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**Committee on Agriculture
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FINDINGS FROM EXPORT RESTRICTIVE MEASURES IN RELATION TO THE COVID-19 PANDEMIC

COMMUNICATION FROM JAPAN; ISRAEL; KOREA, REPUBLIC OF; SWITZERLAND AND
THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The following communication, dated 18 September 2020, is being circulated at the request of the
aforementioned Members.

1 BACKGROUND

1.1. Before the COVID-19 pandemic, export restrictive measures were continuously discussed based on submissions from like-minded Members in 2018 and 2019 (documents JOB/AG/149, JOB/AG/156 and JOB/AG/175), with a review of measures taken by Members over several years, as well as consideration on consistency with relevant GATT provisions and the Agreement on Agriculture (AoA). These studies, and the discussions based on them, clarified the facts and identified specific issues in the area for further negotiations.

1.2. Since the first outbreak in Asia at the end of 2019, the COVID-19 pandemic has become a major crisis, spreading quickly and globally. It is widely recognized that the pandemic is not only a medical crisis but has brought a wide range of negative impacts on our socio-economic systems, and unfortunately, agriculture trade is not an exception.

1.3. The international community reacted to the crisis and, as part of attempts to address the situation, Members and the WTO Secretariat have made efforts to issue reports and statements¹ in collaboration with other international organizations, which always place importance on avoiding export restrictive measures. The WTO Secretariat also collected and shared relevant information.

1.4. Upon the request of Members, on 18 June 2020 a special meeting of the Committee on Agriculture (CoA) was held which dealt with COVID-19 and agriculture trade-related matters. During the meeting, Members reviewed the trade measures recently taken and gave valuable notes to other Members through the meeting's interactive process, where one of the main topics discussed was export restriction.

¹ Shown below are the examples of relevant reports and statements:

(i) "Joint Statement by QU Dongyu, Tedros Adhanom Ghebreyesus and Roberto Azevêdo, Directors-General of FAO, WHO and WTO" (31 March 2020), https://www.wto.org/english/news_e/news20_e/igo_26mar20_e.htm.
(ii) Ministerial Statement on COVID-19, G20 Extraordinary Agriculture Ministers Meeting (21 April 2020), https://g20.org/en/media/Documents/G20_Agriculture%20Ministers%20Meeting_Statement_EN.pdf.
(iii) "Responding to the COVID-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products" (29 May 2020, WTO document WT/GC/208/Rev.2 – G/AG/30/Rev.2).

2 INTRODUCTION

2.1. Following those recent activities, and building on previous studies, this paper intends to provide fact-based findings^{2,3} from export restrictive measures taken by Members in relation to the COVID-19 pandemic. These findings are based on information provided by the Secretariat, ER:1 notifications by Members and the responses in the special meeting of the CoA held on 18 June 2020.

2.2. By sharing these findings, this paper aims to provide and share the lessons learned from COVID-19 experiences in connection to export restrictive measures. It also attempts to help Members understand the circumstances surrounding export restrictive measures, including Members' compliance with the relevant provisions of the AoA as well as new elements for possible improvement of the rules, which could be discussed further at the coming meetings of the Committee on Agriculture in Special Session (CoA-SS).

2.3. The information provided in this paper is based on (1) the ER:1 notifications⁴ after the COVID-19 pandemic, (2) the responses⁵ by Members through an interactive process for the special meeting of the CoA held on 18 June 2020, and (3) the COVID-19 related website⁶ provided by the WTO Secretariat and some other information sources.

3 FINDINGS

3.1 FINDINGS FROM INFORMATION ON ACTUAL MEASURES AND ER:1 NOTIFICATIONS

3.1. It is recognized that 16 Members have instituted a total of 21 export restrictive measures since March 2020, the list of which is shown in Table 1 (see next page).

² Country names are not specified in this paper as the purpose of this paper is to provide an overview of matters in export restrictive measures in relation to the COVID-19 pandemic - each country is indicated as letters of the alphabets (Country A, Country B, Country C, ...).

³ The scope of analysis in this paper is the findings concerning the export restrictive measures taken by WTO Members. The information of non-Members is also included in Table 1 and Figure 2 to provide a global picture of such measures in relation to the COVID-19 pandemic.

⁴ ER:1 notifications made from March to August 2020.

⁵ Obtained mainly from Agriculture Information Management System (AG-IMS).

⁶ WTO website "COVID-19: Trade and trade-related measures", (https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm).

Table 1 – List of export restrictive measures

Country ¹	Products	Type of Measure ²	Duration	Notification ³ ER:1*** QR*	Date of ER:1 notification (days after starting date)	Description of "nature and justification" for the measure in ER:1 notifications
A	Wheat and meslin, Wheat flour	Export prohibition - > Export quota	20 Mar – 2 Apr - > 3 Apr - 30 Apr	*** *	2 Apr (13 days)	Due to the COVID-19, the Government of Country A via its Decision of No. 70, dated 20.03.2020, adopted a measure on the prohibition of exports of wheat and meslin, as well wheat flour with aim to protect human health and prevent relieve critical shortage of essential products. Country A has already submitted QR notification to the Committee on Market Access, dated 31 March 2020.
B	Wheat and meslin, Wheat flour, Cooking oil, Rice, Pasta production, Chicken egg, Sugar, Feed	Export prohibition	6 months from 22 Mar	*** *	30 Mar (8 days)	Due to the global outbreak of COVID-19, the government vide its Decree No. 174, dated 22.03.2020, adopted the decision to impose export prohibition on select food products with the aim of supplying Country B population with strategic food stuffs and other products. The measure has already been notified to the Committee on Market Access, dated 24 March 2020.
C non-WTO member	Wheat flour, Rice, Pasta, Oil, Coffee, etc.	Export prohibition	22 Mar – no end	-	-	-
D	Bird eggs	Export prohibition	26 Mar – 1 Apr	*** *	30 Mar (4 days)	Pursuant to Article XI, paragraph 2(a) of GATT 1994 and in accordance with Article 12, paragraph 1 (b) of the Agreement on Agriculture, an export prohibition was introduced with the aim to prevent critical shortage in the domestic market resulting from the global outbreak of the COVID-19. Country D welcomes consultation, under Article 12, paragraph 1(b) of the Agreement on Agriculture, with any Member having a substantial interest as an importer.
	Bird eggs	Export prohibition	2 Apr – 30 Apr	[***] *	2 Apr (0 days)	Pursuant to Article XI, paragraph 2(a) of GATT 1994 and in accordance with Article 12, paragraph 1 (b) of the Agreement on Agriculture, an export prohibition was introduced with the aim to prevent critical shortage in the domestic market resulting from the global outbreak of the COVID-19. Country D welcomes consultation, under Article 12, paragraph 1(b) of the Agreement on Agriculture, with any Member having a substantial interest as an importer.
E	Dried leguminous vegetables	Export prohibition	26 Mar – 31 Dec	-	-	-
F	Dried leguminous vegetables	Export prohibition	26 Mar – no end	-	-	-

Country ¹	Products	Type of Measure ²	Duration	Notification ³ ER:1*** QR*	Date of ER:1 notification (days after starting date)	Description of "nature and justification" for the measure in ER:1 notifications
G	Leguminous vegetables and products thereof (except peanuts, fresh or chilled peas, etc.)	Export prohibition - > Export quota	3 months from 28 Mar - > 3 months from 15 Jun	*	-	-
H	Wheat	Export quota	30 Mar – 30 Jun 2021	-	-	-
	Buckwheat; Buckwheat grain (uncoated)	Export prohibition	9 Apr – 1 Jul	***	13 Apr (4 days)	In order to prevent a critical shortage of foodstuff the Cabinet of Ministers of Country H has adopted the Resolution No. 260 of 2 April 2020 "On Amending Annex I of the Resolution of the Cabinet of Ministers of Country Hof 24 December 2019 No. 1109" that imposes export prohibition on certain food products. Country H has already submitted relevant notification to the Committee on Market Access, dated 13 April 2020.
	Rye	Export quota	17 Aug – 30 Jun 2021	-	-	-
I	Wheat and meslin, Rye, Barley, Corn	Export quota	1 Apr – 30 Jun	-	-	-
J	Wheat and meslin, Wheat flour, etc.	Export quota	2 Apr – 31 May	-	-	-
	Buckwheat, White sugar, etc.	Export Prohibition	2 Apr – 31 May	-	-	-
K	Rice	Export prohibition	5 Apr – 19 May	-	-	-
L	Lemon	Export license	7 Apr – 6 Aug	-	-	-
M	Wheat, Wheat flour, Barley, Corn, Rice, Soybeans, etc.	Export prohibition	10 Apr – 15 Apr	-	-	-

Country ¹	Products	Type of Measure ²	Duration	Notification ³ ER:1*** QR*	Date of ER:1 notification (days after starting date)	Description of "nature and justification" for the measure in ER:1 notifications
N	Rice	Export prohibition - > Export quota	25 Mar – 9 Apr - > 10 Apr – 30 Apr	***	4 Aug (116 days)	Nature of the measure: Export quota for rice in April 2020. Justification: Rice is an essential foodstuff of every xxx (nationality of Country N). In the context of the complicated and unpredictable escalation of the COVID-19 pandemic which led to citizens' insecurity in March 2020, the Government of Country N decided to adopt a necessary global quota in rice export to ensure domestic supply and national food security, which is prescribed in Article XI:2(a) of the GATT 1994 as an exception to the general elimination of quantitative restrictions. Measure introduced: Country N's Ministry of Industry and Trade on 10 April 2020 issued Decision 1106/QD-BCT prescribing a global quota of 400,000 tonnes for rice export in April 2020. The first-come, first-serve mechanism was used to administer this measure.
O	(A measure as a member of the regional economic alliance only. See far bottom line.)					
P non-WTO member	Rye, Rice, Buckwheat, Vegetables, etc	Export prohibition	12 Apr – 30 Jun	-	-	-
Q non-WTO member	Sunflower Oil, Molasses, Yeast, etc.	Export prohibition	13 Apr – 6 May	-	-	-
	Corn	Export quota	13 Apr – 6 May	-	-	-
R	Wheat, Wheat flour, Vegetable, etc.	Export prohibition	25 Apr – no end	-	-	-
S	Rice	Export quota	1 May – 30 Jun	***	12 Jun (42 days)	Due to the COVID-19, the Government of County S via its Bulletins of No.(3/2020) and No.(5/2020), dated 07/04/2020 and 24/04/2020, adopted a measure on the restrictions of export of rice, with the aim to prevent critical shortage of rice which is an essential foodstuff in the national diet.
	Rice	Export quota	1 Jul – 30 Sep	[***]	9 Jul (8 days)	Due to the COVID-19, the government of Country S via its Bulletins of No. (3/2020) dated 07-04-20 and No.(5/2020) dated 24-04-2020, adopted a measure on the restrictions of export of rice, with aim to prevent critical shortage of rice which is an essential foodstuff in the national diet.

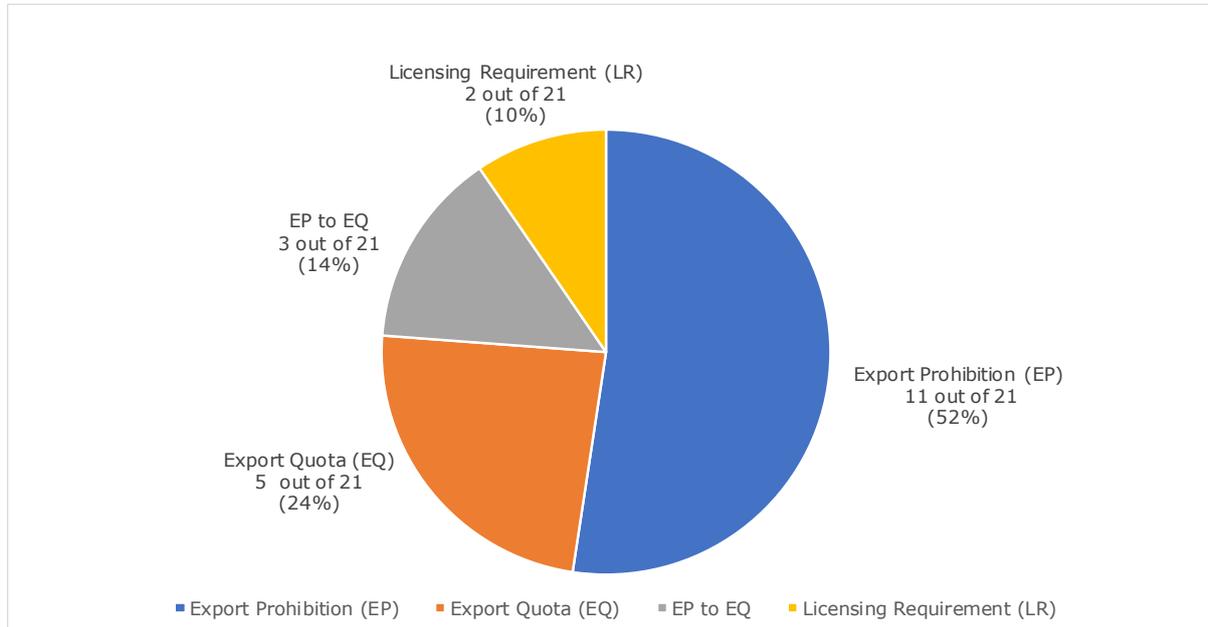
Country ¹	Products	Type of Measure ²	Duration	Notification ³ ER:1*** QR*	Date of ER:1 notification (days after starting date)	Description of "nature and justification" for the measure in ER:1 notifications
B, I, J, O and P as a regional economic alliance	Rye, Rice, Buckwheat, Vegetables, etc.	Export prohibition	12 Apr – 30 Jun	-	-	-
	Soybeans	Export prohibition	12 Apr – 12 Jun	-	-	-
	Sunflower seeds	Export licensing	12 Apr – 31 Aug	-	-	-

Notes:

- 1 Country C, P and Q are observers (non-WTO members).
- 2 "[***]" (***) in bracket in "Notification" columns means the second notifications on the same measure for extension.
- 3 Country A, G and N have changed the initial export prohibition to the export quota at some point, as indicated in "Type of Measure" columns.

3.2. Of those 21 measures, 11 measures are export prohibitions, five measures are export quotas and two measures are licensing requirements, and three measures have been instituted as export prohibition and then changed to export quota (see Figure 1). Export prohibitions, which account for 52% of all the measures, occupy the first place.

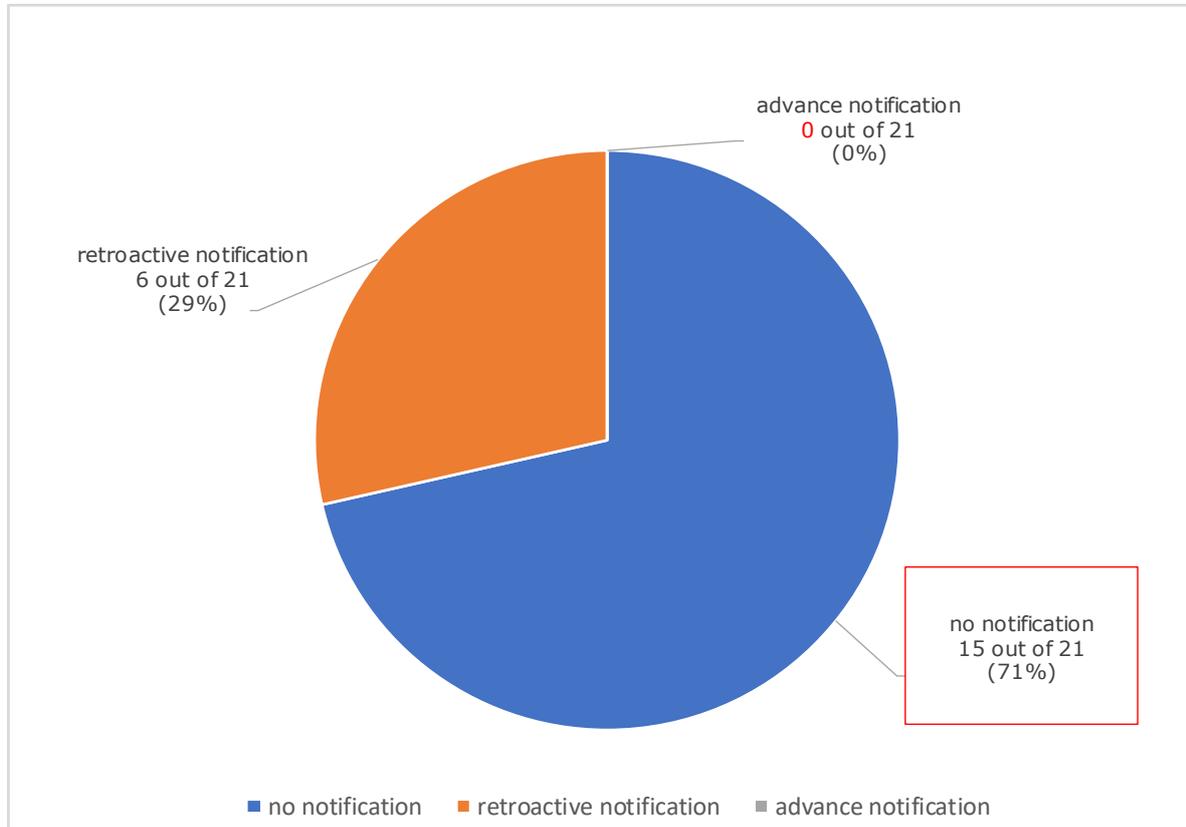
Figure 1 – Types of export restrictive measures



3.3. Most of the measures were instituted with a specific duration (indicating end dates of the measure) while some extended the duration before the end of the period. The average duration of the measures setting the end date is approximately 130 days while two measures did not specify an end date. It is observed that one third of the measures has not been withdrawn and that the durations of some measures are indicated to go beyond the end of 2020 (see Figure 2, next page).

3.4. First, it should be pointed out that ER:1 notifications have been made so far for only six out of 21 export restrictive measures (six out of 16 Members). Article 12 of the AoA requires Members to make notifications unless the measure was taken by a net-food importing developing country of the specific foodstuff. In addition, there were no advance notifications even though the said article sets out the timing of the notification "as far in advance as practical" (see Figure 3).

Figure 3 – Present state of ER:1 notifications



3.5. Regarding the six notifications made so far, even though limited in numbers, major observations are illustrated below (see also the far right column of Table 1). As a whole, the information available from the notifications is limited in terms of the nature and justification of the measure, as provided in document G/AG/2.⁷

- The type of the measure is not shown: *Country S*.
- No clear justification on how the measure fulfils the conditions provided by GATT Article XI.2(a):⁸ *Country A, B, D, H, N, S*.

3.2 FINDINGS FROM RESPONSES BY MEMBERS AT THE COVID-19 SPECIAL MEETING OF THE COA

3.6. In the following paragraphs, some typical phrases/sentences selected from the responses by Members obtained mainly from the AG-IMS are illustratively quoted and categorized according to the relevant provisions of the GATT/AoA. Some other information such as that from ER:1 notifications are also used where needed.

⁷ A duplicate of the current format of ER:1 notification (included in document G/AG/2) is attached as an Annex to this paper for reference.

⁸ General Agreement on Tariffs and Trade (GATT) Article XI.2: The provisions of paragraph 1 of this Article shall not extend to the following:

(a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party; [...].

GATT Article XI.2(a)

The provisions of paragraph 1 of this Article shall not extend to the following:

- (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party; [...]

"temporarily applied" (Article XI.2(a), GATT)

3.7. A Member has explained that a measure has been **temporarily applied** and will be withdrawn as soon as the market situation is back to "normal" and domestic reserve is "guaranteed" but its actual criteria of termination of the measure is not necessarily clear for other Members:

"Ministerial Decision No. x is strictly temporary and will be in force until the situation regarding the national supply of red beans returns to normal and domestic reserves can be guaranteed." [Country F]

3.8. It is noted that, as of today, many of the Members have withdrawn the export restrictive measures instituted in relation to the COVID-19 pandemic. However, it should also be noted that one third of the export restrictive measures are still maintained and some measures are likely to go beyond the end of 2020 (see paragraph 3.3 and Figure 2).

3.9. A Member decided to make a second ER:1 notification when it was decided to continue the measure longer than the original duration. With the second notification, a new end date has been provided (see Table 1 and Figure 2):

"The measure on rice exports is temporary applied for a certain limited period of two months (1 May 2020 - 30 June 2020)" (Note: On 10 July 2020, extended duration has been notified.) [Country S]

"critical shortages" (Article XI.2(a), GATT)

3.10. Some Members seemingly provide only a qualitative explanation to justify that there are **critical shortages** of the product concerned in the exporting Member without showing the current status and/or prediction of supply and demand:

"The extraordinary measures that virtually all countries have adopted to mitigate the effects of the COVID-19 crisis have led to high volatility and speculation regarding basic foodstuffs and staples, which carries a real risk of critical shortage of these products." [Country F]

"The restrictions on movement and the shutdown of virtually the entire economy to mitigate the impact of the pandemic increase the risk of shortages of essential foodstuffs generally, and rice in particular." [Country S]

3.11. Some other Members seemingly provide more quantitative explanations to demonstrate how the product concerned is (or possibly will be) in short supply:

"On 2 April 2020 [Country H] decided to introduce the export prohibition on buckwheat, which took effect on 9 April 2020, after in late-March three major exporters of this product to [Country H] [xxx, xxx, xxx: plural country names other than Country H] had imposed export prohibitions on buckwheat. These three countries account for about 100% of [Country H's] total buckwheat imports, which are projected to meet about 18% of the domestic consumption needs in 2019/2020 marketing year." [Country H]

"essential" products (Article XI.2(a), GATT)

3.12. Some Members seemingly provide only qualitative explanations to justify that the product concerned is **essential** to the exporting country:

"Rice is an essential foodstuff of every xxx (nationality)" [Country N]

"Lemon is an essential product for daily consumption. Moreover, it is also used as raw material for the production of cologne, sanitizer and household cleaners. Because of the COVID-19 pandemic, need for cleaning and hygiene has increased." [Country L]

3.13. In contrast, some other Members seemingly provide an appropriate rationale to demonstrate why the product concerned is essential to the country in a quantitative way:

"[Country A] is net importer of wheat and meslin, and wheat flour, as essential food products. In the past five years, [country A's] import each year reached to approx. 86.000-100.000 tons wheat and meslin and 45-55.000 tons wheat flour. On the other hand, the export of [Country A] is very limited, where as in quantities of wheat and meslin is approx. 1.000-3.000 tons and wheat flour 1.000-8.000 tons." [Country A]

AoA Article 12.1(a)

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:

- (a) the Member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing Members' food security;

Due consideration to importing Members (Article 12.1(a), AoA)

3.14. A Member explains the measure was instituted with **due consideration** to importing Members but it is not necessarily clear what kind of consideration has been given:

"During this time, [Country N] did consider the effects on WTO Members that import rice from [Country N] so that reasonable adjustment to rice exportation could be made." [Country N]

AoA Article 12.1(b)

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:

- (b) before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.

Notification obligation (Article 12.1(b), AoA)

3.15. Some Members which have not made notifications seemingly do not provide clear explanations why **ER:1 notification obligation** has not been fulfilled:

"The information on the quota utilization was publicly available on the website of the Ministry of Agriculture of [Country I]." [Country I]

"[Country L] has already shared the related information on this temporary measure through the WTO Trade Monitoring Mechanism and will continue its efforts to provide necessary information to ensure transparency." [Country L]

AoA Article 12.1(b)

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:

- (b) before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.

Information included in notification (Article 12.1(b), AoA)

(See paragraph 3.5 of this paper for this topic.)

AoA Article 12.1(b)

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:

- (b) before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.

Providing necessary information to other Members upon request (Article 12.1(b), AoA)

3.16. A Member claims that its attempt **to request relevant information** from an exporting country that imposes export restrictive measure has been disregarded:

"[...] [Country H] had sent a detailed request to [xxx (country name other than Country H)] aiming at obtaining relevant information on the measure in question. [...] Moreover, in early April, [Country H] had sent a request through its Permanent Mission to Geneva to obtain relevant information from [xxx] regarding the implemented export restrictions measures, but it had not yet received any response. [...]" [Country H]

AoA Article 12.2

2. The provisions of this Article shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.

Exemption from notification obligation (Net-food importer) (Article 12.2, AoA)

3.17. The criteria for the **exemption from the provisions of Article 12 of the AoA** seem ambiguous. For instance, a case has been found where a developing country Member claiming that it is a net-importer of the product concerned might be a net exporter according to the statistics made available by the FAO. This might not be immediately taken as a contradiction. However, it can be pointed out from this case that it is difficult to determine whether a developing country Member is a net importer or net exporter unless relevant information is provided to other Members:

"[Country G] is a net importer of the product concerned and is exempt from reporting to the CoA." [Country G]

4 QUESTIONS CONCERNING THE DISCIPLINES OF EXPORT RESTRICTIONS

4.1. Shown below are the questions concerning the current disciplines in export restrictions that might be derived from the findings provided in the previous sections, which could be referenced in further discussion by Members at the CoA-SS.

4.2. Questions in connection with GATT Article XI.2(a):

- a) Is it necessary to include **quantitative descriptions or data in ER:1 notifications** to explain why those products concerned are *essential* to the country?
- b) Is it necessary to include **quantitative descriptions or data in ER:1 notifications** to explain how there is a *critical shortage* of those products concerned?
- c) Is it necessary to set a **proper upper limit of duration** to ensure that the export restrictive measures are *temporarily applied*?

4.3. Question in connection with AoA Article 12.1(a):

- d) Is it necessary to include relevant information in ER:1 notifications to ensure that proper **due consideration for importing Members** has been made?

4.4. Questions in connection with AoA Article 12.1(b):

- e) Is the compliance by exporting Members in terms of the **notification obligation ("as far in advance as practicable")** satisfactory?
- f) Is it necessary to set a **mandatory deadline for advanced notifications**?
- g) Is a **further guideline⁹ for ER:1 notification** necessary? What other information needs to be included in ER:1 notifications?
- h) Is it necessary to set a **rule as to an exporting Member should respond to the request of necessary information**?

4.5. Question in connection with AoA Article 12.2:

- i) Is it necessary to provide **relevant information to determine whether a developing country Member is a net importer** (i.e. eligibility of exemption from notification obligation) of the product concerned?
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⁹ See Annex, a duplicate of the current format of ER:1 notification (included in document G/AG/2). It is observed that almost no guidance is provided for notifiers.

ANNEX

Format of ER:1 Notification (page 32, document G/AG/2)

G/AG/2

Page 32

Table ER:1

EXPORT RESTRICTIONS: name of Member

Notification under Article 12 of the Agreement: Export prohibitions and restrictions

(1) Description of product:

(2) Tariff item number(s):

(3) Nature of, and justification for, measure to be introduced:

(4) Duration of application of measure:
