted. The items listed for each stage are not identical, reflecting the fact that transparency needs differ and that they place different demands on government policies relating to information, communication and divulgence.

Finally, as transparency is ultimately a function of the ways and means through which a government applies and enforces trade policy, the list incorporates standards relevant to the administration of export restrictions.

**Easy access to information** is the other important factor in export restrictions transparency and another general principle elaborated by the checklist. Here, reference is made to good practices commonly associated with accessible information, which have been validated by the business survey.

### Box 1. Checklist of Good Transparency Practice for Export Restrictions\*

#### A. General principles of transparency

- Provide and publish information about the final measure, including the texts of final laws, regulations, administrative rulings, decisions and policy statements of general application to export restrictions, at a reasonable time prior to entry into force. (This does not apply to emergency situations)
- For draft measures, provide and publish information and consult, as appropriate, with all interested parties\*\* during the process of developing the measure and take their comments into account
- Administer the measure in a consistent, impartial and reasonable manner
- Make operational specific procedures for independent review and appeal of decisions
- Make information widely accessible and easy to find, by
  - Publishing it on the Internet
  - Publishing draft and final measures in full text
  - Providing information about the draft and final measure in at least one of the following languages: English, French and Spanish (the official language of the World Trade Organisation)
  - Operating enquiry point(s) that can be accessed by any interested party, national or foreign;
  - Considering use of central electronic sites or portals.

#### B. Information requirements

##### 1. When a measure is under development and before it is adopted

When considering a new measure or modification of an existing measure, and before making a final decision, provide the following elements of information:

- The type of measure being considered;
- Why the measure is being considered (objective, rationale);
- What products are targeted (including HS information);
- How the decision is made, and the participating authority(ies);
- Whether consultations with stakeholders are envisaged or have taken place, and with whom;
- Date or timetable for adoption of the measure;
- Draft text(s) of the measure;
- Contact information for Enquiry Point through which any interested party\* can obtain further information; about the proposed measure and the policy process.

##### 2. After the measure is adopted

When a new or modified measure is adopted, and at the latest at the time when the measure enters into force, provide the following elements of information:

- The type of measure
- If applicable, the value of the measure (e.g., if an export tax, the rate of the tax; if an export quota, the amount of the quota)
- Name of the product(s) to which the measure applies
- Harmonised System (HS) code(s) of the product(s)
- Date of entry into force
- How long the measure will be in force
- The text of the final measure and information where it can be obtained (title, publication name and date)
- The rationale or objective of the measure
- If the measure has been revised or amended, the reason for the revision/amendment



- Where applicable, information specifying exemptions from or derogations of the measure (e.g. when specific trading partners or entities are exempted)
- Administrative rules and procedures used in the application of the measure :
  - Applicable procedures, decisions and rulings for applying the measure (e.g. the criteria and method employed in allocating quotas, or granting licenses, permits or other authorisations)
  - Application procedures and document requirements, appeals procedures
  - Contact information for authority in charge of administration
- Contact information for Enquiry Point through which any interested party\*\* can obtain further information about the measure and its application.

\* Export restrictions are measures which raise export price, limit export quantity or place conditions on exporting. Examples are: Export tax, Fiscal tax on exports, Export surtax, Export quota, Tariff rate quota, Export prohibition, Export licensing requirement, Minimum export price/price reference schemes, Dual pricing scheme, Discriminatory VAT tax rebate regimes, and Domestic market obligation.

\*\* Refers to domestic and foreign governments and private persons

As designed, the checklist applies to all types of export restrictions; the issue whether measure-specific items could be developed has not been considered. Also, the list is concerned with information policy at the national level and is proposed without prejudice to formal notification requirements that governments may have vis-à-vis other governments or other parties under various trade treaties with respect to specific measures restricting exports.

The following sections elaborate on the general principles and specific information requirements provided for in the checklist, including the rules, regulations and practices from which they derive.

### 3. Public access to information and specific information requirements

A core objective of transparency provisions found in multilateral and regional trade agreements and in guidelines for improving the performance of national regulatory systems and governance is to ensure that stakeholders and the general public are informed about policies that materially affect them or affect commitments made under international treaties.

In terms of ways of achieving this it is useful to distinguish between the need of a stakeholder to access information that is available, and the scope and content of that information.

#### *a) Accessibility of information*

Accessibility of information implies publishing or otherwise making publicly available information about export restrictions. At issue is the ease with which interested individuals can learn about trade policy and understand the information. Transparency rules elaborated by multilateral and regional trade agreements, along with good governance guidelines commonly emphasize that information should be obtainable easily, at no or minimal additional cost and in a timely and non-discriminatory manner to all stakeholders, domestic and foreign alike.

The survey asked business representatives for their opinion about practices and tools mentioned by the list from Agatiello and Fliess (2013) and shown in the Annex A. All of these items were validated by a majority of respondents and are retained on the final checklist as tools that facilitate stakeholder access to information.

The checklist can be applied to information policy regardless of the medium used but identifies **making information available through the Internet** as the preferred option.

Information that is published on the Internet has the advantage of universal availability to all stakeholders regardless of their geographic location; it is a powerful tool to safeguard against discrimination. Hence use of this channel is becoming the “best publication practice.” In WTO, the TBT, SPS and Trade Facilitation Agreements stand out for promoting this practice, which is also advocated by the OECD Recommendation on Regulatory Policy and Governance (OECD, 2012a) and the APEC General Transparency Standards (APEC, 2012). Also, many new-generation RTAs contain general or measure-specific Internet-based publication obligations, including at times for measures that impact on exports. For example, RTAs between Canada and Peru, Taiwan and Nicaragua, China and Chile, China and New Zealand, China and Peru and China and Pakistan include a clause which commits the parties to publish on the Internet a list of administrative fees and charges imposed on or in connection with exportation. (Korinek and Bartos, 2011). The use of electronic channels for communication was mentioned by some of the survey respondents as well.

Effective information policies also make use of **enquiry points**. Learning what trade measures are actually in force at any time requires access to up-to-date information. Moreover, trade policy often involves several government agencies and many countries do not have a single authority from which market operators can obtain all the rules and procedures that apply to their activity and products. To facilitate access to information, most WTO agreements require Members to operate enquiry or contact points. These are increasingly being made available for use not only by governments but other stakeholders (see the WTO trade facilitation agreement contained in the “Bali package” of December 2013 and recently concluded RTAs). The checklist registers this emerging good practice of wider access to contact points.

The business survey revealed strong agreement on the importance of enquiry points to which questions about export restrictions in operation or under development could be addressed. Rapidly changing information technology provides multiple ways in which enquiry points can carry out their functions. One comment made was to operate these contact points via electronic means (e-mail, chat, etc.).

Although not all survey respondents saw merit in arrangements that **centralise the dissemination of information through dedicated portals or sites**, this item has been retained on the checklist as a practice for governments to at least consider. A review of actual transparency policies of governments that use export restrictions in the minerals sector showed that when information was available in some consolidated form on a site or portal (found at different levels of sophistication, e.g. in Malaysia, South Africa and Viet Nam), the time spent on collecting and collating information was significantly reduced (Agatiello and Fliess, 2013).

#### ***b) Information requirements with respect to final measures***

The preliminary checklist elaborated by Agatiello and Fliess (2013) specified the type of information that governments ought to make publicly available in respect to export restrictions already in force.

These items are listed in Section A of the questionnaire and were strongly and almost always unanimously endorsed by the survey respondents. Consequently the final checklist retains all of them as the reference list of information requirements once export restrictions have been adopted. The information pertains to the following:

- The type of measure
- If applicable, the value of the measure (e.g. if export tax, the rate of the tax; if export quota, the amount of the quota)

- Name of the product(s) to which the measure applies
- Harmonised System (HS) code(s) of the product(s)
- Date of entry into force
- Duration of the measure in force
- Where the text of the final measure can be obtained (title, publication name and date)
- The rationale or declared objective of the measure
- If the measure has been revised or amended, the reason for the revision/amendment
- Where applicable, information specifying exemptions from or derogations of the measure (e.g. when specific trading partners or entities are exempted)
- The administrative rules and procedures by which the measure is being applied
- Contact information for enquiry point through which any interested party can inquire about the measure and its application

When should governments provide this information? Transparency is enhanced and the business environment becomes more predictable when information about a change of policy becomes available well in advance of its implementation. Last-minute disclosure of entry into force of a new policy makes stakeholders scramble to adjust to the changing situation, which can destabilise markets as well as trading and investment relationships.

All WTO agreements require governments to disclose their policies and practices publicly within the country and/or by notifying the WTO. The rules of specific agreements are modelled after the broad GATT disciplines, mainly found in Article X, which include an obligation to publish laws, regulations and subordinate measures of general application that affect trade in a ‘prompt’ manner so as to enable governments and traders to become acquainted with them. Article X also states that trade rules should not be enforced before they have been officially published.

Box 2 provides illustrations of relevant provisions found in trade agreements, which converge in emphasising that it is important that governments publicise new or changed trade measures *in advance of their introduction*. This is only a sampling of the large number of agreements with such provisions. The standard finds expression in different formulations that usually do not specify timeframes. Exceptions exist but appear to be rare. The ASEAN Trade in Goods Agreement (2009) mandates a minimum of 60 days of prior publication. Under the WTO TBT and SPS Agreements Members must allow a “reasonable” interval between the publication of technical regulations and their entry into force; in this case, WTO Members took the clarifying decision that “reasonable interval” shall normally mean a period of not less than six months (WTO, 2001). Regulatory changes can necessitate major changes in production methods and product, which take time to implement; hence it is important that market operators, and especially foreign suppliers less familiar with a market, are able to prepare well in advance.

The principle of prior publication was validated by the business survey. In the checklist this is reflected in the general principle dedicated to information about final measures. Respondents were also invited to indicate a time period and most often mentioned 60 to 90 days. Keeping in mind that export restrictions are not a homogenous group of trade measures and that the transparency provisions reviewed show a preference for non-specificity, the principle as stated by the checklist keeps with this standard and refers to provision of information about adopted measures *at a reasonable time prior to their entry into force*, in non-emergency situations.

Timely publication of information can be augmented further by other channels of proactive government communication with interested stakeholders. Examples are advance notification or alert services or newsletter mailings to which anyone interested can subscribe, to which participants in the business survey make reference.

Prior publication involves publishing the text of the measure (law, regulation, general ruling or otherwise) but may also include other material. The text of a law, regulation or decree may not state the information that matters to exporters or importers, for example a precise description of the products that are affected by an export restriction.

#### **Box 2. Norms related to prior publication or notice of final measures**

**GATT 1994:** Article X:1 – “Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, **shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.**”

**Agreement on Import Licensing Procedures (1995):** Article 1.4 – “The rules and all information concerning procedures for the submission of applications....shall be published... in such a manner as to enable governments 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 import licensing shall also be published in the same manner and within the same time periods as specified above.”

**Agreement on Technical Barriers to Trade (1995):** Article 2.11-12 – “Members shall ensure that all technical regulations which have been adopted **are published promptly or otherwise made available** in such a manner as to enable interested parties in other Members to become acquainted with them ... Except in ... urgent circumstances..., Members shall **allow a reasonable interval between the publication of technical regulations and their entry into force** in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.”

**Colombia - United States Trade Promotion Agreement (2006):** Article 2.9 – **Import Licensing:** “**Promptly** after entry into force of this Agreement, each Party shall notify the other Parties of any existing import licensing procedures, and thereafter **shall notify the other Parties of any new import licensing procedure and any modification to its existing import licensing procedures, within 60 days before it takes effect.** ...No Party may apply an import licensing procedure to a good of another Party unless it has provided notification ...”

**ASEAN Trade in Goods Agreement (2009):** Article 75 – “Except in urgent circumstances, **Member States shall allow at least six (6) months between the publication of technical regulations and their entry into force** in order to provide sufficient time for producers in exporting Member States to adapt their products or methods of production to the requirements of importing countries.”

**US-Australia FTA (2004):** To the extent possible, **each Party shall provide notice** of the requirements of final regulations **prior to their effective date.**

**New Zealand-Malaysia Free Trade Agreement (2009),** Horizontal Chapter 14 on Transparency: “...Each Party shall ensure that its **laws, regulations, procedures, and administrative rulings of general application** with respect to any matter covered by this Agreement **are promptly published or otherwise made available** in such a manner as to enable interested persons of the other Party to become acquainted with them.”

**APEC Model Chapter on Transparency for RTAs/FTAs (2012):** Article 2.2 – “**To the extent practicable, a Party shall provide a reasonable period of time between the date of publication of a measure of general application and its entry into force.** Except in emergency situations, a Party shall not enforce a measure of general application before such measure has been officially published. This paragraph does not require a Party to ensure the prior publication of judicial decisions of general application if that is contrary to the domestic laws and procedures of that Party.”

*Source:* OECD, review of the texts of a large sample of agreements and guidelines available on the Internet.

#### 4. Transparency of measures under preparation

Transparency becomes an issue long before an export restriction enters into force. This is made plain by the WTO glossary's definition of transparency as the "degree to which trade policies and practices, and *the process by which they are established, are open and predictable*".<sup>2</sup> For the purpose of this checklist this has meant identifying standards and rules capable of meeting stakeholders' information needs at the planning stage of trade policymaking.

Two transparency issues arise when a policy or measure is being considered:

- what information is publicly available about policy proposals and measures under preparation;
- how open the process of developing a policy or measure is to participation by stakeholders.

The checklist develops the first issue in detail while acknowledging the importance of stakeholder involvement in the policymaking process.

##### *a) Information requirements at the planning stage*

International trade agreements with strong transparency disciplines require that a government publishes (or notifies) information about a measure when still under consideration. A sample of provisions is shown in Box 3. The business survey showed very strong support for the principle that information about measures that restrict exports ought to be available before such measures are decided.

##### **Box 3. Publication requirements covering draft measures**

**APEC Model Chapter on Transparency for RTAs/FTAs (2012)** – encourages members on a best endeavour basis **to publish timely proposed measures prior to their adoption** and provide a reasonable period of time, defined as normally taking no less than 30 days for comments by other government or stakeholders.

**The APEC General Transparency Standards (2002)** – recommend that governments **when possible publish in advance any measure proposed** and give governments or other interested persons opportunity to comment.

**Recommendation of the Council of the OECD on Regulatory Policy and Governance (2012)**: When reviewing existing and developing new regulations, governments should ... "[make] **available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analysis, and the reasons for regulatory decisions as well as all relevant data**;..."

**ASEAN Trade in Goods Agreement (2009)** – requires Member States to notify planned measures and for the notification to provide **information about the measure, the reasons for undertaking the measure, and the intended date of implementation and the duration of the measure**.

**CARICOM-Costa Rica Free Trade Agreement (2004)**, Art. XII – **As far as practicable, each of the Parties shall publish and notify the other Party of any measure** (such as laws, regulations, judicial decisions, procedures and administrative regulations of general application which are related to the provisions of this Agreement) **that it proposes to adopt**, and shall provide the interested Party with a reasonable opportunity for making observations on the proposed measures.

2. WTO Glossary ([www.wto.org](http://www.wto.org)). *Emphasis added.* The IMF Code of Good Practices on Transparency in Monetary and Financial Policies of 2000 provides a similar definition: "Transparency refers to an environment in which the objectives of policy, its legal, institutional, and economic framework, policy decisions and their rationale, data and information related to monetary and financial policies, and the terms of agencies' accountability, are provided to the public in a comprehensible, accessible, and timely manner." [www.imf.org/external/np/mae/mft/sup/part1.htm#appendix\\_III](http://www.imf.org/external/np/mae/mft/sup/part1.htm#appendix_III) )

**New Zealand-Malaysia Free Trade Agreement, Horizontal (2009)**, Chapter 14 on Transparency: ...  
**“To the extent possible, each Party shall ...publish in advance any measure ... that it proposes to adopt; and ...provide, where appropriate, interested persons and the other Party with a reasonable opportunity to comment on such proposed measures.”**

Source: OECD, review of the texts of a large sample of agreements and guidelines available on the Internet.

Along with the text of a draft measure, what specific information ought to be made available when export restrictions are still on the drawing board? The business survey sought reactions to a short but amendable list of items shown in Section D of the questionnaire:

- The type of measure being considered
- Why the measure is being considered (declared objective, rationale)
- What products are targeted
- The authority(ies) deciding the measure
- Draft text of the measure
- Date or timetable for final decision
- Enquiry or contact point

Notification requirements under WTO and bilateral trade agreements typically expect Members to make this information available to other Members. Some items are explicitly required to be published, hence making not only governments but also other stakeholders and the general public aware of policies at the development stage. Also, interested stakeholders made aware of a measure being developed usually can request further information as the initiative moves forward.<sup>3</sup> In this regard, it is important to note that the role of enquiry points, which have long served the information needs and criteria of government authorities, is redefined in favour of open access and customer satisfaction. Moreover, not to reserve enquiry points to government authorities only, but to make them available to all interested parties is one of the ways in which recent RTAs seek to make trade policies more transparent (Lejarraga, 2013).

The items listed do not reflect the content of notifications in any exhaustive manner and it should be noted that more ambitious parameters for information disclosure exist for which the OECD guidelines for domestic policy, governance and regulation serve as an example (Box 3). All or almost all participants of the business survey endorsed each of the items proposed. Survey participants were free to flag additional items and some offered comments on individual items. Following the business survey, the checklist has been amended with respect to transparency in the decision-making process. One survey respondent noted that governments should also disclose whether stakeholders have been consulted. Comments calling for the checklist to take the decision process better into account were received also from Members of OECD during the framing of the checklist. The final checklist recognises the role of the policy process for transparent trade policies. This issue is discussed in the next section.

### ***b) Transparency and public consultation***

The WTO glossary defines transparency to include an open and predictable process by which policies and practices are established. This is generally understood to involve having

- 
3. Optimal transparency would be achieved through a combination of both, a well-functioning public consultation process and the systematic availability of information allowing anyone to follow the policy initiative as it moves forward.

mechanisms in place that allow for public scrutiny and participation in policymaking. Good practice in this context consists of policymakers engaging in some form of stakeholder or public consultation as they consider new policy or review existing policy (prior consultation).

*Prior consultation* enhances policy transparency by providing a channel through which those who are engaged can obtain valuable information about draft proposals and how these will affect them, and through which they express their opinions and provide comments. Governments themselves benefit because they may obtain useful information about the costs, benefits and practical implementation issues of proposed new or modified measures (including their impact on trade) and what other approaches to achieving the policy objectives might be available. Prior consultation also enhances the perceived legitimacy of government authorities and may nurture compliance with the policy once adopted (Iida and Nielson, 2001).

The concept of public consultation is a core element of good governance on which the OECD Council Recommendations on Regulatory Policy and Governance (2012) include detailed guidance. In international trade agreements, the issue of consultation is usually addressed through “prior notice and comment” requirements for trade measures at the draft stage. Among WTO agreements, the TBT, SPS and GATS agreements apply prior notice and comment procedures, on which provisions in recent RTAs have expanded.

One way in which prior consultation norms are evolving is their advocacy of more inclusive stakeholder participation. Most WTO agreements reserve consultation for governments. A few agreements (GATS, TBT, Antidumping Agreement, and Agreement on Safeguards) have provisions giving private participatory rights and opportunities at the national level. Such provisions are especially frequent in recently concluded RTAs, notably those involving OECD countries, which let private-sector stakeholders or the general public provide comments on draft measures, thus mainstreaming wide participation. Also, some RTAs are applying such mechanisms horizontally across all sectors and measures covered by an agreement (Lejarraga, 2013). Examples of such consultation provisions are provided in Box 4.

#### Box 4. Examples of provisions on stakeholder consultation

**WTO Agreement on Agriculture (1995)**, Article 12(b) – “before any Member institutes an export prohibition or restriction, it ...**shall consult, upon request, with any other Member having a substantial interest as an importer** with respect to any matter related to the measure in question. The Member instituting such export prohibition restriction shall provide, upon request, such a Member with necessary information.”

**Agreement on Trade Facilitation (2013)**, Article 2.1 – “Each Member shall to the extent practicable and in a manner consistent its domestic laws and legal system, provide **opportunities and an appropriate time period to traders and other interested parties** to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods...”

**Recommendation of the OECD Council on Regulatory Policy and Governance (2012)** – Recommendation 3: Governments should “**consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage** while developing or reviewing regulations, ensuring that the consultation itself is timely and transparent, and that its scope is clearly understood....” – Recommendation 7.4: Regulatory agencies should be required to follow regulatory policy including engaging with stakeholders ...when developing draft law or guidelines and other forms of soft law”.

**APEC Model Chapter on Transparency for RTAs/FTAs (2012)**, Article 3 – “Each Party shall endeavour to make publicly available proposed measures of general application prior to their adoption and **provide a reasonable period of normally not less than 30 days for the other Party and its interested persons to comment** to the authority responsible for the development of the proposed measure.”



**Côte d'Ivoire – EC Stepping Stone Economic Partnership Agreement (2009)**, Article 16:1-2 – “No new customs duties on exports or charges with equivalent effect shall be introduced, nor shall those currently applied in trade between the Parties be increased from the date of entry into force of this Agreement. **In exceptional circumstances, if the Ivorian Party can justify specific needs for income, protection for infant industry or environmental protection, it may, on a temporary basis and after consulting the EC Party, introduce customs duties on exports or charges with equivalent effect** on a limited number of traditional goods or increase the incidence of those which already exist.”

**Canada-Colombia Free Trade Agreement (2011)**, Article 1901 – “To the extent possible, each Party shall: (a) publish in advance any such measure that it proposes to adopt; and (b) **provide interested persons and the other Party a reasonable opportunity to comment** on such proposed measures.”

**New Zealand – Malaysia Free Trade Agreement (2009)**, Horizontal chapter 14 on Transparency (2009): – “To the extent possible, each Party shall (a) publish in advance any measure [laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement] that it proposes to adopt; and (b) **provide, where appropriate, interested persons and the other Party with a reasonable opportunity to comment on such proposed measures.**”

Source: OECD, review of the texts of a large sample of agreements and guidelines available on the Internet.

The checklist aligns with the evolving norms in this area by including a **reference to stakeholder consultation as a general principle** for governments to abide by. The wording “all interested parties” in the statement reflects the understanding that the process should be open to governments and private persons, domestic and foreign, alike.

In addition, the information requirements for measures under development and not yet adopted has been amended to supply information with respect to:

- How the decision is made, and which authorities participate;
- Whether stakeholder consultations are envisaged or have taken place, and with whom

The general principle keeps with the observation that the consultation commitments found in WTO agreements usually are expressed as ‘best endeavours’ encouraging rather than requiring that governments give interested parties a reasonable opportunity to comment. This is true also for RTAs, including RTAs involving countries with a long tradition of stakeholder consultation (Moïsé, 2011). Where prior consultation is made an obligation, it tends to be limited to specified situations. For example, the WTO Agreement on Agriculture makes consultation obligatory for export restrictions, but only when the government of another country requests this and that country is a major importer (Box 4). Consultation is also mandatory under the TBT and SPS Agreements, but only when a measure can affect trade significantly.

The issue of consultation could be developed further, but the checklist stops here. For example, it does not reflect that some trade agreements (often addressing TBT and SPS issues) specify how much time stakeholders should have to make comments. In general, translating the principle of prior consultation into practice is not straightforward and raises numerous questions for which there are no easy answers. Should there be limits on consultation, in terms of types of instruments subject to consultations (legislative versus subordinate measures), or the level of government involved? In the case of export restrictions, should consultation mechanisms be applied horizontally to all types of restrictions, from export taxes to domestic content rules? Are prior consultations making sense mostly when the effect of export restrictions on trade is very significant, or when trading partners have a substantial interest as importers (a precondition for consultation under the WTO Agreement on Agriculture)? Actual country experiences with developing export restrictions could help clarify if and where across policies the limit should be drawn. A recent case of consultations on restrictions taking place in South Africa is anecdotally described in Box 5. In general,



studies of country experiences with consultation processes for export restrictions are not available as of yet.

#### **Box 5. South Africa develops export controls for scrap metal**

South Africa's International Trade Administration Commission (ITAC) in early 2013 held public consultations on a new arrangement for controlling scrap metal exports. The South African government reportedly has had several concerns about those exports, including that exporting scrap metal was allegedly an outlet for illicit activity. A draft proposal to restrict the export of ferrous and nonferrous scrap metal by way of a licensing mechanism would give domestic consumers of scrap a first right of refusal, as well as preferential prices. The details of the proposed directive, drafted by the Economic Development Department, were published in the Government Gazette of South Africa of 25 January 2013 along with a call for public comments to be submitted by end February. The deadline for comments by interested parties on the proposed guidelines was subsequently extended by four weeks, to 8 March. Export control guidelines pertaining to the exportation of ferrous and non-ferrous waste and scrap metal were published in the Gazette on 2 August, and a summary of a price preference system was published in the Gazette on 18 September. The price preference system was made available on ITAC's homepage, along with other information.

#### *Sources*

Comments sought on SA's proposed metal scrap restrictions, *Engineering News*, Creamer Media, <http://www.engineeringnews.co.za/article/comments-sought-on-sas-proposed-metal-scrap-restrictions-2013-02-05>, 5 February 2013;  
ITAC still consulting on scrap metal, *Engineering News*, <http://www.engineeringnews.co.za/article/itac-still-consulting-on-scrap-metal-2013-03-20>, 20 March 2013;  
ITAC website: [http://www.itac.org.za/search\\_page.asp?search=scrap](http://www.itac.org.za/search_page.asp?search=scrap).

## **5. Transparency in the application of the measure**

It is commonly understood that it is important to ensure transparency in regard to the law or regulation itself as well as related administrative rules, procedures and decisions, including through their publication. In addition, stakeholders must know the enforcement process, including through the publication of relevant decisions.

Observance of these principles is a general requirement for Members of the WTO. GATT Article X and GATS Article VI require that administration of trade measures be uniform, impartial and reasonable and that stakeholders have access to review of action taken pursuant to these measures. More specific WTO agreements and also bilateral and regional trade agreements mirror these principles.

These principles are sometimes expressed in terms of the efficacy of the processes by which trade measures are applied to demonstrate procedural fairness and non-discrimination.<sup>4</sup> Procedural fairness is an indication of the degree of transparency because stakeholders need to know the rules of the game, i.e. how administration of trade measures works, in order to be in a position to judge whether the measures are applied fairly or not. The existence of a review mechanism for decisions, carried out by an independent authority and open to all parties affected by administrative decisions reinforces the transparency of administrative and enforcement systems.

4. See WTO (2002) Transparency. Note by the Secretariat. Working Group on the Relationship between Trade and Investment, WT/WGTI/W/109, 27 March 2002, and WTO (2002), Core principles, including transparency, non-discrimination and procedural fairness. Background Note by the Secretariat. Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/209, 19 September 2002.

#### Box 6. Handling applications

**Agreement on Technical Barriers to Trade (1995)**, Article 5 – In cases where a positive assurance of conformity with technical regulations and standards is required, Members shall ensure that **“the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request...”** Article 7 states that Members shall take such reasonable measures as may be available to them to ensure compliance with this obligation also by local government bodies within their territories such bodies.

**Agreement on Sanitary and Phytosanitary Measures (1995)**, Annex C (Control, Inspection and Approval Procedures) – Members shall ensure with respect to any procedure to check and ensure the fulfilment of sanitary and phytosanitary measures, that **“...the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request...”**

**Decision on Disciplines Relating to the Accountancy Sector (1998)**, Article VII – **“Licensing requirements** (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice) **shall be pre-established, publicly available and objective”**. Article XI (Licensing Procedures) – **“Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective**, and shall not in themselves constitute a restriction on the supply of the service.”

Source: OECD, review of the texts of a large sample of agreements and guidelines available on the Internet.

There have been efforts to promote transparency more deeply into the processes by which agencies administer trade-related laws and regulations. To increase regulatory certainty for businesses and other stakeholders affected by regulatory decisions, the OECD Council Recommendation of 2012 advocates the establishment of standard time periods for decisions in approval or infringement processes. Operating and publishing standard timeframes for handling applications is among the higher-standard transparency disciplines found in WTO agreements dealing with regulatory measures (see Box 6 for illustration). With respect to administrative decisions and actions in their respective areas, these agreements (TBT and SPS Agreements and the Disciplines for the Accountancy Sector in the service sector) also provide for disclosure of information on the reasons for rejection of applications, non-discriminatory processing of submission of applications for domestic and foreign parties, avoidance of unnecessary information requirements for applications, and reasonable processing fees.

The checklist states that governments should administer measures in a consistent, impartial and reasonable manner and provide opportunity for affected parties to make use of review and appeal procedures. No attempt is made to develop this general statement further, for example by mentioning the practice illustrated in Box 6 of setting standard timeframes for applications. At that level of administrative detail, ways to internalise the stated broad norms into the administrative process must often be tailored to the specific type of measure and are not suitable for reference by a horizontal checklist.

With respect to the issue of information availability, two kinds of disciplines exist:

- There are rules requiring governments to publish sufficient information so that generally applicable procedures used for applying regulations and regulatory decisions are known to any stakeholder;
- There are rules for communicating with affected parties when specific issues of administrative decisions or actions arise (e.g. when an application for an export licence or authorisation was rejected, prompt, objective and impartial review upon request, and remedies).

The checklist is only concerned with information intended for all stakeholders. The most important good practice norm states that **existing and forthcoming administrative**

**procedures, rulings and interpretations of general application must be published.** Examples of publishing requirements are illustrated in Box 7 for trade procedures that can impose large time and monetary costs on businesses and may also be a source of administrative discretionality, discrimination, red tape and corruption. Transparency may require commitments that drill down and make visible to stakeholders or the public how agencies handle specific regulatory requirements and administrative formalities.

Another general norm is that governments are expected to **operate enquiry points**. Provisions on the checklist include the contact information for the Enquiry Points through which an interested party can obtain further information about the measure and its application.

These information items were included in the business survey (Section A) and endorsed by the majority of respondents. A comment made asked for some way of tracking the utilisation of an (export) quota to be provided.<sup>5</sup> Information needs and best ways to meet them could of course be tailored to each type of measure, which is not the aim of this checklist.

#### Box 7. Publishing obligations with respect to administration

**Agreement on Import Licensing Procedures (1995)**, Article 1.4(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 Import Licensing... 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 import licensing shall also be published in the same manner and within the same time periods as specified above.” Article 5 (b) – Members administering quotas by means of licensing **shall publish the overall amount of quotas to be applied by quantity/or value, the opening and closing data of quotas, and any change thereof,** within the time periods specified in paragraph 4 of Article 1 [above].”

**Agreement on Trade Facilitation (2013)**, Article 1 – Publication and Availability of Information: Each Member shall promptly **publish ... in a non-discriminatory and easily accessible manner.... importation, exportation and transit procedures ... penalty provisions ... appeal procedures, ... procedures relating to the administration of tariff quota.** Article 3 – Advance Rulings: A Member shall publish at the minimum (a) the requirements for the application for an advance ruling, including the information to be provided and the format; (b) the time period by which it will issue an advance ruling; and (c) the length of time for which the advance ruling is valid. Member shall endeavour to make publicly available any information on advance ruling which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

Source: OECD, review of the texts of a large sample of agreements and guidelines available on the Internet.

- 
5. It appears that the information to which this comment refers is available to governments through the WTO, since WTO procedures on notification of quantitative restrictions require Members to regularly report information about the degree of utilisation of quotas in force. This includes quantitative restrictions on the export side (WTO, G/MA/NTM/W/1/Rev.1 of 3 Nov 1995).

For clearer organisation these items have been grouped in the final checklist under the heading ‘Information about procedures and rules of administration’. They refer to publication of:

- Applicable procedures, decisions and rulings for applying the measure (e.g. the criteria and methodology employed in allocating quotas, or granting licenses, permits or other authorisations)
- Application procedures and document requirements, appeals procedures, and the like
- Contact information for authority in charge of administration.

It is recalled that the information requirements do not extend to determinations or rulings made in administrative or judicial proceedings that apply to a particular person or a particular product in a specific case; or rulings that adjudicate with respect to a particular act or practice. Such information is intended for individual stakeholders, is not automatically made available and is not intended for the general public.

## 6. Conclusions

Transparency of export restrictions involves effective public communication, opportunity for stakeholder involvement in the decision process and procedural fairness of administration. This paper compiles good-practice standards on the provision of, and public access to, information into a list that provides a template for developing an effective national information policy. The checklist covers all stages of policy development - when measures are still on the drawing board, when they are adopted and when they become operational. It also identifies applicable practices for ensuring that the process of deciding about the adoption of a measure and making it operational is transparent.

The story told is that when a government is considering introducing an export restriction, it should publish sufficient information letting stakeholders know about the initiative so that they can act upon the information. So that stakeholders are in a position to adjust to change in policy, the government should publicise the planned action widely, give interested stakeholders an opportunity to express their views and take such views into consideration. Following enactment of an export restriction, information should be published well in advance of its entry into force. The measure should be implemented and enforced in a transparent manner assuring all stakeholders affected equal treatment and include a right to contest decisions and procedures.

From the business perspective, transparency throughout the policy development process is clearly important. Research of what governments publish online about export restrictions already in place suggests that there is considerable room for improvement, at that stage. The checklist offers a blueprint for achieving a high level of *ex post* transparency, elaborating information requirements for making measures public once taken at a high level of specificity validated by a business survey. However, the list also makes clear that transparency disciplines apply *ex ante* as well, in the form of information and engagement of stakeholders prior to the enactment of a restriction. The result is a coherent framework of actions capable of sustaining a high level of transparency throughout the policy cycle and flow of information from which local and foreign private operators and governments, and ultimately global markets, all can benefit.

The checklist can be used flexibly and could find application in a variety of settings. It facilitates self-evaluations but could also support peer reviews and multi-stakeholder dialogue on transparency of policies that restrict exports.

The checklist can serve as a diagnostic tool that governments can use to assess their own transparency practices and take steps to address underlying weaknesses. Transparency is not cost free. Taking steps addressing underlying weaknesses requires resources that in particular developing countries may not have at their disposal. The checklist does not offer guidance on capacity building issues; however, governments are free to decide on which parts of the framework for transparency they wish to focus their efforts to enhance transparency. Also, they can align their practices step by step, in line with their capacity and available technical assistance.

A manageable starting point could be to close information gaps relative to the specific information requirements for publishing information. These information requirements respond to concrete information needs of market operators and are formulated in clear terms that facilitate implementation. Also, governments around the world are making increasing use of information technology in their communication policies, and many governments that use export restrictions already are publishing some relevant information about these measures via the Internet. Therefore, improvements here appear relatively easy.

Public consultation mechanisms on the other hand are decisions that governments usually take years to consider and implement. Also, the appropriateness of any standards for consultations in the public policy field is not necessarily universally recognised. Some governments may not see value in open and transparent decision-making processes. *Ex ante* transparency therefore needs strong advocates to be adopted. Governments that make use of consultative mechanisms when considering export restrictions should publicise this widely and share their experience with trading partners that do not. More proactive forms of support of governments interested in establishing more open policymaking procedures could also be considered.

Like with their own practices, governments can use the criteria of the checklist to scrutinise how other countries handle transparency when they develop and put into effect export restrictions. The checklist could support the organisation of peer reviews where governments can learn from each other's experiences.

The checklist could make a contribution to a range of ongoing activities. For example, the recently concluded WTO Agreement on Trade Facilitation requires Members to publish and make available information in respect to a range of trade measures that include export restrictions. The principles and precise information requirements of the list could inform Members' work making these obligations operational. Other settings where the list could serve as a reference tool are the various bodies and fora which RTAs have set up to oversee and help signatory countries with the implementation of the transparency rules of these treaties, where these cover export restrictions. Finally, the possibility that countries negotiate and reach agreement on multilateral transparency disciplines for export restrictions over and above those currently applied under the WTO should not be ruled out. Whereas opinions of countries diverge on the need for stricter multilateral disciplines on the use of export restrictions, efforts to promote transparency enjoy broad and growing support among countries. The strong transparency provisions of recent RTAs confirm this trend, including for export restrictions.

Because the regulatory field of export restrictions is broad and the checklist applies to all goods sectors, the list may be able to contribute also to policy dialogues in WTO, APEC, OECD and other fora that seek to promote greater transparency as part of better governance in public policy more generally and with an open market perspective firmly in mind.

## *Bibliography*

- Agatiello, Osvaldo and Barbara Fliess (2012), *Export Restrictions: Benefits of Transparency and Good Practices*, OECD Trade Policy Paper, No. 146, OECD Publishing, Paris, DOI 10.1787/5k49czl4c5kh-en
- ASEAN Trade in Goods Agreement, 2009,  
[http://www.fta.gov.sg/afta/atiga\\_asean%20trade%20in%20goods%20agreement%20cha-am%20thailand%2026%20february%202009.pdf](http://www.fta.gov.sg/afta/atiga_asean%20trade%20in%20goods%20agreement%20cha-am%20thailand%2026%20february%202009.pdf).
- Asia-Pacific Cooperation (2012), Annex A – *APEC Model Chapter on Transparency for RTAs/FTAs*, Ministerial Statement, 2012 APEC Ministerial Meeting, Vladivostok, Russia, 5-6 September, [http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2012/2012\\_amm/annex-a.aspx](http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2012/2012_amm/annex-a.aspx).
- Asia-Pacific Cooperation (2002), *Leaders' Statement to Implement APEC Transparency Standards*, Los Cabos, Mexico, 27 October, [http://www.apec.org/Meeting-Papers/Leaders-Declarations/2002/2002\\_aelm/statement\\_to\\_implement1.aspx](http://www.apec.org/Meeting-Papers/Leaders-Declarations/2002/2002_aelm/statement_to_implement1.aspx).
- Canada – Colombia Free Trade Agreement, 2011, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx>.
- CARICOM – Costa Rica Free Trade Agreement 2004,  
[http://www.sice.oas.org/Trade/crcrcom\\_e/crcrcomind\\_e.asp#EIF](http://www.sice.oas.org/Trade/crcrcom_e/crcrcomind_e.asp#EIF).
- Colombia United States Trade Promotion Agreement, 2006,  
[http://www.sice.oas.org/Trade/COL\\_USA\\_TPA\\_e/Index\\_e.asp](http://www.sice.oas.org/Trade/COL_USA_TPA_e/Index_e.asp).
- Côte d'Ivoire – European Community Stepping Stone Economic Partnership Agreement, 2009,  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:059:0003:0273:EN:PDF>.
- Iida, Kiya and Julia Nielson (2001), “Transparency in domestic regulation: Prior consultation”, in: *Trade in Services: Negotiating Issues and Approaches*, OECD Publishing, Paris, DOI: 10.1787/9789264194960-en.
- Korinek, Jane (2014), “Export Restrictions on Raw Materials: Experience with Alternative Policies in Botswana”, *OECD Trade Policy Papers*, No. 163. OECD Publishing, Paris, DOI 10.1787/5jzb6v86kz32-en.
- Korinek, Jane (2013), “Mineral Resource Trade in Chile: Contribution to Development and Policy Implications”, *OECD Trade Policy Papers*, No. 145, OECD Publishing, Paris, DOI 10.1787/5k4bw6twpf24-en.
- Korinek and Bartos (2011), “Multilateralising Regionalism: Disciplines on Export Restrictions in Regional Trade Agreements”, *OECD Trade Policy Papers*, No. 139. OECD Publishing, Paris, DOI 10.1787/5k962hf7hfnr-en.
- Lejarraga (2013), “Multilateralising Regionalism”, *OECD Trade Policy Papers*, No. 152, OECD Publishing, Paris, DOI 10.1787/5k44t7k99xzq-en.
- Moisé, E. (2011), “Transparency Mechanisms and Non-Tariff Measures: Case Studies”, *OECD Trade Policy Papers*, No. 111. OECD Publishing, Paris, DOI 10.1787/5kgf0rzzwfq3-en.
- New Zealand – Malaysia Free Trade Agreement, 2009, <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Malaysia/index.php>.
- OECD (2012a), *Recommendation of the Council on Regulatory Policy and Governance*, Paris, <http://www.oecd.org/gov/regulatory-policy/49990817.pdf>

- OECD (2012b), *Inventory of Restrictions on Exports of Raw Materials* (database), <http://qdd.oecd.org/Subject.aspx?subject=1189A691-9375-461C-89BC-48362D375AD5>
- OECD (2010), *The Economic Impact of Export Restrictions on Raw Materials*, OECD Publishing, Paris, DOI 10.1787/9789264096448-en.
- OECD (2009a), *Overcoming Barriers to Administrative Simplification Strategies: Guidance for Policy Makers*, OECD Publishing, Paris, DOI 10.1787/9789264059726-en.
- OECD (2009b), *Transparency in the Design of Non-Tariff Measures and the Cost of Market Entry: Conceptual Framework*, 20 November, Paris (unpublished).
- OECD (2005), *Guiding Principles for Regulatory Quality and Performance*, OECD Publishing, Paris, DOI 10.1787/9789264056381-en.
- OECD (2003), *Integrating market openness into the regulatory process: Emerging patterns in OECD countries*, TAD/TC/WP(2002)25/FINAL, Paris.
- OECD (2002a), *Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs*, OECD Publishing, Paris, DOI 10.1787/9789264199286-en.
- OECD (2002b), *Transparency in Domestic Regulation: Practices and Possibilities*, TD/TC/WP(2001)31/FINAL, Paris.
- OECD (2001), *Engaging Citizens in Policy-making: Information, Consultation and Public Participation*. OECD Public Management Policy Brief No. 10, July, Paris (archived).
- United States – Australia Free Trade Agreement (2004), [http://www.sice.oas.org/Trade/US-AusFTAFinal/USAusind\\_e.asp](http://www.sice.oas.org/Trade/US-AusFTAFinal/USAusind_e.asp)
- WTO (2013), *Agreement on Trade Facilitation* WT/MIN(13)/W/36, WT/L/911, 7 December, Geneva.
- WTO (2012), *Draft Consolidated Negotiating Text, 2012, Fourteenth Revision*, Negotiating Group on Market Access, TN/MA/W/103/Rev.3, 6 December 2012, Geneva.
- WTO (2012), *Decision on notification procedures for quantitative restrictions*. Adopted by the Council for Trade in Goods on 22 June 2012, Revision, G/L/59/Rev.1, 3 July, Geneva.
- WTO (2008), *Draft Modalities for Non-Agricultural Market Access*. 2008, Fourth Revision. World Trade Organization, Negotiating Group on Market Access, TN/MA/W/103/Rev.3, 6 December, Geneva.
- WTO (2003), *The WTO Agreements Series* Volume 3: Agriculture, Geneva.
- WTO (2002), *How to apply the transparency provisions of the SPS Agreement*, September, Geneva.
- WTO (2002) *Transparency*. Note by the Secretariat. Working Group on the Relationship between Trade and Investment, WT/WGTI/W/109, 27 March 2002.
- WTO (2002), *Core principles, including transparency, non-discrimination and procedural fairness*. Background Note by the Secretariat. Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/209, 19 September 2002.
- WTO (2001), *Decision on Implementation Related Issues and Concerns taken at the Fourth Ministerial Conference in Doha, Qatar* (WT/MIN(01)17), 14 November.
- WTO (1996), *Decision on Notification Procedures for Quantitative Restrictions*. Adopted by the Council for Trade in Goods on 1 December 1995. G/L/59, 10 January, Geneva.
- WTO (1996), *Report of the Working Group on Notification Obligations and Procedures*, Working Group on Notification Obligations and Procedures, G/L/112, 7 October 1996, Geneva.

WTO (1996), *Information on Notifications Made Under the Agreements in Annex 1A of the WTO Agreement*, Working Group on Notification Obligations and Procedures, G/NOP/W/14, 20 May 1996. G/L/112, 7 October 1996, Geneva.

WTO (1996), *Information on Discussions Being Held in Various WTO Committees related to Topics Under Examination in the Working Group*, Working Group on Notification Obligations and Procedures, G/NOP/W/13, 10 May 1996, Geneva.

WTO (1995), *Notification requirements and formats* (Adopted by the Committee at its meeting on 8 June 1995), Committee on Agriculture, G/AG/2, 30 June 1995, Geneva.

WTO (1994), *Uruguay Round Decision on Notification Procedures*. Adopted by the Trade Negotiations Committee on 14 April 1994, Geneva.

WTO Glossary, [www.wto.org](http://www.wto.org).



## **Annex A.**

### **Constructing the Checklist**

Transparency implies the systematic availability and ready accessibility of information on applicable trade measures for all interested persons. ‘Best practice’ publication and notification standards are promoted by WTO and regional trade agreements and relevant OECD and APEC recommendations on good regulation and governance. As existing GATT rules have been strengthened over the years and disciplines have been extended to new areas of trade policy, new or amended substantive and procedural provisions have led to higher transparency standards at the national and international levels. As for RTAs, a number of agreements address export restrictions explicitly, but perhaps the most striking feature observed with respect to RTAs concluded in recent years is their introduction of ambitious transparency disciplines over and above WTO rules, often applied horizontally across the policies addressed by an agreement. Finally, APEC and OECD are promoting transparency, including in trade policy, through their guidelines for good regulation and governance.

Reviewing this body of transparency norms and practices, Agatiello and Fliess (2013) assembled the tentative list of good practice information elements reproduced below.

The list has a narrow focus. It was tailored to the supply of information about export restrictions that governments had already put in place. More specifically, the authors used the list to take stock of the information actually available on the official websites of governments of 33 countries that apply export taxes, licensing requirements or quantitative restrictions in the minerals sector. Whether and how much information related to these measures could be found was taken as an indication of how transparent governments are in this policy area. This exercise confirmed what a large-scale effort by OECD to collect data for an Inventory of restrictions on exports of raw materials revealed: provision of information is very uneven across countries and what is published is often unclear about policy details and not up to date.

There is however more to transparency. Transparency encompasses all stages of preparing, introducing and implementing trade policy. The most obvious gap in the tentative checklist concerns stakeholders’ information needs when measures such as export restrictions are still under development.

In its final form as presented in this paper, the checklist of good practice in transparency covers transparency throughout the process of developing and implementing export restrictions. The new elements of the list are the result of a review of normative provisions found in WTO and regional trade agreements and other guidelines, supplemented by a small business survey which the OECD Secretariat conducted in co-operation with the Business and Industry Advisory Committee to the OECD (BIAC) to obtain feedback about the content of the checklist. Firms directly or indirectly involved in trade were asked to review a list of questionnaire items (shown in Annex B) and mark those items that in their view ought to be included in a checklist defining good practice in providing public information. Respondents were free to comment and add other information items they considered important. The survey was carried out in the summer and fall of 2013. The completed questionnaire was returned by

a total of 32 firms and associations from OECD and non-OECD countries, some of which apply export restrictions.<sup>1</sup>

---

### **Tentative list of good-practice information items**

---

#### ***Availability of information***

*Information about policies and practices made public by government*

---

Type of restriction is specified

If export tax, applicable rate is specified

If export quota,

- quota is specified

- allocation mechanism (eligibility criteria, procedure, etc.) is described

Products concerned are identified by name

HS product classification system code is provided

Date of entry into force of measure is specified

Duration of measure is specified

Title of enabling law/regulation is specified

Rationale / purpose of measure is stated

Administrative procedures (eligibility criteria, document requirements, application procedures etc.) relating to the measure are described (only for non-automatic export licensing, quota)

Exemptions and derogations of measure/s are specified

Authority in charge of administering the measure is identified

---

#### ***Accessibility of information***

*Ease of finding and understanding the published information*

---

Text of law / regulation / is available on government website

Use of export restrictions is mentioned on government website

Information is available in language/s other than national

Enquiry point / contact details are provided

All information available is in one place / portal

---

Source: Agatiello, O. R. and B. Fliess (2013), "Export Restrictions: Benefits of Transparency and Good Practices", *OECD Trade Policy Papers*, No. 146, OECD Publishing, page 27, Table 2.  
doi: [10.1787/5k49c214c5kh-en](https://doi.org/10.1787/5k49c214c5kh-en).

1. BIAC emailed the survey to its member organisations and to its observer organisations based in non-OECD countries. Because the African region was not represented among the organisations approached, the OECD Secretariat mailed the survey also to major industry/business organisations based in Botswana, Kenya, Tanzania, Zimbabwe and South Africa for dissemination to their members. Countries represented by survey respondents include Brazil, Canada, Chile, Colombia, eight European countries, Japan, Russian Federation, South Africa and United States.

## Annex B.

## Survey Questionnaire and Survey Responses

Questions / items		Count of survey respondents endorsing the item	Comments made (optional)
<b>A. Availability of information</b>			
What kind of information should governments make publicly available about their policies/measures regulating the export of raw materials, once they have entered into force?			
What the specific measure is	<input type="checkbox"/>	32	
If the measure is an export tax, the rate of the tax	<input type="checkbox"/>	32	
If the measure is an export quota, the amount of the quota	<input type="checkbox"/>	32	Some way of tracking the consumption of the quota;
If applicable to the measure, the eligibility criteria and procedures (e.g. if export quota, the method used for allocating the quota)	<input type="checkbox"/>	29	
The name of the product(s) to which the measure/policy applies	<input type="checkbox"/>	32	
Harmonised System (HS) code of the product(s)	<input type="checkbox"/>	30	
The date when the measure/policy entered into force	<input type="checkbox"/>	30	
How long the measure/policy will be in force	<input type="checkbox"/>	30	
The title of the enabling law/regulation	<input type="checkbox"/>	30	Publication name, date, source, date coming into force, etc.
The rationale or objective of the measure/policy	<input type="checkbox"/>	30	
If a measure has been changed, the reason for the change	<input type="checkbox"/>	30	
A description of applicable administrative procedures (eligibility criteria, document requirements, application procedure, if relevant)	<input type="checkbox"/>	29	
If exemptions or derogations from the measure/policy exist	<input type="checkbox"/>	29	
Name of the authority in charge of administering the measure/policy	<input type="checkbox"/>	29	
Any other information that should be made public about the measure or policy? (Optional)			Information about export bans

continued

Questions / items		Count of survey respondents endorsing the item	Comments made (optional)
<b>B. Accessibility of information</b>			
Making it easy to find and understand the information that is published			
Make information available through the Internet (government website)	<input type="checkbox"/>	31	
Make the full text of the relevant law/regulation available	<input type="checkbox"/>	29	English (synopsis) version, too.
Publish information about the measure/policy in at least one of the official languages of the World Trade Organisation (English, French and Spanish)	<input type="checkbox"/>	32	3 respondents noted English only
Provide enquiry point	<input type="checkbox"/>	29	By electronic means (e-mail, chat, etc.)
Make relevant information accessible through a centralised place/portal	<input type="checkbox"/>	30	
Any other features that would be helpful? (Optional)			RSS feed (news feed); a summary of measures in force
<b>C. Learning about a policy/measure before it enters into force</b>			
Should information be made available in advance?	<input type="checkbox"/>	31	Notification service/newsletter by email distribution list
If so, how long in advance of a measure's entry into force, in a non-emergency situation? (please specify, e.g. 60 days)		- no answer (3 respondents) - 15 days (1) - 60 days (4) - at least 60 days (15) - 90 days (5) - at least 90 days (1) - at least 60-90 days (1) - 6 months (2)	
<b>D. Learning about a policy/measure before it has been decided?</b>			
Should information be made available before a measure/policy is decided?	<input type="checkbox"/>	31	
If so, what specific information should governments provide:			
What measure/policy is being considered, and for what products	<input type="checkbox"/>	31	With HS information
Why the measure/policy is under consideration	<input type="checkbox"/>	28	
Who decides the measure/policy	<input type="checkbox"/>	28	
The date or time table set for a decision	<input type="checkbox"/>	30	
An enquiry or contact point	<input type="checkbox"/>	30	
Any other information that should be publicly available on a government's website in advance of the entry into force of a measure/policy or before it has been decided?(Optional)			Whether stakeholders have been consulted

Notes: Sections A-B comprise the items of the tentative checklist developed in Agatiello and Fliess (2013). The questions of Sections C-D cover additional items resulting from further research undertaken for this paper. Survey results shown are for a total number of 32 respondents, not counting one respondent who sent an email message endorsing all items of the survey but did not return the completed survey itself.