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WTO REFORM - IMPROVING TRANSPARENCY AND NOTIFICATIONS IN THE WTO

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EXECUTIVE SUMMARY

The Twelfth Session of the Ministerial Conference held at Geneva in June 2022 agreed on a work programme that includes WTO reform. While the reform agenda remains to be spelt out formally past discussions give more than an inkling of the subjects that would figure in the discussions. The negotiating function, the dispute settlement function and the monitoring and surveillance of the WTO complete the set of three subjects that would constitute the heart of the talks on reform. Discussions on special and differential treatment of developing countries are also inevitable. This paper takes up the limited issue of transparency and notification, which is a subset of the broader area of monitoring and surveillance, that is likely to figure in the talks.

Draft General Council Decision

The debate on transparency and notification began in the WTO bodies in November 2018 with the circulation of a paper by a group of members under the leadership of the European Union, Japan and the United States, proposing a Draft General Council Decision to revive the Working Group on

Notification Obligations established originally in 1994 to undertake a review of notification obligations and procedures under various agreements in the area of Goods, and mandating it with the task to develop recommendations on improving compliance. The Draft already included suggestions for proposing measures to increase pressure on members for compliance with notification obligations in future. Among the suggestions made in the paper was that compliance should receive focussed attention during Trade Policy Reviews, that wider use of counter-notification should be permitted and that members missing the deadline should be asked to furnish an explanation for the delay. More importantly, the proponents suggested that tough administrative measures would be applied if the delay persisted to the second year after missing the deadline. These included debarring of representatives from nomination to preside over WTO bodies and payment of a penalty to the WTO budget. The idea was to ratchet up pressure further in the third year and eventually to designate the member concerned as an inactive member.

Discussions on the Draft General Council Decision

A large majority of developing countries strongly criticised the punitive approach underlying the administrative measures. They exhorted the co-sponsors to first address the challenges confronted by developing country members, going beyond technical assistance and capacity building, and look into aspects such as simplification of notification formats and longer time frames. The ideas of imposing financial penalties and broadening counter-notification were particularly repugnant to developing countries. They also opposed the suggestion to take up in Trade Policy Reviews the issue of compliance performance with notification requirements. An important point made by developing countries is that the Draft General Council Decision is lop-sided in confining attention to notification obligations only in the area of goods and ignoring the GATS and the TRIPS Agreement.

Discussions so far have been fruitful in that the co-sponsors have shown sensitivity to the criticism of the 'punitive approach'. In the 12th revision of the Draft General Council submitted in 2022 all suggestions for administrative measures have been dropped. Differences remain only on whether the Trade Policy Review Mechanism should take up the compliance issue during its deliberations and more importantly on whether the revived Working Group should expand the scope of its recommendations to include the notification obligations in the GATS and TRIPS Agreement. The latest Draft opens the door to the possibility of the scope of the Working Group's efforts being expanded to cover other WTO Agreements but does not settle the matter.

The GATS contains a number of notification requirements, including those under which very few if any notifications have been received. However, the GATS notification provisions on Transparency, Economic Integration, and Recognition (of education or experience in the context of licensing or certification for the authorisation of service suppliers) have been widely used during the period from 1995 to 2020. Developing countries may have a deeper interest in strengthening notification requirements for Transparency and Recognition as

these aspects are very relevant for access for Mode 4, which is a mode of particular interest to them. It would greatly help in clinching the issue in favour of developing countries sponsoring the proposal if they can identify areas in which members (both developed and developing country partners) have been found wanting in compliance with notification obligations relating to transparency and recognition.

In contrast to the multiple notification requirements in the GATS, the TRIPS Agreement has only one: Article 63 requires members to notify the laws and regulations on intellectual property rights covered by the Agreement. Developing countries have made a convincing case for enhancing transparency only in respect of Article 66.2 of the TRIPS Agreement which calls on developed country members to provide incentives to their enterprises and institutions for promoting transfer of technology to the least developed countries.

Among the demands made by developing countries the one relating to simplification of formats for notifications could make a big difference in improving compliance. The paper demonstrates by its analysis of the questionnaire on import licensing procedures and the format for notification of quantitative restrictions that some opportunity exists for reducing the complexity of formats by excising out details not related to the obligations of the relevant Agreement.

Situation on Compliance with Periodic Notification Obligations by WTO Members

The situation on compliance with notification obligations may be summarised as follows:

- Members that are in G20: In respect of agriculture notifications the compliance performance of the world's top economies in G20 is highly satisfactory over the period 1995-2020. For most countries the compliance percentage was 100 or in the high 90s. Outside agriculture, the performance of G20 countries is less impressive: in fact, there were pockets of poor compliance by a few countries such as Indonesia, Saudi Arabia, Mexico and South Africa in such areas as QRs and Import Licensing.

Compliance Percentages of Major Developed and Developing Countries

Member	Agri D1	Agri E1	AD	CVD	Subsidy	State Trading	QR	Import Licensing
Argentina	96	96	100	100	100	100	66	77
Australia	92	100	100	100	100	100	100	45
Brazil	100	100	100	100	100	66	66	50
China	100	100	100	100	100	83	83	77
India	100	73	100	100	100	66	83	77
Indonesia	100	92	100	100	75	83	0	50
Japan	100	100	100	100	100	100	83	86
South Africa	77	92	100	100	0	66	0	27
Mexico	100	100	100	100	100	16	16	41
Saudi Arabia	87	93	80	100	100	66	16	12
USA	100	100	100	100	100	100	68	72
EU	96	100	100	100	100	100	100	100

Source: WTO Doc G/L/223/Rev.26 and Rev. 30 (Compliance percentages are WTO Secretariat calculations for agriculture and the author's calculations for other areas).

- Other WTO members among the top 50 trading countries: The compliance performance of these members in respect of notifications in agriculture is outstanding except for three members, viz., Egypt, Kazakhstan and Ukraine. Outside agriculture, the fulfilment of notification obligations on QRs and Import Licensing appears to be a particular area of weakness. What is remarkable is that even in developed countries such as New Zealand, Norway and Switzerland the performance is below par on Import Licensing.
- Least Developed and island developing countries with tiny economies: The compliance situation of these countries is dismal. The situation on compliance of the notification obligation on QRs epitomizes the situation for these countries. In the last 10 years, out of 35 LDC members only six have made notifications in this area and as many as 29 have not made any notifications at all. Four out of the six LDC members that have made notifications have done so only once against six biennial notifications that have fallen due.

The Virtual Lack of Compliance with Notification Obligations of the Least Developed Countries over Several Important Agreements

Member	Agri DS:1	Agri ES:1	Subsidy	State Trading	QR	Import Licensing
Angola	0	4	0	0	0	0
Benin	8	0	0	0	0	0
Central African Republic	0	0	0	0	0	0.5
Djibouti	0	50	0	0	0	0
Guinea-Bissau	0	0	0	0	0	0
Liberia	0	0	0	0	0	0
Mauritania	0	0	0	0	0	0
Mozambique	0	0	0	0	0	0
Niger	0	0	0	0	0	0
Rwanda	0	0	0	0	0	10
Sierra Leone	0	0	0	0	0	0
Solomon Island	0	0	0	0	0	0
Tanzania	0	0	0	0	0	0
Yemen	0	0	0	0	0	0

Conclusions and Recommendations

In recent years, the compliance performance of the top 50 or so trading countries among WTO members has improved considerably and can be said to have been reasonably satisfactory. There remain one or two areas of weakness, such as import licensing and quantitative restrictions, in which a handful of members, including a few developed countries have fallen short. Simplification of notification formats could help to improve compliance particularly in these areas and the Working Group should give priority to this aspect. In any case, the problem needs to be addressed through normal discussion and dialogue within subsidiary Committees. There is no need for a drastic remedy.

However, the situation on compliance is dismal for LDCs, island developing countries and other members with small economies and limited administrative infrastructure. It is imperative for the Working Group to consider making a recommendation for reduction of the frequency of notifications for these members so that the obligations are commensurate with their administrative infrastructure. They could be required to submit periodic notifications in all areas after reasonably long intervals, such as once in five years. An alternative could be to require them to submit the periodic notifications only in the year when their TPR is taken up.