

DRAFT

**System of mandatory sale through Tajik Universal Commodity Exchange
Rationale versus obstacles to trade**

Background

In addition to assisting in WTO accession efforts of Tajikistan, TFI focuses on supporting SME development by providing help in creating an enabling environment for growth through reducing various regulatory obstacles to trade and investment. Recently, TFI has interviewed a number of agricultural processing enterprises in Soghd oblast with an aim to identify administrative obstacles they face in exporting their products. The results of the survey showed that among other issues, exporters indicated obtaining permission from the Tajik Universal Commodity Exchange (TUCE) as a significant barrier to their exports. In this memo, TFI describes this requirement in light of impediments it creates, costs of compliance to business, rationale behind the introduction of the measure, its WTO compliance and provides some solutions.

The issue

Tajik government Resolution #237 of 08/05/2001 introduced mandatory sale through the TUCE of selected goods (See the table below). This requirement means that any person wishing to export or sell domestically goods listed in the resolution has to sell its goods through the TUCE. The formal aim of the resolution was to improve the promotion of domestic goods in foreign markets. It is difficult, however, to imagine how this requirement, that creates an additional burden on exporters, can promote exports of such goods. Rather, the system and its associated costs may be reducing the competitiveness of Tajik exports. The unofficial rationale was that, at the time the requirement was introduced, most enterprises were government owned and this measure was intended to avoid selling at artificially low prices with the difference being paid as “kick-backs” to directors and government officials. At the moment, since most enterprises have been already privatized, one could only reasonably assume that the real goal of this requirement now is to control export prices in order to avoid under-valuation for the purpose of illegal outflow of capital **an approach of “minimum price setter”, not “THE price setter” would have been more constructive** and/or to provide a source of revenue to an entity that has ceased to serve any real need. Exports and other sales are permitted if the price of the goods reaches the level of those traded at the TUCE. **The other useful function is to make sure sale proceeds are received – many sellers in Tajikistan were caught out shipping goods and never getting paid – however the TUCE approach is very blunt, and various financial instruments would allow a more sophisticated approach.**

List of raw materials and goods produced by the domestic commodity producers and subject to mandatory sale through the Tajik Universal Commodity Exchange

Goods nomenclature	Code according to the CIS goods nomenclature of the foreign economic activity
Vegetable materials (cotton linters)	1404
Tobacco and industrial tobacco substitutes	24
Ores and ashes	26
Fluorine, chlorine, bromine, iodine	2801
Rare-earth metals	2805
Sodium Hydrate, etc.	2815
Pharmaceutical production	30
Explosives	3602, 3603
Raw hides and skins	4101, 4102, 4103
Silk	50
Fleece, fine and coarse wool	51
Cotton	52
Natural and cultivated pearls, precious and semi-precious stones,	71

Goods nomenclature	Code according to the CIS goods nomenclature of the foreign economic activity
precious metals, clad metals and different goods from them	
Ferrous metals and goods from them	72-73
Copper waste	7404
Nickel waste	7503
Aluminum goods	76
Lead waste	7802
Isolated wires, cables and other isolated electric wires with connecting parts or without them	8544

In addition, to these products listed above, apparently, the same requirement in practice is being applied to canned/jarred products, although, currently there is no legal authority exist for this.

Despite the rationale behind this requirement, its administration creates significant constraints to farmers and exporters, which are described below. Such commodities as cotton, and cotton linters, tobacco, hides and skins, silk, wool as well as canned food are of primary concern to SME's. Since these sectors are privatized, there is no longer need for price control measures.

Problem

- The requirement restricts exports of certain goods, thus violates WTO requirements;
- *Ad valorem* fees charged for sale through or obtaining conclusion paper, which increase with the increase of the value of the contract serve a revenue purpose rather than fee for a service rendered. [Cotton exporters are paying \\$10 per tonne under the table to receive contract conclusion](#)
- Permission is only issued at TUCE office in Dushanbe;
- Permission is required even for additional goods that are not listed in the Resolution # 237;
- [Causes delays in shipment](#)
- [is a should be a minimum price setter, not THE price setter](#)
- [the terms of shipment are far too restrictive and not adequately flexible](#)

Analysis

The Resolution requires that all export and domestic sales of the selected goods to be conducted through the TUCE. In reality, those traders who have entered into sales contracts outside the TUCE will have to approach the TUCE to obtain a "conclusion" paper (Zaklucheniye). Conclusion paper confirms that the sales price of the contract is equal to or higher [for cotton it is difficult to sell higher than the TUCE](#) than those currently traded ([approved would be a better word](#)) on the TUCE. A negative conclusion of the TUCE is a basis for refusing to approve the sale and the release for export by customs authorities. Therefore, effectively, all products subject to this requirement are prohibited from being sold by their actual contract price. In essence, this is a minimum price control scheme. This measure contradicts to the provisions of Article XI of GATT, which requires that, no restrictions other than duties, taxes and other charges on the importation and or exportation or sale for export of any product. During the course of Tajikistan's accession negotiations WTO members have already criticized these measures.

Commissions charged for trading at the TUCE are based on the value of the contract and thus increase with the value of the contract. In fact, the same commission is charged for issuing a conclusion paper for those export contracts that are traded *outside* the TUCE. Since this is a mandatory requirement for exporting, fees charged fall under the rules of GATT. Article VIII of GATT requires that fees charged should be limited to the cost of the services rendered. In the WTO practice, *ad valorem* fees are considered as not complying with this requirement.

All exporters and processing industries of these products shall obtain permission at TUCE. Process of obtaining permission requires multiple steps. In order to apply for permission, applicants should apply for documents from the National Bank and Tax authorities and pay a fee in both cases. According to the “process map” prepared by TFI (attached), procedures of obtaining permission take up to 10 additional days. Moreover, the complexity of the procedures creates a fertile ground for corruption. Businesses have to pay unofficial fees to speed up the procedures, which in most cases amount to 3 to 4 times the official fees. Cotton = \$10 / tonne = 140,000 tonnes = \$1.4M

This requirement is especially burdensome for traders that are based far from Dushanbe. Permissions are issued only at TUCE offices based in Dushanbe and to obtain the conclusion paper, exporters have to visit Dushanbe for each shipment. Moreover, applicants in Soghd oblast should approach TUCE representative office in Khujand first to get an initial approval. The Khujand office of TUCE charges a separate fee for a review of the applicant’s papers. Then they can apply for permission from the TUCE office in Dushanbe. This adds significant cost to traders in terms of time and money spent, especially to those of small and medium businesses.

Moreover, according to the results of the survey of exporters in Soghd oblast, this requirement is being applied to canned/jarred food products, which were not listed in the Resolution # 237. Previously, canned food products were eliminated from the list according to the World Bank recommendations but apparently is still being applied de facto. This practice is a clear violation of the law and obviously requires no further comments. With over 50 000 people employed, the sector of agricultural processing industries is an important part of the economy of Soghd oblast. Exports of canned food in 2004 were valued at USD 5.5 Mln.

Recommended solution:

The ultimate solution is that this requirement has to be eliminated as non-WTO compliant before the accession of Tajikistan to the WTO. At the very least, products not on the list in the Resolution should not be subject to TUCE approval or conclusion. This requirement puts a burden on all traders, including honest ones. Possible approach could be a gradual phase-out of this requirement by cutting the list of products subject to this requirement in stages, perhaps to only those of strategic importance to the government and which many SMEs do not trade in. If the government is concerned about undervaluing of official export contracts or capital flight, there are less trade restrictive and WTO-compliant methods. For example, the customs valuation principles and methods in the new Customs Code of Tajikistan could be used to determine values and to target and prevent dishonest traders seeking to undervalue their exports. However, the transactions themselves should be free and the prices freely agreed upon under market conditions. There simply should be no room for governmental interveners like the TUCE. At the end of the day, there would be no reason for capital outflow if proper and friendly business climate is established in the country.

Issuing letter/instructions by the Ministry of Revenues and delivering to all customs offices and officers should stop the practice of requiring these permissions.

TUCE conclusion for cotton has been a mechanism which avoided predatory pricing for cotton farmers – farmers who sell on a lint basis (estimated at about 50%), receive reasonable prices in the absence of a competitive buying market. This has been a useful role = if the TUCE was removed overnight, predatory pricing would be a problem. Suggested way forward:

1. deregulate domestic sales
2. consider the following TUCE reforms:

<p>The Ministry of Economy and the Cotton Exchange (TUGE) will amend its pricing and contract approval practices and will publicly announce these amendments. The amendments will be as follows:</p> <ol style="list-style-type: none"> 1. The TUGE will not reject any contract which: <ol style="list-style-type: none"> a) Specifies a price higher (but not lower) than the official price formula for the relevant delivery term. b) Specifies delivery on terms other than FOB (as long as they conform with “Incoterms” 2000) c) Specifies for the price of the cotton contracted to be fixed on the date of the signing of contract, so long as there is written and legally notarized agreement from the farmer or farming unit (who is the owner of the cotton to be shipped) to the price being fixed on the date of the signing of the contract. 	<p>Discussions to be held with Ministries of Economy and Finance and TUGE (medium)</p> <p>Ministry of Economy to develop an agreed set of discounts to cover shipment terms contained in “Incoterms” 2000</p>
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