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Export Restrictions

BENEFITS OF TRANSPARENCY AND GOOD PRACTICES

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EXPORT RESTRICTIONS: BENEFITS OF TRANSPARENCY AND GOOD PRACTICES

Abstract

Recent years have witnessed an ever-increasing resort to export restrictions in the markets for raw materials, causing heightened uncertainty about supply availability together with friction among trading partners. Poor transparency can amplify and compound the effects of restrictive trade policies. This paper explores the issue of transparency with respect to the use of export restrictions, especially focusing on the question of what information governments applying them make publicly available. After explaining how transparency is operationalised in the conduct of trade policy and what its benefits are for trading firms, investors and other stakeholders, in importing countries inasmuch as in the economies applying export restrictions, the paper reviews applicable rules and commitments elaborated in GATT/WTO, regional trade agreements and other sources of rules. The review shows an evolutive, cumulative path towards greater transparency in trade policy over time and distills best-practice principles and tools specifically aiming at the provision of information. The last section of the paper applies a checklist of information elements consistent with these best practices to the study of actual national information policies. This is done by examining the content of public information on export restrictions in the minerals sector that is made available on the governmental websites of 33 countries that make use of such measures. The exercise suggests where national information policies appear to have gaps and could be improved. It also provides illustrations of country approaches for delivering such information in a comprehensive and efficient manner.

Keywords: transparency, information, trade policy, export restrictions, export taxes, export quotas, export licensing requirements, WTO, GATT, minerals

JEL classification: F13, K33, F53, F55

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Executive Summary

International disciplines concerning the use of export restrictions are less developed than for import barriers and governments and traders are confronted with an emerging trend of increased use, notably in the raw materials sector.

This paper addresses the issue of transparency in the use of export restrictions. Transparency involves effective public communication of meaningful information, opportunity for stakeholder participation in the decision process, and procedural fairness. In this paper the first component is discussed. After explaining what can be gained from policies that are transparent, WTO rules and standards developed elsewhere are reviewed and best practice' principles and tools promoting transparency are identified. These are then used in a checklist developed for assessing actual information policies on the use of export restrictions.

What are the benefits of transparency and the costs of non-transparency? The paper sustains the notion that accurate and timely information is essential for markets to function effectively, concluding that it is an important policy objective in its own right. Information is essential especially to foreign traders and firms, who face greater difficulties in obtaining information in regulatory and business environments marred by opacity.

The predictability and simplification benefits of transparency for traders and investors in importing and export countries are manifold. They include reduced search costs, reduced uncertainty and reduced information asymmetries.

Next, the paper reviews the obligation to publish all the way from the original GATT texts to the amendments proposed by WTO Members under the Doha Development Agenda, the transparency mechanisms introduced by WTO agreements, including particular information and notification requirements (if any) like in the case of quantitative restrictions, export duties and price controls, and agricultural export restrictions. Special notification requirements are also set out in WTO accession protocols for new members. A section is devoted to transparency in RTAs that have progressively expanded the reach of transparency beyond the WTO norm. Important work leading to specific guidelines to assist governments to enhance the transparency of domestic regulatory frameworks undertaken by OECD and APEC is also reviewed.

An evolutive picture of transparency standards in the period 1940s-2010s is provided. It starts with the disciplines contained in GATT 1947 Articles X, XI and XIII, the GATT-WTO agreements and practices, the transparency proposals submitted to the trade facilitation and NAMA negotiations in the framework of the DDA, and the OECD Guiding Principles and Recommendation on Regulatory Policy and Governance. With the proliferation of RTAs, more ambitious transparency standards are being introduced over and above the WTO disciplines. A progressive, cumulative path towards greater transparency shows throughout.

Transparency rules seek to ensure that stakeholders and the general public are informed about policies that affect them directly or affect commitments made under international agreements. A table describes the best practices that address this objective. The elements adopted as "best practice" constitute an incremental approach by which countries not only fulfil GATT-WTO disciplines but aim beyond them. They provide a basis for comparing transparency practices at the national level and across countries.

In the last part of the paper, the best practices are put to use in a checklist used to study actual country practices.

The study examines the content of public information on export restrictions available on the government websites of 33 countries using a checklist with information elements consistent with the best practice normative provisions. The focus is on export restrictions in the minerals sector, where research carried out in 2010-2011 for the OECD Inventory of Restrictions on Exports of Raw Materials can furnish most of the country data needed. In 2010, the 33 countries applied export taxes, licensing requirements or quantitative restrictions to various minerals.

All 33 governments published some information on measures and products, but the level of detail varied across countries as well as across different measures within countries. Information was notably poor with respect to product specification (HS codes), on the declared rationale/purpose of the measure and in respect to its duration. The authority in charge of administering the taxes, licenses, quotas or bans was usually mentioned; however, the procedures and requirements for issuing and obtaining export licences were often not explained on websites. The text of primary law usually is available, but less often subordinate decisions dictate the measures. Also, information on restrictions was often scattered, making it unwieldy to locate.

Ranging from relatively simple lists and schedules to searchable large information systems, some useful approaches to delivering information comprehensively and efficiently are identified and illustrations provided.

Improving existing information policies in respect to export restriction represents a challenge. The gaps in the availability and accessibility of information merit attention.

Export Restrictions: Benefits of Transparency and Good Practices

I. Introduction

International disciplines on the use of export restrictions are less developed than for import barriers, and governments and traders are confronted with an emerging trend of increased use, notably in the sector of minerals and other raw materials.

What compounds the increased level of uncertainty for participants in markets for raw materials is that accurate and timely information about what governments are doing is hard to come by. With rare exceptions, most of these restrictions are not systematically monitored at the global level.

Lack of transparency in the application of export restrictions to mineral resources and foodstuffs adds to three systemic risks widely identified as critical, that is potentially leading to global governance failure. One such risk is technological in nature – mineral resource supply vulnerability; the other two are economic – extreme volatility in energy and agriculture prices, and the (often unforeseen) negative consequences of regulations.[1] This paper concentrates in the third one from the perspective of transparency.

The paper follows up on discussions at an OECD Workshop in May 2012, which convened trade officials from OECD and non-OECD countries to assess the current situation of transparency in respect to policies that regulate the export of raw materials. It reviews good practice material from WTO and other agreements or standards in order to identify the best practices aiming at informing stakeholders and the general public about policies that affect them. From these transparency standards a checklist of information elements is distilled and applied to actual national information policies in countries that restrict exports of minerals.[2]

1. Word Economic Forum, Global Risks 2012.

2. The issue of transparency has also been raised in other areas of the raw materials sector. For example, transparency has been advocated in the area of extraction and the use of the revenues (e.g. the Ethical Trading Initiative (ETI) to curb corruption and enable citizens to hold their governments accountable for the use of raw materials revenues) and through various initiatives to promote adherence of the extractive industries to environmental and social minimum standards in countries where governance is weak. The OECD Directorate for Financial and Enterprise Affairs has developed specific guidance to promote responsible investment through enhanced due diligence for managing the supply chain of key minerals in conflict zones and fragile states. Also see the Kimberley Process Certification Scheme (KPCS), established in 2003 to prevent diamond purchases from financing violence by rebel movements and their allies seeking to undermine legitimate governments (http://www.ethicaltrade.org/, www.kimberleyprocess.com/web/kimberley-process/kp-basics, Collins-Williams and Wolfe, 2010).

The paper is organised along the following lines. The next section explains the concept of transparency. Section III explains how importing and exporting countries, respectively, can benefit when trade policies, including use of export restrictions in the raw materials sector, are transparent. Section IV reviews applicable rules and commitments in GATT/WTO and elsewhere, showing the evolutive cumulative path over time towards greater transparency and distilling best-practice rules specifically aiming at the provision of information. Section V employs a checklist consistent with these standards to the study of information which governments from 33 countries using export restrictions in the minerals sector publish on governmental websites. Section VI concludes.

II. The concept of transparency

The meaning and purpose of transparency is not always understood. Nor is the term always clearly defined.[3] In public policy, transparency is about effective communication on policy matters between governments, businesses and other civil society stakeholders.[4] In the trade policy field, the WTO glossary refers to transparency as the "degree to which trade policies and practices, and the process by which they are established, are open and predictable".[5] In practice, this usually implies making relevant laws and regulations publicly available, letting concerned parties know when laws change and ensuring uniform administration and application (Box 1). WTO/GATT and other trade agreements usually include general as well as measure-tailored specific transparency rules to which Members formally subscribe.

Box 1. Core transparency requirements of international trade agreements

[E]nsuring 'transparency' in international commercial treaties typically involves three core requirements: (1) to make information on relevant laws, regulations and other policies publicly available; (2) to notify interested parties of relevant laws and regulations and changes to them; and (3) to ensure that laws and regulations are administered in a uniform, impartial and reasonable manner.

Source: Transparency (2002), WT/WGT1/W/109, World Trade Organization.

In a more advanced form, promoted *inter alia* by the OECD's work on good public governance, transparency furthermore implies that rulemaking involves some form of public consultation and that procedures are in place that allow stakeholders to place complaints. Certain WTO agreements seeking to ensure that domestic regulation does not create unnecessary barriers to trade also use this enhanced definition (e.g. the TBT and SPS Agreements). In practice, in many areas of regulatory activity affecting international trade there has been a clear tendency over the past decade for national transparency policies to become increasingly sophisticated. Systematic public consultation during the development of laws and

3. OECD (2011), *Multilateralising Regionalism: Strengthening Transparency Disciplines in Trade*, Unpublished.

4. See OECD (2003), *Stocktaking project on transparency: Background information and proposed work*, Unpublished, 14 March 2003, p.2.

5. WTO Glossary (www.wto.org).

regulations, the use of prior notice and comment procedures, and procedures that allow stakeholders to file complaints all are long-standing practice in many OECD countries and are becoming more widely used in non-OECD countries as well.

While openness of rule-making to public scrutiny undoubtedly is a characteristic of good economic governance that has a place in the discussion of trade policy, the empirical work presented later is only about the provision of information. Transparency in this sense refers to the systematic *availability* and *accessibility* of information on trade policies or measures (here export restrictions) for all interested parties. These terms are further explained in Box 2.

The more limited focus on judging transparency of export restrictions in terms of the availability and accessibility of information is practical: examining national policy processes necessitates information going beyond the data available for this paper from the research undertaken for the OECD Inventory of Restrictions on Exports of Raw Materials.

Box 2. Making information available in accessible ways

Availability refers to the content and overall quality of the information that is disseminated. It means that the *information is clear and comprehensive*. This implies, for example, that the objective and rationale of a policy or measure is published and explained (including, where applicable, the nature of urgent problems and the reasons why rules are being changed). It also means that stakeholders have access to all relevant documents – decisions, decrees, legislation, regulation, administrative guidance, etc. – in order to fully understand government decisions and policies.

Accessibility refers to governments *publishing or otherwise making publicly available* information about their policies and practices, including laws, regulations and procedures. Among other relevant principles, information should be provided in a timely manner and well in advance of the actual implementation of a policy, the information should be up to date, and national enquiry points should be available for obtaining information. The mechanisms themselves for disclosing information cannot be expected to be the same for all countries. Rather, the choice of channels depends on such factors as the capacity of a country to implement information technology solutions and the characteristics of the political system (e.g. whether central or sub-central government authorities have jurisdiction). However, it is increasingly common practice for governments to publish the texts of trade-related laws, regulations and decrees on the Internet. That information is made available in a non-discriminatory manner could be considered another aspect of accessibility. Publishing information on the Internet has the advantage of universal availability to all (online) stakeholders, nationals and non-nationals alike, and regardless of geographic location. There are of course other delivery mechanisms. At a minimum, decisions taken by government authorities should be published in the government gazette.

Finally, it is important to note what transparency is *not* about. Transparency does not compromise governments' "right to regulate" or intervene in the economy or individual markets. It does not imply eliminating or watering down existing regulation. It does not prevent governments from pursuing multiple objectives. It does not aim at curtailing government discretion in policymaking. It also does not "lock in" policy regimes or regulatory regimes.[6] It simply seeks to enhance predictability.

6. Simon Evenett, *Transparency, information disclosure and trade policy*. Keynote speech at the OECD Workshop on Regulatory Transparency in Trade of Raw Materials, 10-11 May 2012 in Paris.

III. On the benefits of transparency or costs of non-transparency

Availability of accurate and timely information is essential for markets to function effectively and efficiently. It enables market players in the public and private sectors to base economic decisions on rational assessments of potential costs, risks and market opportunities. Consequently, making relevant information readily available is an important policy objective in its own right.

From a trade perspective, transparency is particularly valuable to foreign traders and firms, as these tend to face greater difficulties than domestic market players in obtaining information in a regulatory and business environment characterised by opacity, whether originated in government action or business sector practices. Transparent trade legislation, policies and practices also reduce the prospect of trade frictions with trading partners.

The specific question of this research is how stakeholders and economies can generally benefit from greater transparency in the use of export restrictions, when resorting to them is deemed indispensable by national governments. For trading firms and individuals, investors and services providers in importing countries, the predictability and simplification benefits of transparency include the following:

- Transparency translates into reduced transaction costs in terms both of time and expense of obtaining information ("search costs"), and reduced uncertainty on the conditions of access to materials supplies by diminishing the associated "information asymmetry burden" and high-risk premiums (OECD, 2009b).
- Last-minute, *ad hoc* or *ex post* disclosure of newly-introduced measures, whether really new ones or modifications of old measures, poses difficulties for firms in taking necessary actions and adjusting to changes in rules and practices. If a firm can anticipate a government's decision to stop exportation of a raw material, it can take preventative measures, for example by diversifying its sources of supply or recombining inputs, as the case may require.
- Transparency remedies information asymmetries, which in turn create opportunities for discretionary behaviour. It reveals and can serve as a safeguard against hidden discrimination.
- Better information flows help abate the extent and perniciousness of principal-agent problems in governments, firms and civil society institutions, revealing vested and conflicting interests (Bellver and Kaufmann, 2005).

While some of these benefits point to the more *static* aspect of information availability, others refer to the *dynamic* aspect of public consultation, emphasising due process and good governance. As Stoeckel and Fisher (2008) put it, 'to develop better policies that serve the national interest it is necessary to assess the national interest. Good transparent review of policy does that.'

Governments are more likely to be forthcoming with information about export restrictions if they see how that will help them meet their own policy objectives. The question here is how producer country governments, when regulating exports, may benefit from transparent export rulemaking. The benefits of such an approach include the following.

- Transparency of coherent trade policies, including export restrictions, reduces trade-related uncertainty, which is associated with lower investment and growth

rates and with a shift in resources towards non-tradables, lower scale value-added goods, and even rent-seeking activities by firms and individuals (Francois, 2001).

- Policy regimes that carry higher risks for businesses are directly associated with higher capital costs. Investors demand a (higher) risk premium on funds invested in nations with economic or regulatory environments that are perceived as unstable (Francois, 2001).

- Transparency, in government action and common practice of the business community (leading to an 'enabling environment'), is an important tool if governments wish to attract foreign direct investment and reinvestment, technology transfer and diffusion, and to improve total factor productivity.[7] Especially in sectors such as mining, where investments are long term and capital intensive – and oftentimes governments seek foreign capital and technology participation – how frequently export restrictions and other regulatory measures change, whether or not advance notice is given and opportunity for consultation exists, are part of the risk assessment companies apply when they make investment decisions. Business surveys rank transparency as a top priority for foreign investors (The World Bank, 2012). The companies investing are often also leading exporters of the mined commodities, implying that transparency of national trade regulatory frameworks matters as much as transparent investment rules do.

- Transparency can simplify and accelerate business procedures, lead to greater efficiency within government and avert corruption and similar criminal behaviours. Use of Internet solutions multiplies administrative efficiency gains (OECD, 2009a).

- Governments that engage in open policymaking can implement policies and regulations more easily. This is because compliance prospects are greater when stakeholders have more information, especially when they have a voice in their development. They are then better equipped and more willing to support implementation.

- That trading partners conduct their export policies with a high degree of transparency can be of strategic importance for national growth and development agendas, especially when access to raw materials is at stake. No economy in the world is self-sufficient in the raw materials that are essential input for the production of manufactured goods, and consequently every government has an interest to ensure that (imported) raw materials are available to domestic users at reasonable prices and with reasonable predictability.

- The same argument is sometimes used by some countries to justify restrictions placed on exports as a beggar-thy-neighbour policy. However, as can be forcefully seen on the table in the Annex 1, countries that apply export restrictions in the industrial minerals sector invariably are minerals importers too. That is, they are no less exposed to the risk of unfavourable world supply changes

7. It seems that no matter the "investor friendly" inducements offered by a recipient country, there is a point on the transparency/opacity continuum below which few (serious) investors are willing to tread. The same logic applies to trade. See OECD (2002), *Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs*, Chapter X, and pp. 176-184.

and are more exposed to retaliation. On top, they cannot claim the moral high ground. In this situation, no economy gains and every government ought to be concerned when trading partners conduct their export policies in an opaque and erratic manner.[8]

Of course, aiming for enhanced transparency as well as promoting it entails costs and brings about renewed challenges to governments. The trend seems inescapable though. To be sure, there are financial and human resource costs linked to establishing and running efficient mechanisms for disseminating information and ensuring accessibility to all concerned stakeholders, which may seem exorbitant to some developing-country governments. However, well-planned stakeholder involvement consistently contributes to identifying ways aimed at reducing administrative burdens, generating savings and avoiding an uneven distribution of benefits (Möisé, 2011)

IV. Transparency rules applicable to export restrictions

This section takes stock of applicable GATT/WTO transparency provisions covering export restrictions. Multilateral disciplines on these measures are weak, and since the advantages of transparency, and the disadvantages of opacity, hold for all trade policies irrespective of whether exports or imports are concerned, the review also includes transparency rules for certain mirror measures on the import side (for example import tariffs). The stocktaking will also take account of the findings from the Secretariat's ongoing research on Regional Trade Agreements (RTAs)[9] and extends to some non-binding recommendations or guidelines, notably the OECD Guiding Principles for Regulatory Quality and Performance of 2005 and the Recommendation of the OECD Council on Regulatory Policy and Governance of 2012, because they treat transparency as one of the fundamental principles for ensuring the open market orientation of domestic regulation.

The goal is to learn from this body of rules and recommendations about principles, standards and tools that are consistent with a high level of transparency. These will then be used for assessment of actual practices in the use of export restrictions, as seen through the prism of the collection of data for the OECD Inventory of Restrictions on Exports of Raw Materials.[10] No attempt will be made to evaluate the performance of existing transparency provisions in the WTO or elsewhere. Other substantive issues, such as the consistency of export restrictions with WTO agreements per se, or the question of actual restraints of export measures through WTO or other disciplines, also exceed the scope of this exercise.

8. One of the functions of transparency is to make government actions more predictable. A paper examining all the potential causes of price spikes in various agricultural markets concludes that ad hoc export restrictions have contributed to the price spikes in the global wheat and rice markets in 2007/2008, when seven countries responsible for 62% of world production of rice and 50% of global rice exports decided to restrict their exports of these commodities. See HM Treasury (2012), *Speculation and the Recent Agricultural Price Spikes*, 1 October 2012, unpublished.

9. Relevant work is already in progress. See OECD, 2011 and OECD, 2012b.

10. For further background information in respect to the collection of data for and the content of the Inventory see Fliess and Mård, 2012.

A. Transparency mechanisms in the WTO

Many GATT and WTO agreements require governments to disclose their policies and practices in one or two ways: a) by public divulgence within the country – which, when effectively done like through publication in the official gazette and on the Internet, means *ad omnia*, nationally and internationally – and/or b) by notifying Members. In principle, while publication of laws and regulations reinforces their generality and obligatoriness, notification may be more limited in reach and scope. However, the notification obligation is crucial when countries are parties to international agreements, including GATT/WTO. Notifications provide basic information necessary to trading partners regarding implementation of relevant agreements. It is a guarantee of trust that members abide by the agreements they have entered into (*pacta sunt servanda*). Other benefits of notification are that they reduce many potentially costly disputes and their settlement since they make possible discussion at the appropriate WTO body at an early stage. Those discussions contribute to minimise unclear points regarding the measures concerned and their interpretation, and to enhance understanding and dialogue. Information by notification also reduces uncertainty for traders, investors and services providers, and enhances predictability of trade policy when made publicly available.

1. General obligation to publish policy measures affecting trade

a. GATT Article X

GATT transparency disciplines, whose overarching tenets are found in GATT 1947 Article X, include the obligation to publish all regulations and subordinate measures, including judicial decisions, administrative guidelines and rulings of general application that affect trade in goods in a prompt manner so as to enable relevant parties to become acquainted with them. According to Article X:2, trade rules cannot be enforced before they have been officially published. Article X requires a party to 1) publish its trade-related laws, regulations, rulings and agreements promptly and in an accessible manner; 2) to abstain from enforcing measures of general application before they are published; and 3) to administer laws, regulations, rulings and agreements in a uniform, impartial and reasonable manner. The paramount objective of this article is transparency, but it does not include specific notification obligations. Also, Article X sets out disciplines on the administration of the Members' regulatory framework, requiring uniformity, impartiality and reasonable administration, as well as the availability of an appeals or review mechanism. Besides horizontal obligations such as those put forth by Article X, there are some measure-specific transparency rules, e.g. on quantitative restrictions.

The multilateral trade negotiations on trade facilitation under the Doha Development Agenda (DDA) update and enhance the provisions of GATT 1947 Article X (TN/TF/W/165/Rev.14, 17 December 2012). If eventually adopted, the new disciplines will require the prompt publication, in a non-discriminatory and easily accessible manner, of all import, export and transit procedures; the applicable duties and taxes, fees and charges; the norms on rules of origin; the import, export or transit restrictions or prohibitions; the penalties for breaches of import, export or transit formalities; the appeals procedures; the agreements celebrated with other countries relating to importation, exportation or transit; and the administrative procedures relating to the imposition of tariff quotas. Also, Members are expected to

make information available via Internet, in one of the official languages of the WTO, and to operate one or more Enquiry Points. The duty of notification will comprise the identification of the official place where the published information can be found, as well as of the website(s) of the Enquiry Points. A "reasonable interval" will be required between publication and entry into force of new or amended trade-related laws or regulations. Traders and other interested parties would have opportunities and a reasonable time period to comment on such changes of the rules and the possibility to engage in regular consultations with border agencies, among other provisions.

The Uruguay Round Decision on Notification Procedures (1994) established the general framework in terms of notifications.[11] It established a Central Registry of Notifications (CRN) under the responsibility of the WTO Secretariat, which cross-references its records by Member and obligation. CRN annually reminds Members of their regular notification obligations for the following year and draws their attention in cases of noncompliance. CRN information is available upon request to any Member entitled to receive the notification concerned. An *indicative* list of measures subject to notification includes tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free-trade areas/customs unions, other preferences), tariff quotas and surcharges, quantitative restrictions, including voluntary export restraints and orderly marketing arrangements affecting imports, other non-tariff measures such as licensing and mixing requirements; variable levies; rules of origin; technical barriers; safeguard actions; anti-dumping actions; countervailing actions; export taxes; export subsidies, tax exemptions and concessionary export financing; export restrictions, including voluntary export restraints and orderly marketing arrangements; other government assistance, including subsidies, tax exemptions; and foreign exchange controls related to imports and exports; and others.

2. Transparency provisions of specific WTO/GATT agreements

a. Quantitative restrictions (QRs)

While GATT 1947 Article XI consecrates a blanket ban on prohibitions or restrictions on any imports or exports through quotas, import or export licences or other measures, it provides for a number of exceptions, including those temporarily imposed to prevent or relieve critical shortages of foodstuffs or other essential products; those necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade; and import restrictions on agricultural or fisheries products necessary to the enforcement of governmental measures under special circumstances.

The rules provide for QR notifications and reverse notifications.[12] Implementation of the instructions issued in December 1995 by the WTO Council for Trade in Goods (G/L/59 of 10 January 1996) has been generally poor. One problem

11. It was of one the Uruguay Round ministerial decisions and declarations adopted by the Trade Negotiations Committee on 15 December 1993 and 14 April 1994. This general decision does not supersede those notification procedures sanctioned in other Multilateral and Plurilateral Trade Agreements.

12. Reverse notifications are notifications about measures that Members can make, these being not domestic measures but measures maintained by another Member.

is that some members notify that they have no QRs by interpreting the obligation as only relating to WTO-inconsistent QRs, while other members have notified details of many existing QRs for transparency purposes, although these measures could be justifiable under the exceptions of Articles XX (General exceptions) or XXI (Security exceptions) of GATT 1994. Similarly, the reverse notification procedures have rarely been used, suggesting an absence of interest among WTO members. Although information regarding notified QRs and reverse notifications is recorded in a database of the WTO and available to WTO members, it could be consulted only upon request addressed to the WTO. Thus non-members and private parties could not access the information; the WTO Secretariat issued periodically only a list of Members having made a notification. This was in stark contrast to the Goods schedules and most other notifications, which are openly available to the public through the WTO website.

When the Council for Trade in Goods revised the notification procedures for QRs in 2012 (G/L/59/Rev.1, 22 June 2012), it decided that the overhauled database, which records notified QRs in force by 30 September 2012 and taken thereafter, should be made available also to the public. Members are required to make complete notifications of all QRs in force at biennial intervals.[13] The information requested per the revised procedures of 2012 includes a full description of the products and tariff lines, a precise indication of the type of restriction, an indication of the grounds, and WTO justifications for the measure, a description of the national legal basis and entry into force and, where applicable, other information, such as how a measure is administered and what modifications have been made to previously notified measures. The same information requirements apply to reverse notifications, G/L/59/Rev.1). Members shall also notify any changes made to QRs as soon as possible, but not later than six months after their inception. Notifications are circulated in a document series and automatically included in the agenda of the Committee on Market Access. The revisions made in 2012 generally seek to improve the reporting situation. Notifications have to be submitted also in electronic form. If a notification is missing any of the information elements required, the Secretariat will alert the Member, and developing and least-developed countries can request technical assistance in the preparation of their notifications.

b. Export duties and price controls

Export duties and price controls are policy measures that are by and large not covered under the existing WTO notification obligations, with the exception of the Uruguay Round Ministerial Decision on Notification Procedures of 14 April 1994 which expressly mentions export taxes and restrictions as subject to notification. Both developed and developing countries use them to pursue economic and extra-economic objectives. According to WTO Trade Policy Review Mechanism (TPRM) data, export duties on agricultural products and raw materials are the most frequently used export restriction, and are predominantly imposed by small economies (Bonarriva et al., 2009). They are easy to administer and more certain in their operation than other restrictions (Devarajan et al., 1996). Governments can impose export price controls in the form of *minimum* export prices, often in

13. Every two years after 30 September 2012, the latest deadline. Decision on Notification Procedures for Quantitative Restrictions, G/L/59/Rev.1, 3 July 2012.

conjunction with export duties. Sometimes minimum export prices are not binding but used as *reference* prices.

The issue of export taxes was raised by a proposal tabled in 2006 in the Non-Agricultural Market Access (NAMA) negotiations under the DDA and subsequently amended. The draft text, which only received limited support among Members, would have committed Members to a process leading to the elimination of existing export taxes on non-agricultural products and to maintaining or introducing new export taxes only under specified circumstances, including the general and security exceptions of GATT Articles XX and XXI. As for transparency, export taxes would be recorded in Members' schedules of concessions and bound at a negotiated level. Any new export tax or increase thereof would have to be notified to the WTO Secretariat 60 days before entry into force. The notification format would include a description of the export taxes in question, the products affected, and trade coverage. Other Members would be able to request consultations and information on the reasons for the measure, its potential effects and on other matters of interest or concern. Also, a reasonable time between the adoption of the measure and its entry into force would have to be observed (WTO, TN/MA/W/103, 8 February 2008).

Unlike GATT/WTO, a number of regional trade agreements include decisions to ban export taxes. For example, they are prohibited between the member countries of trade integration arrangements like the European Union (EU), the North American Free Trade Agreement (NAFTA), the Caribbean Common Market (CARICOM) and the Southern Common Market (MERCOSUR). Some bilateral trade agreements also prohibit export taxes, like those between Canada-Chile, Canada-Costa Rica, Japan-Singapore and EU-Mexico (Piermartini, 2004, Korinek and Bartos, 2012).

c. Administrative fees and formalities

By inference of GATT 1947 Article VIII on Administrative Fees and Formalities, export and import taxes are not technically considered an administrative fee or charge. Article VIII restricts the imposition of fees and charges relating to the administrative processing of inbound goods to the approximate cost of services rendered, which should not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes. Although transparency would be gained from Members' publishing an exhaustive list of export charges as a regular practice, it is not required.

d. Agricultural export restrictions

The Agreement on Agriculture is in force since 1 January 1995. The notification requirements are set out in Articles 12 and 18 of the Agreement. Members should notify the Committee on Agriculture before instituting a prohibition or restriction and consult with other Members having a substantial interest as importers, providing the necessary information. The Committee on Agriculture reviews the implementation of Members' commitments on the basis of their notifications and the Secretariat's documentation prepared to facilitate the review process. Moreover, Members should consult annually in the Committee on Agriculture as to their participation in the normal growth of world trade in agricultural products within the framework of the commitments on export subsidies. Members may bring to the attention of the Committee those measures that they deem should be notified by another Member.

The notification requirements and formats have been developed in detail since 1995 (G/AG/2 and G/AG/2/Add.1). The Committee on Agriculture semi-annually reports on compliance with notification obligations. A comprehensive *Handbook on Notification Requirements under the Agreement on Agriculture* was published by the Secretariat in May 2010. [14]

e. Preshipment inspection (PSI)

The Agreement on Preshipment Inspection entered into force on 1 January 1995. It falls under the responsibility of the Committee on Customs Valuation. The Agreement covers all activities relating to the verification of the quality, quantity, price, and/or customs classification of goods to be exported to a Member. Both importers and exporters (the Agreement designates them as User and Exporter Members, respectively) are required to promptly publish their laws and regulations relating to PSI activities.

Also Members should notify the Secretariat of the laws and regulations through which they put the Agreement into force. Any changes in the laws and regulations relating to preshipment inspection should only be enforced once they have been officially published (Article 5). The Secretariat informs the Members of the availability of this information which has been officially interpreted as an obligation to provide 'additional descriptive information' on how they are implementing the Agreement.

f. Import licensing

Import licensing is subject to specific WTO disciplines since the Agreement on Import Licensing Procedures entered into force on 1 January 1995. It requires that import licensing be neutral in application and administered in a fair and equitable manner, and procedures kept as simple as possible. For example, the agreement requires governments to publish sufficient information for traders to know how and for what licences are granted. It also describes how countries should notify the WTO when they introduce new import licensing procedures or change existing procedures. The agreement offers guidance on how governments should assess applications for licences.

Some licences are issued automatically. The agreement sets criteria for automatic licensing so that the procedures used do not restrict trade. Other licences are not issued automatically. Here, the agreement tries to minimize the importers' burden in applying for licences, so that the administrative work does not in itself restrict or distort imports. The agreement provides that agencies handling licensing should not normally take more than 30 days to deal with an application.

Members are required to notify the name of the publication in which rules and information concerning import licensing procedures are published; to submit copies of such publications; and to notify the full texts of their relevant laws and regulations (Article 1.4(a)/8.2(b)). They are requested to notify the Committee within 60 days of publication of any laws or regulations pertaining to new or changed import licensing procedures, with specific information about the nature of the licensing procedures, its

14. See G/AG/GEN/86/Rev.11, 10 September 2012. www.wto.org/english/tratop_e/agric_e/ag_notif_e.pdf

expected duration and the products affected, the contact point for information on eligibility, the administrative body for submission of application, where and when the licensing procedure is published, etc. Also Members should provide replies to the questionnaire on import licensing procedures annually by 30 September (Article 7.3). The *ad hoc* WTO Committee on Import Licensing reports biennially about the implementation and operation of the Agreement and informs the WTO Council for Trade in Goods of developments during the period covered by the reviews.

A proposal on *Enhanced Transparency on Export Licensing*, tabled by a group of countries in the NAMA negotiations of the Doha Development Round (DDA) and revised to serve as draft text for an *Agreement on Increased Transparency on Export Restrictions* merits mention here. The draft text defined export restrictions as "administrative procedures used for the operation of export restriction 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 exportation…" The proposal, which its co-sponsors argued would better inform traders and facilitate trade but other Members viewed as imposing a heavy administrative burden, sought to minimise harmful use of these administrative procedures through improved transparency. Members would have to notify existing export restriction procedures, and changes to existing measures within 60 days of the effective date of the new measure. This notification would contain information about the product(s) concerned, the procedures for submitting applications, the eligibility criteria and contact point for questions, the name of the authority for submission of application, the date and name of the publication where the procedures had been published, and any applicable exceptions or derogations from an export restriction requirement. The draft text also provided for a consultation process that other Members could use if a measure gave rise to concerns (WTO, TN/MA/W/103 of 8 February 2008).

g. Import tariffs

When WTO members notify their customs duty rates to the Secretariat they are conscious that such information will eventually enter the public domain. That is, the market access schedules they communicate to the Secretariat publicly announce their tariff rates. WTO Members supply to the Secretariat the information relating to tariffs, including range and scope of bindings, GSP provisions, rates applied to members of free-trade areas/customs unions, other preferences; tariff quotas and surcharges; quantitative restrictions, including voluntary export restraints and orderly marketing arrangements affecting imports; and other non-tariff measures such as licensing and mixing requirements; and variable levies (WTO document G/MA/IDB/1/Rev.1, 27 June 1997). Member's supply of information is due annually by 30 March for current tariffs and by 30 September for previous year imports (G/MA/IDB/1/Rev.1/Add.1, 4 December 1997).

All Members file a schedule of tariff concessions at the time they join WTO/GATT. The scheduling requirement is separate from the discipline of binding tariffs; some countries maintain their tariffs still unbound for certain tariff lines. The current situation of schedules of each WTO Member can be accessed online.[15] Apart from the Statistics Database, the WTO website allows for instantaneous analysis of

15. See G/MA/W/23/Rev.8, 23 April 2012.

members' customs duty rates. One facility is Tariff Analysis Online, which draws on two databases (the Integrated Data Base and the Consolidated Tariff Schedules) to offer tariff rates on products defined at a Harmonised System (HS) six-digit level (https://tariffanalysis.wto.org/). The other is the Tariff Download Facility, which provides standardised tariff statistics with the capacity to compare data between countries (http://tariffdata.wto.org/). The dissemination policy of the databases is the responsibility of the Committee on Market Access, as a segment of the information may be 'provisional', that is, not approved by the Member and thus not available to the general public.

h. TBT Agreement

The Agreement on Technical Barriers to Trade is mentioned here because its transparency provisions deeply embed the principle in the policymaking process. In force since 1 January 1995, the agreement aims at ensuring that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to international trade. Members introducing a technical regulation, which may have a significant effect on international trade, should explain its justification to a requesting member. Also they should publish a notice at an early stage to enable stakeholders in other Members to become acquainted with it; notify other Members through the Secretariat of the products to be covered by it; provide information about it, upon request, identifying deviations from international standards; and allow reasonable time for other members to make comments in writing, discuss these comments, upon request, and take the comments and results of the discussions into account. All technical regulations adopted should be promptly published. The procedure applies to central and local governments as well as to conformity assessment procedures not in accordance with guides and recommendations issued by international standardizing bodies.

Members must designate a single central government authority responsible for the implementation of the notification procedures under the Agreement. Also they should have one or more Enquiry Points (EPs) to respond to enquiries on national or local technical regulations, standards and conformity assessment procedures; on membership to international and regional standardizing bodies, conformity assessment systems and bilateral and multilateral arrangements. Information about the location of EPs and their areas of competence is obligatory. Copies of the measures adopted should be made available to stakeholders at an equitable price, same for foreigners as for nationals. Developed country members should, upon request, provide translations in English, French or Spanish, of documents or summaries covered by a specific notification.

The Secretariat is responsible for circulating to all members and interested international standardizing and conformity assessment bodies copies of the notifications it receives. To that end it administers the Technical Barriers to Trade Information Management System (TBT IMS), a public database of information provided by WTO Members. It includes Member notifications of technical regulations and conformity assessment procedures (including revisions, addenda, corrigenda, and supplements); notifications of bilateral or plurilateral agreements between Members on TBT measures; notifications from standardizing bodies in relation to the Code of Good Practice; contact information for Members' TBT Enquiry Points and Notification Authorities; as well as information on specific trade

concerns raised in the TBT Committee. All information is made available in the three WTO official languages.

i. Decision on Reverse Notification of Non-Tariff measures

According to Decision G/L/60 of the WTO Council for Trade in Goods of 10 January 1996 on Reverse Notification of Non-Tariff Measures, members have the possibility of making notification of specific non-tariff measures maintained by other Members for the purpose of transparency insofar such measures are neither subject to any existing WTO notification obligations nor to any other reverse notification possibilities under the WTO Agreement. All products are concerned for this form of cross-notification. The reverse notifications are to contain the following information: an indication of the precise nature of the measures, a full description of the products affected, a reference to the relevant WTO provisions and a statement on the trade effects of the measures. The Member maintaining the measure shall comment on each of the points contained in the notification. Hardly any reverse notification has ever been made.[16]

j. WTO Accession protocols

WTO accession protocols include detailed requirements for notifications along with clear instructions regarding where such notifications must be made (to which WTO bodies) within the context of the transitional accession protocol. For example, export restrictions must be notified to the Council for Trade in Goods. These requirements will not be discussed further here. China, for example, has made extensive transparency commitments, including to enforce only those laws, regulations and other measures pertaining to trade in goods, services, TRIPS or the control of foreign exchange, which it has published and made readily available to other WTO Members, to establish an official journal dedicated to the publication of such laws, regulations and other measures, to establish an Enquiry Point where WTO Members, businesses or individuals can upon request obtain within a specified time period (usually 30 days) information on the measures required to be published (WTO, Accession of the People's Republic of China, WT/L/432, 23 November 2001). Similar WTO-plus export restriction limitations can be traced in the accession documents of the Ukraine and the Russian Federation, WTO members since 2008 and 2012 respectively (Karapinar 2012).

Information on trade policy, including that on export restrictions, obtained through the WTO Trade Policy Review Mechanism, will not be discussed here. The TPR reviews aim is to achieve greater transparency in, and understanding of, the trade policies and practices of WTO members. The process can provide useful information on specific trade policies, including export duties and measures affecting exports, through country reports. This information is not available through other existing WTO bodies. Export taxes is such a case. The review process can be very infrequent though, involving two-four years for larger countries and more than six years for certain developing countries. It does not include notification obligations.

This paper does not evaluate Members' notification *performance* except to note that there is no uniformity in performance, within agreements or across agreements.

16. Also see Note by the Secretariat G/MA/NTM/W/3/ on Notifications Under the Decision on Reverse Notification of Non-Tariff Measures (G/L/60), 23 January 2001.

The literature finds that generally the record of notification varies across agreements. The difficulty of developing countries in abiding fully with their notification obligations under existing agreements, due to lack of capacity and experience with the process has been noted. Suggestions have been made, inter alia in the Committee on Trade and Development, to give Least Developed Countries (LDCs) longer timeframes for notification, certain exemptions and simplified procedures for notifications.

B. Transparency in Regional Trade Agreements (RTAs)

By treating transparency procedures as instruments to obtain a public good, as much as national treatment and most-favoured nation treatment in the multilateral system, RTAs have progressively expanded the reach of transparency beyond the WTO norm. The flow of information is thus enhanced by adding detail to operational questions like what, how, when and for what information should be made available, who should be the recipients, etc. Furthermore, by setting the specificity parameters that operationalise multilateral mandates, RTAs institutionalise the *modi operandi* of transparency, notable in the case of making regulations and other measures available via Internet and providing their translation or summaries in English and other international languages (OECD, 2011 and 2012).

Most agreements have general transparency provisions that call for the transparent administration of laws and regulations as regards all matters covered by the agreement. Where export restrictions are covered, these horizontal obligations apply to them as well. These are provisions to publish laws, regulations and administrative rulings of general application related to matters covered by the agreement so that interested persons and the other party/ies can become acquainted with them (generally mirroring Article X of GATT as well as notification provisions covering proposed or actual measures that might materially affect the operation of the agreement or otherwise substantially affect other parties' interests under the agreement. There are also increasingly best endeavour commitments to hold public consultations (proposed laws and regulations should be published in advance of their adoption and interested persons provided a reasonable opportunity to comment) (Moïsé 2010).

Recent OECD work examined 93 RTAs for provisions on export restrictions and found that it is quite common that RTAs impose disciplines on the use of some types of restrictions (Korinek and Bartos, 2012). Of the 93 agreements surveyed, only 18 do not address export restrictions at all. Quantitative restrictions and export taxes are a case where a substantial number of RTAs condition their use. The terms are normally stricter than the rules of WTO/GATT. Some RTAs allow existing restrictions that are in place but do not allow new ones, nor do they permit an increase in existing levels of export taxes.

The transparency rules set by RTAs can be rather specific. Some agreements require the parties to publish export charges on the Internet and to inform RTA partners in advance of their application. In some RTAs, if a member wishes to impose an export restriction, other members must be consulted to determine whether conditions justify the use of such measure.

As part of APEC's trade policy dialogue on RTAs/FTAs and work on how best practice can contribute to their improved quality and promote convergence and coherence, APEC Trade Ministers recently endorsed for voluntary use a *Model*

Chapter on Transparency for RTAs/FTAs [17] derived from APEC members' existing FTA Chapters, Article X of GATT and Article III of GATS. The Model Chapter establishes WTO rules as the minimum standard for transparency provisions and adds to that certain standard elements that reflect the practices of APEC Members. Its purpose is to promote transparency and due process in policymaking, as well as to facilitate administration and exchange of information among the Parties to an agreement. It sets forth general principles that are not intended to preclude or prejudice the establishment of more specific provisions in the individual chapters.

The Model Chapter reaffirms the fundamental WTO obligations to notify and to publish. Each party shall promptly publish, at the latest when the measure becomes effective, or otherwise make publicly available its measures of general application. Agreements pertaining to or affecting matters covered by the agreements in which the Party participates shall also be published. A party shall not enforce a measure before it has been officially published. To the extent practicable, it shall provide a reasonable period of time between the date of publication and entry into force, and include in the publication an explanation of the purpose of and rationale for the adopted measure.

Other principles of the Model Chapter relate to prior publication of draft measures and opportunities for stakeholders to comment. Except for emergency situations, parties shall endeavour to the timely publication of proposed measures prior to their adoption and provide a reasonable period, defined as normally taking no less than 30 days, from the other Party and its interested persons to submit comments, which the authority in charge of developing the proposed measure shall consider.

The requirement to publish proposed and final measures can be satisfied by publication in some physical or online official journal(s) intended for public circulation. A party should encourage distribution through additional outlets, including an official website. The Model Chapter also sets basic rules for contact points, namely that parties designate and communicate to the other parties contact points and that the contact points process in a timely manner requests from another Party or its interested persons for help to find copies of published measures and coordinate and facilitate a response on all matters covered by the agreement in question.

The extent to which these transparency provisions in RTAs are implemented by the parties is unclear. Work by the OECD collecting information about export restrictions from government websites does not find that countries that are parties to often multiple RTAs provide better information about export restrictions. It should be noted that information which governments provide on their use of export measures rarely mentions how the measures taken relate to a country's commitments or obligations under RTAs or the GATT/WTO regime.

17. APEC Ministerial Meeting, Vladivostok, Russia, 5-6 September 2012, Joint Statement Annex A: APEC Model Chapter on Transparency for RTAs/FTAs (www.mid.ru/bdomp/ns-dipecon.nsf/0/b2af77c62b39055c44257a71003d811c/$FILE/2012%20AMM%20Declaration%20Annex%20A.doc).

C. Other transparency benchmarks and standards

Important work leading to specific guidelines to assist governments to enhance the transparency of domestic regulatory frameworks has been undertaken by OECD and APEC.

The 2005 OECD Guiding Principles for Regulatory Quality and Performance (OECD, 2005) and the Recommendation of the OECD Council on Regulatory Policy and Governance of 2012 (OECD, 2012a) treat transparency as a fundamental principle of open government. Open government exposes policy proposals to public scrutiny as to their impacts and effectiveness. It helps keep officials accountable but also makes it easier to secure compliance by those who are affected by the final decision. The OECD Guiding Principles and Council Recommendation encourage OECD governments to articulate regulatory policy goals, strategies and benefits clearly, considering the impacts of regulation and regulatory processes on competitiveness and economic growth. To actively engage relevant stakeholders in the regulation-making process, allowing for prior consultation and that laws and regulations are drafted in plain language, are easily accessible and searchable on the Internet, and provide clear guidance on compliance. Governments are encouraged to take into account relevant international regulatory settings and treaty obligations, and cooperate with other countries to promote good practices and innovations in regulatory policy and governance. These principles are derived from OECD country experiences with regulatory reform and observed public policy outcomes. This is work in progress. Governments are at different stages of incorporating regulatory quality into their domestic policymaking frameworks.

The desirability of integrating principles of good-governance into trade and other public policies has also been recognised by APEC. That laws, regulations and administrative procedures in all APEC Member Economies which affect the flow of goods, services and capital among APEC Member Economies are transparent is one of the General Principles underpinning the broad action agenda for promoting free and open trade and investment in the Asian-Pacific region. With APEC leaders agreeing in 2001 to implement a set of *General Transparency Standards*, the issue has received attention at the highest political level possible. These standards involve the following objectives: a) to publish or otherwise make available, for example via the Internet, all laws, regulations, and procedures and administrative rulings in such a manner as to enable interested persons and other Economies to become acquainted with them, b) to designate and regularly publish an official and publish any measures in such journal, make copies available to the public and promote this practice also at regional and local level, c) when possible to publish in advance any measure proposed, provide interested persons or another Economy opportunity to comment, d) upon request, to endeavour to promptly provide information and respond to questions pertaining to any actual or proposed measures, e) when an administrative proceeding is initiated, provide interested persons or another Economy that are directly affected by it reasonable notice and a description of the issue and policy context, provide such persons a reasonable opportunity to present facts and

arguments in support of their positions prior to any final administrative action, and f) to establish appeals mechanisms for administrative decisions.[18]

In 2003 and 2004, these General Standards were applied to specific trade policy areas, including market access, government procurement and customs procedures – but not to export policy or to export restrictions – and area-specific transparency standards were developed. Starting in 2005, the implementation of these standards by APEC countries has been assessed by way of self-assessment questionnaires and annual reports.

D. What can we learn?

An evolutive picture of transparency standards in the period 1940s-2010s is provided in Annex 2. The picture mapped by the Table starts with the disciplines contained in GATT 1947 Articles X, XI and XIII, the GATT-WTO agreements and practices, the transparency proposals submitted to the trade facilitation and NAMA negotiations in the framework of the DDA, and the OECD Guiding Principles and Recommendation on regulatory policy and governance. With the proliferation of RTAs, more ambitious transparency standards are being introduced over and above the WTO disciplines (current and under negotiation) (OECD, 2011). A progressive, cumulative path towards greater transparency shows throughout.

Examples of points of inflection in this evolution are shown in the table in the Annex. A notable one is governments assuring free access to complete legislative and regulatory databases via the Internet to the general public, offering ever user-friendlier search facilities. Another one is the emergence of transparency obligations in favour of foreign stakeholders, so that they too are notified and given timely opportunity to comment on proposed new or changed policies that may affect them. Still another one is the obligation to make public the names and addresses of the authorities responsible for law, regulations and administrative procedures and rulings so that stakeholders can address their queries directly to them. Yet another one is the mandatory circulation of notified information in the three WTO official languages (English, French and Spanish). They are identified as "best practices" because they set a precedent in transparency enhancement. However, some caveats apply. They should not be understood as "one size fits all" prescriptions, as there is no universal road to trade policy transparency. Rather it is important to recognise that individual country transparency arrangements reflect the national values and culture, as well as their relative availability of resources.

One of the core objectives of the transparency rules is to ensure that stakeholders and the general public are informed about policies that affect them directly or affect commitments made under international agreements. Table 1 compiles the best practices that address this objective. Again, these elements adopted as best practice constitute an incremental approach. They provide a basis for comparing transparency practices at the national level and across countries and will be taken into account by the investigation in the next section of actual country practices of making information about export restrictions available.

18. See Leaders' statement to implement APEC transparency standards. Los Cabos, Mexico, 27 October 2002 (www.apec.org/Meeting-Papers/Leaders-Declarations/2002/2002_aelm/statement_to_implement1.aspx)

Table 1. Best practices for making information available

Transparency feature	Content	Source
Publication	Laws, regulations, judicial decisions, administrative rulings of general application and international trade agreements.	GATT 1947, Article X
	All import, export and transit procedures; the applicable duties and taxes, fees and charges; the norms on rules of origin; the import, export or transit restrictions or prohibitions; the penalties for breaches of import, export or transit formalities; the appeal procedures; the agreements celebrated with another country or countries relating to importation, exportation or transit; and the administrative procedures relating to the imposition of tariff quotas.	Trade facilitation negotiations
	Information is to be published in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them.	
Notification	Measures subject to notification include quantitative restrictions, non-tariff measures, such as licensing and mixing requirements, export taxes and export restrictions.	WTO Decision on Notification Procedures, 1994
	WTO members should notify the introduction of export taxes.	Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers, 2008
Medium of publication	Proposed and final measures should be published in an official journal for public circulation, be it physical or online, encouraging their distribution through additional outlets, including an official website.	APEC Model Chapter on Transparency, 2012
	A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.	OECD Recommendation, 2012
Time / form of publication	Promptly, to enable governments and traders to become acquainted with them.	GATT Article X, 1947
	A “reasonable” period of time will be required between publication and entry into force of new regulations as well as to elicit comments from interested parties.	Trade facilitation negotiations
	All information to be made available in English, Spanish and French.	Technical Barriers to Trade, 1995
Enquiry points	Establishment of one or more Enquiry Points to answer reasonable enquiries of governments, traders and other interested parties as well as to provide the required forms and documents.	Trade facilitation negotiations
	Parties should notify each other details of contact points, including those that provide assistance to the other Party and its interested persons. Also they should notify each other promptly of any changes regarding how to reach the contact points.	APEC Model Chapter on Transparency, 2012

Transparency feature	Content	Source
Explanation and disclosure of the measure	Governments should articulate regulatory policy goals, strategies and benefits clearly.	OECD Recommendation, 2012
	Notifications of measures must contain an explanation of the measure's intended purpose. Members introducing a technical regulation that may have a significant effect on international trade should explain to a requesting member the justification for its need.	Technical Barriers to Trade, 1995
	Notifications should include, in the case of automatic import licensing procedures, their administrative purpose and, in the case of non-automatic import licensing procedures, indication of the measure being implemented through licensing.	Import Licensing, 1995

V. National policies: Insights from the collection of information for the OECD Inventory

This section reports on actual transparency policies. Information elements consistent with 'best practice' normative provisions serve as a template for assessing what governments actually publish about their export restrictions on their websites.

The analysis employs a simple checklist shown in Table 2. Based on the best practices identified in Table 1, Table 2 sets out a template to compare transparency practices at the national level and across countries. As the categories identified were too broad to operationalise, Table 2 was constructed after also consulting the questions asked by selected WTO notifications, which give practical specificity to the standards of WTO agreements in respect to the provision of information. Box 3 illustrates the scope and detail of the information sought by notifications. Some questions are standard items, others tailored to learning about particular characteristics of the policies and measures to be reported.

The analysis undertaken here pertains to information available on the governmental websites of 33 countries[19] on three categories of export restrictions encountered in the minerals sector in 2010 – export taxes, export licensing requirements and quantitative export restrictions.[20]

The data available limit the discussion to the information availability and accessibility aspects of transparency, and this only for export restrictions already in place. Transparency questions related to prior consultation and public notice are not addressed.

19. The 33 countries are: Algeria, Argentina, Benin, Botswana, Brazil, China, Colombia, Dominican Republic, Fiji, Gabon, Ghana, Guinea, India, Indonesia, Kazakhstan, Lesotho, Malaysia, Morocco, Namibia, Nigeria, Pakistan, Russia, Senegal, Sierra Leone, South Africa, Sri Lanka, Syria, Ukraine, Uruguay, Venezuela, Vietnam, Zambia and Zimbabwe.

20. In the Inventory, these types of restrictions account for the bulk of export restrictions recorded and non-energy minerals represent the bulk of product entries. The export taxes comprise export tariffs, export royalties and fiscal taxes on exported goods. The quantitative restrictions consist of export quotas and prohibitions.

Most of the data come from the research undertaken for the OECD Inventory of Restrictions on Exports of Raw Materials. Official websites were searched for information about measures that restrict the export of industrial raw materials. The data gathered from the websites in 2010-2011 afford a static snapshot of the information available at that time. Some tentative observations were already offered in earlier reports on the construction of the Inventory (Fliess and Mård, 2012). Some additional data were collected *ex post* to cover certain checklist items.

It must be stressed that the evaluation whether website content meets the criteria of the checklist involves some subjectivity, that the search of websites may have overlooked some relevant information and that the findings are preliminary. While it is increasingly common practice for governments to make the text of trade-related laws, regulations and decrees available to the public on the Internet, there are other, more traditional venues for doing so and governments' choices of channels depend on many factors, including their capacity to use information technology. Also, the set of countries included in this survey is small and excludes OECD and other countries that appear or are confirmed not to restrict minerals exports. It would be inappropriate to generalise from the information policies of the countries studied about the quality of web-based information systems governments maintain in the field of trade policy.

Box 3. Content of notifications

While all notifications in WTO practice are set in a strict format, developed since the times of GATT, some agreements call for a more elaborate content. Some notifications are simple communications, like the responses to questionnaires about national legislation during accession negotiations, submitted to the corresponding working group for consultation. General and particular norms apply, depending on the nature of the measure.

In the case of **quantitative restrictions**, the notification should include full description of the products and tariff lines affected, their HS codes, a precise indication of the type of restriction used, a reference and details about the domestic law, regulation or administrative decision establishing the restriction, statements of the WTO justification for the measure, and a description of the manner in which the restriction is administered, including in the case of quotas, information on the quantity of permissible imports and the degree of quota utilisation. In the case of an **import tax** notification it will contain information on: the member notifying; title of the legal text establishing the tax; the date of entry into force and expiration; the products covered, together with their tariff headings, and the tax rate applied; and the source for additional information. In the case of **import licensing** the notification is more comprehensive and will contain information on: the notifying member; identification an date of the statute establishing the import licensing procedure; in case of changes to existing norms, they need to be identified; the products covered, together with their tariff headings and date of entry into force for each; identification of contact point for information on eligibility; identification of publication of licensing procedures; indication of whether the licensing procedure is automatic or not; and expected duration of the licensing procedure. In the case of the **Agreement on TBT** a typical notification of a technical regulation will contain information on: the notifying member (including local government, if applicable); the agency responsible; the agreement clauses that apply; the products covered, together with the tariff headings; identification of the measure (title, number of pages, language); reference to the rationale of the measure; description of documents relating to the measure; date of adoption, entry into force and deadline for comments, if applicable; and minute reference as to where to find the text of the measure.

Table 2. Information concerning export restrictions available on government websites

Checklist items	Countries meeting the criterion	Comments
Availability		
Information about policies and practices made public by government		
➢ Type of restriction is specified	33/33	At times inferences had to be made whether the export licensing requirement was "automatic" or "non-automatic"
➢ If export tax, applicable rate is specified	17/19	19 of the 33 countries applied export taxes
➢ If export quota, - quota is specified - allocation mechanism (eligibility criteria, procedure, etc.) is described	 - 1/1 - 1/1	1 of the 33 countries applied quota
➢ Products concerned are identified by name	29/33	
➢ HS product classification system code is provided	8/33	Sometimes the HS code is mentioned for some products but not others; or for some type of restriction and not others
➢ Date of entry into force of measure is specified	27/33	Sometimes not consistently for all types of restrictions reported
➢ Duration of measure is specified	25/33	
➢ Title of enabling law/regulation is specified	30/33	
➢ Rationale / purpose of measure is stated	13/33	Sometimes not consistently for all restrictions reported
➢ Administrative procedures (eligibility criteria, document requirements, application procedures, etc.) relating to the measure are described (only for non-automatic export licensing, quota)	10/17	17 of the 33 countries required export licenses
➢ Exemptions and derogations of measure/s are specified	28/33	
➢ Authority in charge of administering the measure is identified	27/33	

continued

Accessibility		
Ease of finding and understanding the published information		
➢ Text of law/regulation is available on government website	25/33	This criteria is not met where only a summary of the law or regulation is provided
➢ Use of export restrictions is mentioned on government website	33/33	
➢ Information is available in language/s other than national	20/33	
➢ Enquiry point / contact details are provided	31/33	
➢ All information available is in one place / portal	8/33	
➢ The main authority publishing relevant information on its website is:		Where a government uses export taxes as well as export licensing, authorities are often not the same. The count therefore exceeds 33.
- Trade /Industry Ministry	- 7	
- Mining / Natural Resources Ministry	- 5	
- Customs	- 8	
- Economy/Finance/Revenue Authority	- 11	
- Other	- 6	

A. Availability of information

A clear and comprehensible description of policy measures is important for understanding their requirements and consequences. For potential and actual exporters, information permitting clear identification of the products affected is also essential. Availability is an aspect of transparency that emphasises that it is the content and overall quality that makes information valuable for users.

All governments surveyed made some information available on their official websites. At the minimum it was informally stated that the exportation of some category of products was subject to export taxes, a quantitative restriction (quota or prohibition) or permit. The vast majority of websites went further in the description of measures and products, often by referring to relevant official documents such as legal texts, decisions or formal announcements. These texts were usually accessible.

Where a country applies more than one type of restriction, the different measures were not always reported with the same detail. Omission of reporting some measures could not be ruled out because when a specific measure was not used, this was not stated explicitly on the website.

References to products were, in a few cases, by broad category only, for example, "all minerals", "mineral ore", "ferrous metals" or "precious metals." While in most cases products were mentioned by name, this was not always applied consistently across different types of restrictions. Clear identification of products would be facilitated if codes of international product classification systems (notably HS) had been used, which was not a common practice. It was difficult to determine, solely on the basis of the information available on the Internet, whether a measure applied to a particular type of mineral.

There are some practices involving presentation of consolidated detailed information about products and measures. They consist of listing goods under

restrictions either as part of national tariff schedules or in the form of structured separate schedules, made available on the Internet. Besides listing products at six or higher digit level of HS along with annotations specifying export taxes or other types of trade measures, these schedules can contain other useful information, for example about special requirements in the case of particular products or about exemptions from application of the measure. Such schedules can be organised flexibly to report virtually any type of export measure. The actual schedules found on the websites of certain governments reported export taxes and export licensing requirements and situations where export was categorically prohibited (Box 4).

Such lists or schedules are useful only if they are actively managed and promptly updated when policy changes. In two instances the lists that were published on the websites were undated. It was therefore unclear when the list had been prepared and whether the information was still valid.

Box 4. Consolidated approaches of reporting export restrictions

The web portal (www.douanesguinee.gov.gn/tarif.htm) of the **Customs authority of Guinea** is representative for initiatives to provide information about export and import duties in a single consolidated tariff schedule format for quick consultation. One can look up the rates of export and import tariffs as well as other types of taxes and monetary charges for any traded product, including minerals. The information is presented by HS chapters and the rates are shown at the level of four digit and ten digit level of product classification. The schedule showing the rates line by line is accompanied by detailed information on how products are classified. An explanation of the different types of taxes and fees is also provided. Finally, the taxes shown take into account Guinea's membership in the West African Economic and Monetary Union (UEMOA), with identification of UEMOA external tariffs, where applicable. The information is provided only in French and how often the schedules are updated is not indicated. The portal of Customs furthermore refers to and provides the texts of laws, decisions and instructions in respect to the measures shown in the tariff schedule. Under documentation, visitors can access the customs-related provisions of the Mining Code of Guinea.

A tariff schedule showing export tariffs can be consulted on a webpage maintained by **Vietnam's Ministry of Finance** (www.mof.gov.vn/portal/page/portal/mof_en/ld) and giving access to legal documents through a search engine. The schedule, issued together with the Finance Minister's Decision No. 45/2002/QD-BTC of 10 April 2002, lists commodity groups and items by name and up to HS eight digits and provides the tax rate. This is not a searchable database, and only those items that are subject to an export tariff are shown. The Decision and the schedule itself are available in English. The website offers a search engine in English language where upon entry of the term 'export tariffs' in the field document content, circulars (in English) on export tariff amendments and other export-tariff related information issued by the Ministry since 2002 can be obtained.

South Africa's International Trade Administration Commission (ITAC), in charge of administering the International Trade Administration Act (Act 71 of 2003), maintains on its website (www.itac.org.za) a portal dedicated to "services", through which one can access the text of applicable regulation, guidelines, answers to "frequently asked questions" and contact details for export controls. An informal statement explains the legal and regulatory framework for export controls, which consists of the issuing of import and export permits for any of a range of purposes stated in the International Trade Administration Act. Also published is the list of specific goods, described and identified by HS4, 6 or 8 tariff headings, which require export or import permits, along with the name, for different kinds of products concerned, of other agencies involved in the application processing process. ITAC's services do not extent to the operation of a facility allowing exporters to submit on-line applications for permits.

Although the vast majority of websites publish at least one major document, notably the enabling law, this was in many cases not enough to understand the measure. Important details about the measure were often missing, even when measures and products affected were well described.

The date of introduction of the measure was almost always stated somewhere. Whether the measure was a temporary one or of open-ended duration was less consistently clear from the information provided. The most striking aspect is the low rate of explanations provided of the objectives and rationale of the measure.

Information explaining how the measure is implemented, including an explanation of what administrative steps a potential exporter has to take in order to be able to export, are important features of high-level policy transparency.

This is tangential for the payment of export taxes, which are usually collected at customs points in a straightforward manner, but very important for meeting regulatory requirements such as licensing and export quota. The search therefore included any legal or subordinate texts or informal information explaining how these measures are handled administratively and what the procedures for applications are. As can be seen from the record in the table, such information was relatively often not found for export licensing requirements.

Because of the lack of detail provided, the specific nature of the licensing regime (automatic or non-automatic) was sometimes unclear. Very seldom did governments explain on their websites how long it normally takes to process applications for a license.

What websites do with high consistency for all measures reported is to name the authority responsible for the measure's implementation and administration.

B. Accessibility of information

Official government gazettes were in searchable form available in some countries. In others, individual announcements published in a gazette were among the documents that could be downloaded from websites. A recurring problem is that recent issues of the journal could not be located on the Internet.

To make the law enabling the measure available is common practice. However, often export restrictions are not mandated by the legislature; rather, the actual decisions to apply these measures are delegated to high level officials of the executive branch, who make them on a case to case basis. Accessibility of the texts of these decisions was less consistent.

Information uncertainty arose in situations where laws are old, amendments could not be tracked and no further explanation was offered. The text that was available may not have been the most recent version. This made it hard to determine what the situation was at the time of the visit of the website.

Some agencies published on their websites guidance documents intended for businesses interested in import and export. These guides usually provided an overview of policy and mention the main regulatory mechanisms used, but usually did not do this in detail. Thus, if export restrictions were mentioned at all, they were not explained in detail, since typically the thrust of the communication was aimed at promoting a country's exports.

Some basic information, such as policy statements and announcements, were usually available in at least one language other than the national language, notably English. It was less frequent to find official translations into a foreign language of the full texts of laws and regulations.

Enquiry or contact points function as a useful complement to direct information provision. On websites where major information is provided, one finds typically contact details for further questions.

Trade ministries invariably play a role in disseminating information about national trade policy. However, when the subject is export restrictions in the mining sector, they are not necessarily the only, or even the leading, provider of information about these measures, as can be seen from the Table. The regulation of mining and mineral resources usually falls under the responsibility of specialised ministries, which publish documents related to the regulatory framework on their own websites. These documents may include the major documents related to export restrictions. Customs would seem a logical place for the dissemination of product-specific information about border-based export restrictions. In some countries, customs agencies make available comprehensive information covering export taxes, licensing requirements and prohibitions. However, this is not always the case. In the case of many of the countries studied information about export restrictions is in fact scattered and requires consultation of the websites of several ministries or agencies.

Governments are obliged to notify under various multilateral and regional trade agreements to which they are party various details about their trade policies, some of which pertain to the use of measures restricting exports. In none of the countries did the trade ministries make their country's notifications, including those that could relate to their export restrictions, publicly available on their national websites. Nor did the national websites offer links to the electronic data portals of notifications and other structured trade policy information which WTO and other supra-national trade fora maintain and make available for public consultation on their own websites. In rare instances, government websites referenced and provided direct access to the WTO Trade Policy Review of the country.

The survey of official websites makes apparent important information gaps. It also draws attention to issues of accessibility, i.e. the ease with which information can be found and understood. Of the 33 countries, two provided information about export restrictions satisfying all criteria of the checklist, and several others came close. There is thus significant room for improving existing information policies in respect to export restriction.

Use of dedicated sites or searchable databases that permits relevant legal texts, decisions, and other information required for the identification of a specific measure and the products affected to be consulted in a single place, helps to deliver information comprehensively and efficiently. How one-stop information hubs can be designed to promote transparency on both counts, availability and accessibility, for export restrictions along with other trade measures is illustrated by a system used by Customs Malaysia, described in Box 5. Such advanced information systems set a precedent but are not common practice. Other, less sophisticated approaches exist, as was illustrated in Box 4.

Box 5. One-stop information platforms making detailed information easy to find

A searchable automated information system, the Official Customs HS-Explorer, (http://tariff.customs.gov.my/) has been developed by **Customs Malaysia**, through which anyone can retrieve the texts of official documents (laws, regulations, administrative orders) defining Malaysia's import and export policy as well as detailed information about specific measures. The search can be conducted by entering queries flexibly in the form of text or product codes. Entry of a word, for example "iron", will generate for all products containing the term in their description the following information: import tariff rate, export tariff rate, rates of sales and excise taxes and cess. Information on whether import and export prohibitions apply is also provided in the same output table. Products are described and presented using the HS product classification system. If a product is subject to a specific import or export measure, one can simultaneously obtain the title of the related act or order and the name of the agency in charge of the measure. But this is not all. Not only does this searchable data system provide a user-friendly way to find out about trade measures in force in Malaysia today and going back to 2005; one can also look up the rates of import tariff (though not of export tariffs) which Malaysia applies to imports from the partner countries of each of the regional trade agreements (RTAs) to which it is a party. In the case of RTAs, the output table reports even reductions in import tariffs that are scheduled to occur in future years. The search results from queries can be exported in excel format. The site is in English, users can if they wish send instant electronic inquiries/feedback/suggestions to the information service desk, and customs contact names and telephone numbers are provided.

Improving existing information policies in respect to export restriction represents a challenge, but one that is more manageable compared to that of overhauling rulemaking systems, which countries can take on only over time. Information policies can be strengthened at reasonable time and resource costs because most governments have more or less elaborate communication systems for keeping stakeholders and the public informed about trade policy matters.

VI. Conclusions

Sound transparency rules ensure that stakeholders and the public at large are informed about policies that affect them directly or have a positive impact on commitments made under international agreements. Accurate and timely information increases the predictability of the business environment and reduces risk for economic operators. This paper has investigated the state of transparency in a specific, narrow area of trade policy – the imposition of quantity and price restrictions on mineral exports by a limited number of countries. It has taken stock of evolving best practice rules for publishing or notifying policies and then examined government websites for information on their use of export restrictions. It would be fraught with risk to generalise the results of this research beyond its defined scope; however, it would be desirable that future research go farther and deeper in that direction.

Closer examination of what countries publish on their websites unveils concrete examples of good-practice approaches to information disclosure but, above all, it makes apparent what information is available and how accessible it is. All countries surveyed publish some information about export restrictions, including on their government websites. However, the quality of information varies and is not up to the standards reflected in the checklist of core transparency requirements derived from rules and recommendations developed by GATT/WTO, RTAs and other fora. This is

the situation for information published online; whether inquiries addressed directly to government authorities yield better results was not investigated.

The checklist developed for the study of the information policies of 33 selected countries could conceivably serve as a practical tool that governments could use for self-assessment. Better public communication about export restrictions in force would align these trade practices with standards that are essential for transparent conduct of trade policy.

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Annex 1.

Industrial Minerals Exports and Imports of Selected Countries Using Export Restrictions

Country	Export restrictions applied in 2010	Exports of minerals (2009)	Imports of minerals (2009)
Argentina	*Export tax* for most goods, including minerals *Export licensing requirement* for iron, copper and cobalt *Export reference price* for copper	1 340.8	403.9
China	*Export quota* for aluminium, magnesium, rare earths, tin, molybdenum, tungsten, antimony and other *Export tax* for iron, manganese, copper, cobalt, zinc, tungsten, rare earths, and other *Export licensing requirement* for phosphates, cobalt, antimony, tungsten and other *VAT tax rebate removal* for certain ferrous and non-ferrous metals	1 779.3	74 462.2
India	*Export tax* for ferrous metals, barytes, manganese, chromium *Export royalty* for aluminium *Export licensing requirement* for chromium, silica, manganese and certain rare earths *Captive mining policy* for iron and manganese	7 003.9	14 008.2
Indonesia	*Export prohibition* for silica *Export licensing requirement* for gold and silver	5 876.9	1 087.3
Kazakhstan	*Export tax* for aluminium	1 877.5	232.3
Russia	*Export tax* on copper, iron, molybdenum, nickel, platinum, palladium, rhodium and other	4 967.1	1 550.5
South Africa	*Export licensing requirement* for aluminium, antimony, chromium, copper, gold, nickel, platinum, palladium and other *Export tax and export certification requirement* for diamonds	6 941.7	878.6
Viet Nam	*Export tax* for aluminium, iron, manganese, nickel, lead, tungsten, molybdenum, zinc and others	199.2	553.9
Zimbabwe	*Export tax* on chromium	242.0	33.2

Source: OECD Inventory of Restrictions on Exports of Raw Materials; trade data - UN Comtrade, 2009, HS2002 (except Indonesia, for which 2009 data are only available with HS1996). Trade figures are in millions of USD and refer to total exports and imports of more than 40 minerals in raw (unprocessed) form.

Annex 2.

Best practices in transparency

Examples of best practices in transparency contained in GATT-WTO agreements, Regional Trade Agreements, and the OECD Recommendation on Regulatory Policy

What information needs to be published?	**GATT Article X, 1947 - Original text** - Laws, regulations, judicial decisions and administrative rulings of general application as well as agreements affecting international trade policy that are in force between governments. **GATT Article XI, 1947 - Original text** - Any contracting party applying restrictions on the importation of any product should give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. **GATT Article XIII, 1947 - Original text** - In applying import restrictions to any product, contracting parties should give notice of them. When fixing quotas, the contracting party applying the restrictions should give public notice of the total quantity or value of the product or products that will be permitted to be imported. - When quotas are allocated among supplying countries, the contracting party applying the restrictions should promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and give public notice of them. - This applies to any tariff quota instituted or maintained by any contracting party, as well as to other export restrictions. **Trade facilitation negotiations,[1] ongoing** **Innovation:** Adds specificity to publication requirements. - All importation, exportation and transit procedures; the applicable duties and taxes, fees and charges; the norms on rules of origin; the import, export or transit restrictions or prohibitions; the penalties for breaches of import, export or transit formalities; the appeal procedures; the agreements celebrated with another country or countries relating to importation, exportation or transit; and the administrative procedures relating to the imposition of tariff quotas. **Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers (TN/MA/W/103/Rev.1),8 2008** **Innovation:** Enhances specificity of notification requirements. **-** WTO members should notify the introduction of export taxes. Also they should undertake to schedule export taxes on non-agricultural products in their Schedules of Concessions and bind the export taxes at a level to be negotiated, with some exceptions. **WTO Members' tariff schedules, ongoing** **Innovation:** Introduces communication format that is compulsory for all Members. - Each schedule contains the following information: tariff item number, description of the product, rate of duty, present concession established, initial negotiation rights (such as main suppliers of product), concession first incorporated in a GATT Schedule, INR on earlier occasions, other duties and charges. For agricultural products special safeguards may also be defined.

	Uruguay Round Ministerial Decision on Notification Procedures, 1994[2] **Innovation**: Introduces exhaustive detail in Member notifications. - The WTO Secretariat's Central Registry of Notifications (CRN) cross-references its records of notifications by Member and obligation. An indicative list of measures subject to notification includes tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free-trade areas/customs unions, other preferences), tariff quotas and surcharges, quantitative restrictions, including voluntary export restraints and orderly marketing arrangements affecting imports, other non-tariff measures such as licensing and mixing requirements; variable levies; rules of origin; technical barriers; safeguard actions; anti-dumping actions; countervailing actions; export taxes; export subsidies, tax exemptions and concessionary export financing; export restrictions, including voluntary export restraints and orderly marketing arrangements; other government assistance, including subsidies, tax exemptions; and foreign exchange controls related to imports and exports; and others. **OECD Recommendation, 20123** **Innovation:** Overarching transparency principle, implicitly encompassing foreign stakeholders. - All regulations should be easily accessible by the public. **Japan - India CEPA, 2011**[13] **Innovation: Public identification of government authorities in charge of norms is mandated.** - Each Party shall make available to the public the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings.
When does it need to be published / notified?	**GATT Article X, 1947 - Original text** - Promptly, to enable governments and traders to become acquainted with them. **Import Licensing, 1995** **Innovation:** Precise terms for applications and institution of procedures are sanctioned. - The rules and all information concerning procedures for the submission of applications are to be published 21 days prior to the effective date of the requirement. Members that institute licensing procedures or changes should notify the Committee on Import Licensing within 60 days of publication. **Anti-dumping, 19957** **Innovation:** Stakeholders are given ample time and relevant information to act. - All interested parties in an anti-dumping investigation shall be given notice of the information that the authorities require and ample opportunity to present in writing all evidence that they consider relevant. Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.
How does it need to be published / notified?	**Trade facilitation negotiations, ongoing** **Innovation:** Article X disciplines are expanded and deepened. - Information is to be published in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them. - Information available through Internet. - The duty of notification will comprise the identification of the official publication(s) and website(s) of the Enquiry Points. - A "reasonable" period of time will be required between publication and entry into force of new regulations as well as to elicit comments from interested parties. - Advance rulings in a reasonable, time bound manner will be provided to applicants submitting a written request prior to the importation of a good. **OECD Recommendation, 2012** **Innovation:** A comprehensive, punctilious publication standard is introduced. - A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

	Technical Barriers to Trade, 1995[5] **Innovation:** WTO circulates relevant notified information in three official languages and operates database. - The Secretariat is responsible for circulating to all members and interested international standardizing and conformity assessment bodies copies of the notifications it receives. To that end it administers the Technical Barriers to Trade Information Management System. All information is made available in English, Spanish and French. **ASEAN Trade in Goods Agreement, 2009** **Innovation**: Fixed term of minimum 60 days of prior publication is introduced. - Member States should notify any action or measure that they intend to take which may nullify or impair any benefit to other Member States, directly or indirectly. - They should notify the ASEAN Secretariat before effecting such action or measure, at least 60 days before it takes effect and provide adequate opportunity for prior discussion with Member States having an interest in it. **APEC Model Chapter on Transparency, 2012**[14] **Innovation:** Regional transparency standard is introduced. - Proposed and final measures should be published in an official journal for public circulation, be it physical or online, encouraging their distribution through additional outlets, including an official website. - Enquiries may be addressed through enquiry or contact points or any other mechanism as appropriate and responded to within a reasonable period of time not exceeding 30 days.
Is the rule-making process transparent?	**OECD Recommendation, 2012** **Innovation:** Active stakeholder engagement in rule making and consultation are mandated. - Governments should actively engage all relevant stakeholders during the regulation-making process and designing consultation processes. **Agreement on Agriculture, 19956** **Innovation**: *Ex ante* and cross-notification of restrictions is introduced. - Members should notify the Committee on Agriculture before instituting a prohibition or restriction and consult with other Members having a substantial interest as importers, providing the necessary information. The Committee on Agriculture reviews the implementation of Members' commitments on the basis of their notifications and the Secretariat's documentation prepared to facilitate the review process. Also Members should notify promptly on new domestic support measures or modifications for which exemption from reduction is claimed. Members may bring to the attention of the Committee those measures that they deem should be notified by another Member. **Revised EC Submission on Export Taxes (TN/MA/W/101), 20088** **Innovation:** Widespread publicity of notifications to WTO bodies is mandated. - Notifications pursuant to this Decision [on Procedures for the Facilitation of Solutions to Non-Tariff Barriers] should constitute regular items on the agenda of the relevant WTO Committees, giving adequate opportunity for an exchange of views amongst Members.
Is there a procedure for prior comments or consultations?	**Trade facilitation negotiations, ongoing** **Innovation:** Conditions for consultation of measures with stakeholders should be set out. **-** Opportunities and a reasonable time period will be provided to traders and other interested parties to comment on the introduction or amendment of laws and regulations. - Regular consultations between border agencies and traders or other stakeholders will be provided. **OECD Recommendation, 2012** **Innovation:** Comprehensive policy on consultation is mandatory. - Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will be. **OECD Guiding Principles, 2005**[9] **Innovation:** Stakeholders, actual and potential, national and international are encompassed. - Consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing and reviewing regulations, ensuring that consultation itself is timely and transparent, and that its scope is clearly understood.

	Canada-Colombia FTA, 2008[10] **Innovation:** Measure consultation and dialogue as well as transparency cooperation are mandated. - Each Party should publish in advance the measure it proposes to adopt; and provide interested persons a reasonable opportunity to comment on it. - Each Party should notify the other Party of any proposed or actual measure that the Party considers might materially affect the other Party's interests. - The Parties agree to cooperate in bilateral, regional and multilateral fora on means to promote transparency in respect of international trade and investment. **EFTA-Hong Kong FTA, 2011**[11] **Innovation:** Procedures for preventative *ad hoc* consultations are introduced. - The Parties should publish, make publicly available, or provide upon request, laws, regulations, judicial decisions, administrative rulings of general application as well as relevant international agreements. - Parties agree to hold ad hoc consultations where a Party considers that another Party has taken measures that are likely to create an obstacle to trade, in order to find an appropriate solution in conformity with the SPS and TBT Agreements. Such consultations may be conducted in person or via videoconference, teleconference, or any other agreed method.
Does the agreement require an explanation for and disclosure of the rationale of the measure / action?	**OECD Recommendation, 2012** **Innovation:** Rationale and merit of measure should be made explicit. **-** Governments **should articulate regulatory policy goals, strategies and benefits clearly.** **Technical Barriers to Trade, 1995** **Innovation:** Explanation and justification of measure are mandated. - Notifications of measures subject to the rules of the TBT Agreement must contain an explanation of the measure's intended purpose. - Members introducing a technical regulation that may have a significant effect on international trade should explain to a requesting member the justification for its need. **Import Licensing, 1995** **Innovation:** Notification of purpose and rationale of measure are mandated. - Notifications of the institution of import licensing procedures should include, in the case of automatic import licensing procedures, their administrative purpose and, in the case of non-automatic import licensing procedures, indication of the measure being implemented through licensing. **EU - Korea FTA, 2010** [12] **Innovation:** Regulatory cooperation and dialogue are mandated. - The Parties should endeavour to consider the public interests before imposing an anti-dumping or countervailing duty. - The Parties should strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both the horizontal and sectoral levels.
Does the agreement require the establishment of Enquiry Points? Who has access to it?	**Trade facilitation negotiations, ongoing** **Innovation: Enquiry Points should respond to stakeholders at large.** - Establishment of one or more Enquiry Points to answer reasonable enquiries of governments, traders and other interested parties as well as to provide the required forms and documents. **ASEAN Trade in Goods Agreement, 2009** **Innovation: A multijurisdictional single reference point is open to the public online.** - An ASEAN Trade Repository (ATR, set for full operation by 2015) containing trade and customs laws and procedures of all Member States is established and made accessible to the public through the Internet. It contains trade related information such as tariff nomenclature; MFN tariffs, preferential tariffs offered under this Agreement and other Agreements of ASEAN with its Dialogue Partners; rules of origin; non-tariff measures; national trade and customs laws and rules; procedures and documentary requirements; administrative rulings; best practices in trade facilitation applied by each Member State; and list of authorised traders of Member States.

APEC Model Chapter on Transparency, 2012
Innovation: Regional transparency standard is introduced.

- Parties should notify each other details of contact points, including those that provide assistance to the other Party and its interested persons. Also they should notify each other promptly of any changes regarding how to reach the contact points.

- Parties should assist each other in finding and obtaining copies, on a timely basis, of published measures of general application.

- Each Party should ensure that its contact points are able to coordinate and facilitate responses.

1. Trade facilitation negotiations, Doha Round, Draft Consolidated Negotiating Text, 12 December 2012.
2. Uruguay Round Ministerial Decision on Notification Procedures, 14 April 1994.
3. Recommendation of the OECD Council on Regulatory Policy and Governance, 22 March 2012.
4. Agreement on Import Licensing Procedures, 1 January 1995.
5. Agreement on Technical Barriers to Trade, 1 January 1995.
6. Agreement on Agriculture, 1 January 1995.
7. Agreement on Anti-dumping (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994), 1 January 1995.
8. NTB Textual Proposals, Draft Modalities for Non-Agricultural Market Access, Rev. 2, 20 May 2008.
9. OECD Guiding Principles for Regulatory Quality and Performance, 2005.
10. Canada-Colombia Free Trade Agreement, 2008.
11. European Free Trade Association States (Liechtenstein, Norway, Switzerland) - Hong Kong China Free Trade Agreement, 2011.
12. European Union - Republic of Korea Free Trade Agreement, 2010.
13. Comprehensive Economic Partnership Agreement between Japan and the Republic of India, 2011.
14. APEC Model Chapter on Transparency for RTAs/FTAs, APEC Ministerial Meeting, Vladivostok, Russia, 5-6 September 2012