WTO REFORM- IMPROVING TRANSPARENCY AND NOTIFICATIONS IN THE WTO

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Abstract

Some initiatives in the ongoing debate on improving transparency and notifications as a part of talks on WTO reform seem to have been based on the false belief that compliance with notification requirements could be induced through threat of punitive action. Arguments made during discussions on the issue seem to have convinced the WTO membership that defaults in meeting the deadlines for notifications arise less from wilful neglect and more from the challenging complexity of the format of notifications and lack of capacity and paucity of resources in many developing countries. Even so, the assessment made by the author is that the compliance performance of the top 50 or so trading nations is reasonably satisfactory. It is mainly the LDCs, island developing countries and other developing countries with limited administrative infrastructure that have fallen short. The solution lies in simplifying the formats for the benefit of all members and lowering the bar on frequency of notifications for LDC members and other members with small economies and limited administrative infrastructure.

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WTO Reform - Improving Transparency and Notifications in the WTO

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1. Introduction

The Twelfth Session of the Ministerial Conference of the WTO held at Geneva from 12 to 17 June, 2022 agreed on a work programme that included WTO reform. The Ministers have not spelt out the reform agenda and these are expected to be developed in the General Council and other bodies over the coming months and years. However, there has already been a buzz on reform over the past few years both in the WTO and outside and we perhaps know the core of the agenda.

The first hint of some members beginning to think in terms of reform came at the Nairobi session of the WTO Ministerial Conference when there was a split in the views of members on how to address the Doha Development Agenda. While some reaffirmed their commitment to the Doha mandate others asserted that new approaches were necessary to achieve meaningful outcomes in future negotiations. The Nairobi Ministerial Declaration itself had a veiled reference to the alternative that at least some Ministers wished to consider, by noting that WTO Members had also reached agreements in plurilateral formats. The push for reform to bring plurilateral approaches within the embrace of multilateral trade negotiations became more assertive when, two years later, in December 2017, at the Buenos Aires Ministerial, large groups of members sponsored the Joint Statement Initiatives (JSIs) in four areas, viz., investment facilitation for development, domestic regulation in services, electronic commerce and MSMEs. In the following year, the European Union floated an informal paper proposing that in areas in which multilateral agreement was not achievable plurilateral negotiations could be pursued, open to all WTO members and applied on an MFN basis. These initiatives were the result of impatience among a substantial section of the membership over their inability to obtain positive results in multilateral negotiations and were the starting point for the idea of reform, covering initially the negotiating function of the WTO.

It was not long before the dispute settlement function got added to the agenda of WTO reform. About the middle of 2017 the US started blocking the filling up of vacancies in the Appellate Body as it argued that it was dissatisfied with the working of the Body. This caused great unease among the WTO members who feared that the Appellate Body was doomed if the US maintained its position as the strength of the Appellate Body got depleted with retirements. On December 10, 2019, the worst fears were realised and the Appellate Body became non-operational when two members of the Body retired and only one member was left in position, against the three required for a quorum. The unmaking of the Appellate Body unravelled a major achievement of the WTO whereby the dispute settlement procedure of GATT 1947 had been transformed into a binding mechanism. Most WTO members perceived it as a major adverse development in the world trading system. The restoration of the Appellate Body was not only added to the agenda of WTO reform but put at the very top. At the Twelfth Ministerial Session the Ministers have committed themselves 'to conduct discussions with a view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024.'

The monitoring and surveillance function of the WTO, of which transparency and notification is a subset, completes the trinity of subjects placed high on the agenda of WTO reform by many members. A joint statement issued at New York on 25 September, 2018, by the Trade Ministers of the European Union, Japan and the United States identified the monitoring and surveillance function of the WTO as a priority. They picked out transparency and notification for accelerated action and even agreed that they would co-sponsor a proposal on the subject. Pursuant to this agreement these members led the initiative to propose a Draft General Council Decision to enhance transparency and strengthen notification requirements under WTO Agreements.[1] The Draft General Council Decision has been under

1 JOB/GC/204; JOB/CTG/14 1 November 2018, Proposal to enhance transparency and strengthen notification requirements under WTO Agreements-Communication from Argentina, Costa Rica, the European Union, Japan, the separate customs territory of Taiwan, Penghu, Kinmen and Matsu, and the United States.

consideration at meetings of the Council for Trade in Goods (CTG) and the General Council (GC) since then. In the beginning, a wide gulf separated the thinking among developing and developed country members on the suggestions made for enhancing transparency but there has been a remarkable progress towards convergence and small number of issues remain outstanding.

There have also been strong initiatives from developing and developed members alike to bring special and differential treatment of developing countries (S&DT) into the reform talks. Developing countries want that the S&DT provisions, which are generally hortatory in nature, should be changed into legally enforceable commitments. On the other hand, developed countries have proposed that S&DT provisions should allow differentiation among developing countries and graduation of those among them that are classified as high income by the World Bank or that have a relatively high share of global exports of merchandise. In particular, they propose to end the practice whereby individual countries are designated as developing countries on self-election basis.

Of the four possible topics outlined above that may figure in the future talks on WTO reform, ICRIER has already contributed working papers on three, viz. restoration of the Appellate Body[2], acceptance of the plurilateral approach for multilateral liberalisation[3] and Special and Differential Treatment (S&DT) of Developing Countries[4].

This paper takes a closer look at transparency and notification, which is, as noted above an important subset of the fourth item on the agenda for WTO reforms, namely monitoring and surveillance, and on which, as mentioned above, the European Union, Japan and the United States have submitted a Draft General Council Decision[5]. Section 2 outlines the proposals in the Draft General Council Decision and describes the main points that have emerged in the debate in the CTG and GC. Section 3 examines in depth the situation on compliance by members with notification requirements, relying on the data published annually by the WTO Secretariat Documents in the series G/L/223. On the basis of the analysis of the compliance situation and the arguments presented in the debate on the proposal for the General Council Decision Section 4 draws up suggestions on the Way Forward.

2. Draft General Council Decision on Procedures to Enhance Transparency and Strengthen Notification Requirements under the WTO Agreements

The draft Decision, as originally proposed, envisaged bringing increased pressure to bear on Members in order to induce them to comply with notification requirements under the Agreement on Agriculture, eleven non-tariff measure agreements, the Understanding on the Interpretation of Article XVII of GATT 1994 and the Decision for Notification Procedures for Quantitative Restriction.

The Draft seeks to revive the Working Group on Notification Obligations and Procedures originally established in the 1994 Ministerial Decision to undertake a review of notification obligations and procedures under the Agreements in Annex 1A of the Marrakesh Agreement. The objective is to mandate the Working Group to develop recommendations on improving compliance in consultation with the WTO Committees, other WTO bodies and the WTO Secretariat. While the Working Group's suggestions will be taken up once they are available, in the meantime the draft proposed adoption of the following additional measures:

1. With effect from 2019, in all trade policy reviews there will be specific focus in a standardised manner on the concerned member's compliance with notification obligations.
2. Counter-notifications will be allowed for all notification obligations including those in respect of which they are not envisaged at present.
3. For all notifications in which a member misses the deadline it would be required to furnish an explanation for the delay, with information on the expected time frame for eventual compliance and any element of a partial notification that the member can provide.

More importantly, in order to rachet up further

2 ICRIER Working Paper 403, January 2021, WTO Appellate Body in Crisis: The Way Forward.
3 ICRIER Working Paper 415, January 2023, Supporting Open Plurilateral Negotiations for Multilateral Liberalisation of Trade.
4 ICRIER Working Paper 406, October 2021, Issues in Special and Differential Treatment.
5 See Footnote 1.

pressure to achieve compliance, the proponents proposed a set of tough administrative measures in the Draft General Council Decision, to be applied on the member concerned, from the beginning of second year after missing the deadline set for submission of notification. These measures, which are somewhat on the lines of the practice in the WTO for members in arrears in the payment of assessed financial contribution[6], are outlined below.

(i) Representatives of the members concerned will be debarred from nomination to preside over WTO bodies;

(ii) Questions asked by the member during Trade Policy Reviews of other members will be ignored;

(iii) The member will be required to pay to the WTO budget a supplement to be fixed as a proportion of its normal assessed contribution;

(iv) The Secretariat will be asked to report to the CTG every year on the existing status of the member's compliance with notification obligations;

(v) The member will also be subject to specific reporting at the General Council meeting.

Pressure is proposed to be escalated on non-compliant members from the beginning of the third year of missing the deadline with the application of the following additional measures.

(i) The member concerned will be designated as an inactive member;

(ii) Representatives of the member will be given the floor in formal meetings after all other members;

(iii) When the member takes the floor in the General Council it will be identified as an inactive member.

A significant aspect of the Draft General Council Decision is that the scope of the proposals is limited to specified Agreements and instruments related to the Multilateral Agreements on Trade in Goods[7]. It is relevant to mention here that the Ministerial Decision taken at the end of the Uruguay Round itself required the Council for Trade in Goods to limit the review of notification obligations and procedures to the Agreements in Annex 1A of the WTO Agreement. The Decision did not mandate similar action in respect of Agreements under other Annexes. This may have been due to the fact that the latter agreements covered totally new areas such as trade in services and intellectual property rights and WTO members may have wanted to tread softly the new ground they were entering and get implementation of the agreements going first. The situation was different in goods which was already covered by disciplines in the GATT 1994 that included pre-existing notification obligations. However, as we shall see in the account of subsequent discussions in the General Council given below differences have persisted among developed and developing countries on the scope of the mandate proposed for the revived Working Group on Notification Obligations and Procedures.

2.1 Discussions on the Draft General Council Decision

The Draft has been subject to intense criticism in the CTG and the General Council by developing country members. The following are the main points made by developing countries in opposing the Draft:

- The punitive approach underlying the proposed 'administrative measures' in the Draft General Council Decision is inappropriate as in most cases non-compliance with notification obligations is due to constraints on capacity and resources.
- The approach should rather be to examine these constraints and consider ways to improve the capacity of developing countries to fulfil the notification obligations. The challenges confronted by developing country members need to be addressed, going beyond technical assistance and capacity building. For instance, simplification of notification formats and longer time frames for notification need to be looked into.
- One of the challenges pointed out by developing countries is coordination among different agencies of the government concerned with implementation policies covered by the WTO Agreement, which are exacerbated by the turnover

6 WT/L/156/Rev.3, Financial Regulation of the World Trade Organization

7 The Draft General Council Decision initially covered the Agreement on Agriculture, Agreement on Anti-Dumping, Agreement on Subsidies and Countervailing Measures, Agreement on Safeguards, Agreement on Customs Valuation, Agreement on Import Licensing Procedures, Agreement on Rues of Origin, Agreement on Preshipment Inspection, Agreement on Trade Related Investment Measures, Agreement on Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, Understanding on the Interpretation of Article XVII of the GATT 1994 and Decision on Notification Procedures for Quantitative Restrictions. In the revised version the Agreement on Trade Facilitation was added.

in staff.

- Developing countries have argued that rather than proposing disincentives for non-compliance which would add burden and prove to be counter-productive, incentives should be provided for improvement in compliance.
- The idea of imposing financial penalties and the suggestion to broaden the use of counter-notification are particularly repugnant to a large majority of developing country members
- It has been suggested that the proper course to follow is to first look at the problem in depth in the Working Group and make a comprehensive assessment of the reasons for certain members to fall behind in complying with notification obligations and then only devise steps necessary to put a check on wilful non-compliance
- A strong criticism by developing countries is that the proposals are lop-sided in being limited to the notification obligations in the area of goods and ignoring the General Agreement on Trade in Services and the Agreement on Trade Related Aspects of Intellectual Property Rights
- The suggestion to utilise the Trade Policy Review reports to provide leverage to enforce compliance with notification obligations is also unacceptable to developing countries
- LDCs and island developing countries with small administrative infrastructure did not have the resources required to comply with complex notification obligations

It must be observed that the co-sponsors have responded favourably to the comments of developing country members and progressively accommodated many of them in their suggestions in 12 revised versions of the original Draft. By the time JOB/GC/204/Rev.12; JOB /CTG/14/Rev.12 was circulated the proposals made in the Draft General Council Decision had een drastically altered, virtually eliminating all the pain points for developing countries. Most importantly, the 'administrative measures' criticised for the underlying punitive approach have been fully withdrawn. The proposal for financial sanctions is also gone. In fact, the proposal on financial penalties was removed in one of the earliest revisions as the co-sponsors recognised the validity of the criticism that the measure was disproportionate in the context of achieving the objective of compliance with notification obligations. Further, there is no longer any encouragement for the use of counter-notification although it is possible that members will continue to take recourse to reverse notification where it is already permissible in the rules. The proposed broadening of counter-notification has, however, been given up.

There is another important aspect on which there is progress. Although the original Draft General Council Decision required the Working Group to consider both systemic and specific improvements that can help in improving compliance with notification obligations the focus was on measures needed to enforce the notification obligations and it was for this reason that high priority was initially given by the co-sponsors to 'administrative measures' which were vehemently decried by developing country members in the discussions. There was great emphasis no doubt on technical assistance and capacity building but no reference to examining the difficulties confronted by developing country members in fulfilling their obligations, such as complexities in the notification formats and burdensome notification frequency. The 12th version of the Draft makes good this deficiency by specifically suggesting that the Working Group would identify introduction of simplified notification formats and also look at reporting requirements.

At least two important differences remain, however. There is no change in the proposal to involve the Trade Policy Review Body in the effort to improve compliance with notification obligations. The 12th revision of the proposed General Council Decision retains the language of the original proposal in JOB/GC/204; JOB/CTG/14 in mandating the General Council to instruct the TPRB 'to ensure that within one year of this Decision all trade policy reviews include a specific, standardised focus on the Member's compliance with its notification obligations under the agreements listed in paragraph 1'. In fact, the latest version adds that the Secretariat 'shall include within Secretariat reports specific information on notification compliance by the Member'.

On the contentious issue of scope of the Draft General Council Decision a small step has been taken towards convergence. It is proposed in the 12th revision that the General Council 'may consider expanding the efforts of the Working Group to other WTO Agreements, Understandings and Decisions'. However, one cannot consider the issue as settled as reaching a consensus on the expanded coverage will not be easy. In the discussions in the General Council, developing country members, particularly big players like India and China, have proposed that the mandate of the Working Group should cover

services and intellectual property rights as well. This is perhaps the most important issue that remains to be settled in the talks for WTO reforms in the area of transparency and notifications. In this connection we consider it relevant to look at the existing notification requirements, if any, in the GATS and the TRIPS Agreement.

2.2 Existing Notification Requirements in GATS and TRIPS Agreement[8]

2.2.1 Notification Requirements in the GATS

Transparency: Article III:3 requires prompt (and at least annual) notification of the introduction of any new laws, or any changes in existing laws that have a significant effect on trade covered by specific commitments. Up to the end of 2022, there have been 772 notifications covering 84 members. Article III:5 permits counter-notification of measures taken by any other members, which it considers to have an effect on the operation of the GATS. There has been only one notification under this provision in 2012 by Norway about a measure adopted by Thailand on broadcasting.

Economic integration: Article V of the GATS permits WTO members to enter into economic integration agreements with parties to such an agreement. If in the course of concluding an economic integration agreement a member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its GATS Schedule, Article V:5 requires it to provide a notification, 90 days in advance. So far, three notifications have been received under this Article, all from the EU concerning its enlargement.

Article V:7 (a) requires members to promptly notify to the GATS Council any economic integration agreements to which they are parties, as well as any enlargement or significant modification of such agreements. As might be expected, this provision is used widely by members and as many as 216 have been received up to December 2022.

Recognition: Article VII of the GATS deals with the question of recognition of education or experience, requirements, licensing or certification in a particular country for the purposes of fulfilment of standards or criteria for the authorisation, licensing or certification of service suppliers. Such recognition is granted autonomously or on the basis of an agreement or arrangement with the country concerned.

There are three notification requirements relating to recognition. First, within 12 months of the entry into force of the WTO Agreement for a member it is required to notify its existing recognition measures to the GATS Council. Second, Members are required to give advance notice to the GATS Council of the opening of negotiations on an agreement for recognition. Third, members are required to inform the GATS Council when it adopts new recognition measures or significantly modifies existing ones. Up to December 2022, 95 notifications have been received from 46 members.

The provisions in the GATS on transparency (Articles III:3 and III:5), economic integration (Articles V:5 and V:7(a)), and recognition (Articles VII:4) can be considered as important as notifications under these provisions have been received regularly during the period from 1995 to 2022. There are a number of other provisions requiring notification but very few notifications, if any, have been received under these provisions. These provisions relate to labour market integration agreements, monopolies and exclusive service suppliers, emergency safeguard measures, safeguards to the balance of payments, security exceptions, modification of Schedules, termination of MFN exemptions and use of public telecommunication transport networks and services.

Developing countries may have a deeper interest in strengthening notification requirements under Article III:3 and Article VII of the GATS as these provisions are very relevant for access for Mode 4 and there is great sensitivity in developed country members in respect of trade in this Mode. In respect of Annex 1A Agreements developed country members have pointed out gaps in compliance with notification requirements as the basis of their proposal for strengthening. It would greatly help if similarly developing country members could identify areas in which developed or developing country partners have been found short in complying with notification requirements in respect of transparency and recognition.

8 For the data on the number of notifications received in various categories we draw on the informal Secretariat note (JOB (09)/10/Rev.13).

2.2.2 Notification Requirements in the TRIPS Agreement

In contrast to the GATS, which is replete with notification requirements, the TRIPS Agreement has only one. Members are required to notify to the TRIPS Council the laws and regulations on intellectual property rights covered by the Agreement. In fact, in order to minimise the burden on members, Article 63.2 of the Agreement permits the Council to waive this obligation to notify laws and regulations to the Council, if consultations with WIPO on the establishment of a common register are successful.

In the debates in the General Council, India has referred to Article 66.2 of the TRIPS Agreement which calls on developed country members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to the least-developed countries. At present there is no obligation on developed country members to notify action taken by them pursuant to the mandate contained in this provision. If members agree to a notification requirement it would certainly help to put some moral pressure on developed country members to take steps to comply with this provision.

Another suggestion made by India is about notification of genetic resources used for grant of patents. In response to this suggestion, it is likely that developed countries would point out that access to genetic resources is not a subject covered by the provisions of the TRIPS Agreement and that the Convention on Biological Diversity (CBD) is the appropriate international agreement providing the framework for handling of genetic resources. However, it can be argued that while discussing enhancement of transparency in the context of patents it would be pertinent to discuss disclosure or notification of genetic resources that have been utilised for the development of patents.

It needs to be observed also that developed country members are the main owners of intellectual property rights the world over and developing country members are the main users. Any generalised push for strengthening of TRIPS obligations, including notification requirements, is likely to benefit the owners rather than the users of intellectual property rights. Specific issues such as Article 66.2 or disclosure of genetic resources utilised for development of patents are perhaps the only instances in which the strengthening of notification requirements may benefit developing countries.

2.2.3 Simplification of Notification of Formats

An important suggestion of developing countries is that instead of devoting their energy only to enforcing compliance members must look at the problems from the perspective of developing countries. There appears to be agreement among members on this issue and the Draft General Council Decision (12th revision) specifically provides that the Working Group on Notification Obligations and Procedures would hold consultations inter alia on introducing simplified notification formats. Some of the formats are very long and detailed: the format on Quantitative Restrictions is of 9 pages and the Questionnaire on State Trading of 8 pages. One cannot say that any specific element in the approved formats is unnecessary or unjustified, but if one looks at them from the perspective of reducing the workload on notification some elements that are included in the existing formats could be considered for exclusion. In this context, the comments made below on the formats for the Questionnaire on Import Licensing Procedures (WTO Document G/LIC/3 Annex) and Notification of Quantitative Restriction (G/L/59/Rev.1) are relevant. These comments are illustrative, not exhaustive.

2.2.4 Questionnaire on Import Licensing Procedures

By way of a general comment it may be mentioned that the questionnaire seems to be somewhat outdated. It was originally circulated as GATT 1947 Document L/3515 of 23 March 1971 and subsequently approved by the WTO Committee on Import Licensing at its meeting on 12 October 1995 without any substantive change. As a result it reflects the practices prevalent among contracting parties to the GATT 1947 about 50 years ago. For instance, there are questions about bilateral quotas and export restraint arrangements which were important practices under the Multi Fibres Agreement which is no longer in force. The questionnaire needs to be revised to reflect current practices. Further, the questionnaire can be simplified considerably if questions are framed separately for automatic and non-automatic licensing.

The following questions in the Questionnaire can be considered for being dropped for the reasons mentioned in italics:

Question 4- 'Have alternative methods of accomplishing the purposes been considered and if so, which? Why have they not been adopted?' *The question is not related to any obligation in the Import Licensing Agreement.*

Question 6 (j) 'In cases where imports are allowed on the basis of export permits only, how is the importing country informed of the effect given by the exporting country to the understanding between the two countries.' *This would seem to be an unnecessary detail, not related to any provision of the Import Licensing Agreement.*

Question 19- 'Is foreign exchange automatically provided by the banking authorities for goods to be imported? Is a license required as a condition to (sic) obtaining foreign exchange? Is foreign exchange always available to cover licenses issued? What formalities must be fulfilled for obtaining the foreign exchange?' *The questions are not related to any obligation of the Import Licensing Agreement.*

2.2.5 Format for Notification of Quantitative Restrictions

There are two Sections in the Questionnaire, Section 1 on the list of quantitative restrictions that are currently in force and Section 2 on cross-reference to other WTO notifications with information on quantitative restrictions currently in force. Section 1 elicits complete information on each QR including the WTO justification. The cross-reference in Section 2 is to give to the member concerned an opportunity to furnish information missed out in Section 1, but which has been included in the notification in specific areas such as agriculture, balance of payments, safeguards, import licensing etc.

It may be observed that instead of adding Section 2 members should be advised to check beforehand that no information included in the subject specific notification has been missed out in Section 1. If this is agreed there will be no need for Section 2 and the format of QR notification will be considerably simplified. In taking the final decision on deleting Section 2 from the format members should take into account recent experience in this regard. In how many cases have members needed to furnish substantial information in Section 2.

3. Situation of Compliance of Notification Obligations by WTO Members in the Area of Goods

Without doubt transparency is one of the important obligations of the WTO Agreement and unless individual Members comply with their notification obligations other Members cannot keep track of substantive compliance of the rules by the member concerned. But before we look at the situation on compliance, we need to take an overview of the obligations.

In general, there are three types of notification requirements: first, those that are required on a periodical basis, semi-annual (e.g. anti-dumping or countervailing duty actions), annual (e.g. questionnaire on import licensing), biennial (e.g. new and full notifications on subsidies and state trading ; second, those that are needed to be made only on a one-time basis (e.g. laws, regulations and administrative procedures implementing various NTM agreement, including the names of authorities competent to initiate action or conduct investigations for anti-dumping, countervailing or safeguard actions, or to serve as enquiry points on SPS measures); and third, those that are to be provided only on an ad hoc basis when a certain action is taken, such as to propose SPS regulation whenever an international standard, guideline or recommendation does not exist. WTO members that have not enacted anti-dumping or countervailing duty legislations, and therefore do not contemplate imposing measures under them, may make a one-time notification indicating the position. Once they have made such a notification, they are not required to make any regular periodic notification that they have not imposed any anti-dumping or countervailing duty unless there is a change in position.

For agriculture, the WTO Secretariat not only reports every year whether the notification has been made by the member concerned but also calculates the percentage of compliance during the period of report in respect of periodic notifications. For notifications pertaining to areas outside agriculture the Secretariat publishes a factual report, giving the latest information on compliance with each notification requirement, whether semi-annual, annual, or biennial. The latest Secretariat report (G/L/223/Rev.30) gives the picture as of 31 December, 2022 for the period 1995-2021. In the Tables below we use the compliance percentage in agriculture calculated by the WTO secretariat report, and for areas outside agriculture, we calculate the percentage of compliance ourselves, based on the data given in the Secretariat report.

In the paragraphs that follow, we undertake an assessment of the compliance performance of members in fulfilling notification obligations, separately for agriculture and non-tariff measures. Further, instead of lumping together all WTO members for compliance performance, we found it useful to make the evaluation for compliance performance of members in four separate groups,

namely, developed and emerging country WTO members of G20, other WTO members that lack the stature of G20 member but are nevertheless important trading nations, LDCs and island developing countries. In the second group we have included those WTO members that are among the 50 top exporting countries as well as among the 50 top importing countries in world merchandise trade, according to the WTO Statistical Tables in World Trade Report 2022. In including in the second group WTO members that are among the top 50 both as importer and exporter we believe that we have constructed a category of top trading countries just below the G20. We label them 'Other Important Trading Countries'.

3.1 Compliance with Notification Requirements in Agriculture

There are in all 12 notification requirements in the Agreement on Agriculture but the Member-wise liability varies, depending upon the specific commitments undertaken. There are only two notifications that all members must undertake, DS:1 on Domestic Support and ES: I on Export Subsidies. To keep the narrative short, we analyse compliance by WTO members only with respect to these two important notification requirements, which may be deemed to reflect the WTO member's overall performance in compliance with periodic notification requirements in agriculture.

Table 3.1 shows the picture of compliance for the top trading nations that are members of the WTO, both developed and developing. In this table we list all members of the G20, leaving out those that are member states of the European Union (France, Germany, Italy and the UK), and whose trade is already counted in the trade of the Union. In the first column for both DS:1 and ES:1 we show the performance from the entry into force of the WTO Agreement up to 2017, when concern was first raised in the WTO bodies about underperformance in compliance by some members. Then, to enable members to judge whether there has been any improvement in compliance in a more recent period, we show the performance over the period that extends right up to 2020.

Table 3.1: Compliance of WTO Members in G20 with Periodic Notification Obligations in Agriculture (Percentage)

Sl. No.	Member	DS:1		ES:1	
		1995-2017	1995-2020	1995-2017	1995-2020
1	Argentina	87	96	87	96
2	Australia	96	92	100	100
3	Brazil	96	100	100	100
4	Canada	87	92	91	100
5	China	91	100	100	100
6	India	96	100	65	73
7	Indonesia	100	100	100	92
8	Japan	87	100	100	100
9	Republic of Korea	74	92	83	96
10	Mexico	100	100	100	100
11	Russia	83	100	100	100
12	Saudi Arabia	50	87	58	93
13	South Africa	87	77	96	92
14	Turkey	65	85	0	65
15	USA	96	100	91	100
16	EU	91	96	96	100

Source: WTO Document G/L/223/Rev.26 and Rev.30(Calculations of compliance percentage are of the WTO Secretariat)

Looking at the performance reflected in Table 3.1 above we have reasons to be satisfied with the compliance with the notification obligations of the top economies among WTO members in agriculture. Some might draw attention to less than satisfactory compliance by India and Turkey with respect to ES:1. However, it must be underscored that the compliance percentage of Turkey on ES:1 has improved strongly, while India also recorded some improvement over the more recent period. Among the remaining members

listed in this Table an overwhelming majority have a compliance performance of 100 or in the high nineties.

Table 3.2 shows the compliance performance on notification requirements in agriculture with respect to the second group that we have labelled 'Other Important Trading Countries'. Here too, we find the compliance performance of WTO members to be outstanding in overall terms, except for three members viz., Egypt (in respect of ES:1), Kazakhstan (for DS:1) and Ukraine (for DS:1).

Table 3.2: Compliance by 'Other Important Trading Countries' with Periodic Notification Obligations in Agriculture (Percentage)

Sl. No.	Member	DS:1		ES:1	
		1995-2017	1995-2020	1995-2017	1995-2020
1	Chile	91	100	91	100
2	Egypt	70	62	17	15
3	Kazakhstan	0	0	50	100
4	Hong Kong China	100	100	100	100
5	Malaysia	87	81	96	96
6	New Zealand	100	100	100	100
7	Nigeria	96	100	96	100
8	Norway	100	100	100	96
9	Pakistan	74	81	83	100
10	Philippines	91	100	91	100
11	Singapore	100	100	100	100
12	Switzerland	96	100	96	100
13	Chinese Taipei	88	95	100	100
14	Thailand	74	65	83	96
15	UAE	95	100	95	100
16	Ukraine	40	31	90	92
17	Viet Nam	64	93	82	64

Source: WTO Documents G/L/223/Rev.26 and Rev.30 (Calculations of compliance percentage are of the WTO Secretariat)

3.2 Compliance with Notification Requirements in NTM Agreements, Understanding and Decision

WTO members have attached importance to the notification requirements in agriculture because these requirements were aimed at ensuring implementation of the crucial decisions taken by them to put meaningful ceilings in respect of all three pillars of the Agreement on Agriculture, namely tariffs, domestic support and export subsidies. New disciplines in agriculture were undertaken in many countries at great political costs, and members were under immense domestic pressure to ensure that these disciplines are faithfully observed by the entire membership. Notification requirements provide the main instrument for monitoring and surveillance of agricultural policies. Notification obligations also provide the means to keep a check on the use of non-tariff measures that are subject to WTO disciplines under other Agreements in Annex 1A to the Marrakesh Agreement. Some notification requirements provided for originally have been extinguished by the evolution of obligations embodied in the substantive provisions in Annex 1A Agreements, as in the Agreement on Textiles and Clothing, while some others have been added with the adoption of new agreements, as in the Trade Facilitation Agreement[9]. In one case a new notification obligation was added through a Decision of the Council for Trade in Goods (CTG). On 1 December 1995, the CTG agreed that members would make complete notification of quantitative restrictions maintained by them every two years.

9 The WTO Agreement on Trade Facilitation was concluded in 2013 and entered into force on 22 February 2017.

Today, the extant notification obligations cover as many as 13 Annex 1A Agreements, Understanding and Decision outside agriculture. To keep within the space constraints of this paper we restrict our assessment of compliance performance of WTO members outside agriculture to only five out of the 13 Agreement and Understandings, namely, the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures (ASCM), the Agreement on Import Licensing, the Understanding on State Trading Enterprises, and the Decision on Notification Procedures for Quantitative Restrictions. In these Agreements we take up the notification obligations that necessitate periodic submission of information The ASCM has two obligations, namely, semi-annual notification of countervailing duty actions and new and full notifications of subsidies every two years (biennially). The Anti-Dumping Agreement envisages semi-annual notification of anti-dumping actions taken; the Import Licensing Agreement requires that Members provide responses to an annual questionnaire to serve as a basis for review by the Committee; the Understanding on State Trading Enterprises requires notification of state trading enterprises every two years; and in the Decision on Quantitative Restrictions too Members have agreed to make a complete notification of all restrictions maintained by them, once every two years. Thus, there are six notification requirements in the five Agreements/ Understanding/ Decision to which we have restricted our analysis of compliance. In addition to periodic notifications, there is a requirement that members would submit notifications on a one-time basis of their laws and regulations on anti-dumping, countervailing measures, and import licensing.

Table 3.3 shows the compliance performance of WTO members in G20 that are among the world's top economies in respect of the selected NTMs. In respect of anti-dumping, countervailing duty and subsidy, the compliance performance can be described as splendid, except for the isolated case of South Africa on biennial subsidy notification. However, with respect to some other NTMs there are pockets of complete non-compliance by some WTO members in G20 over prolonged periods, for instance by Indonesia and South Africa on Quantitative Restrictions and by Russia on State Trading, and poor performance by Saudi Arabia and South Africa on Import Licensing. What extenuates to some extent the less than satisfactory performance of these G20 countries is that even advanced countries such as Australia, Canada, Japan, South Korea and the USA have shown below par compliance on Import Licensing.

Table 3.3: Compliance performance of WTO Members in G20 with Periodic Notification Obligations on Selected NTMs (Percentage)

Member	AD	CVD	Subsidy	State Trading		QR		Import Licensing	
				1995-2017	1995-2020	1995-2017	1995-2020	1995-2017	1995-2020
Argentina	100	100	100	100	100	25	66	74	77
Australia	100	100	100	83	100	50	100	42	45
Brazil	100	100	100	66	66	75	66	58	50
Canada	100	100	100	100	100	75	100	63	72
China	100	100	100	100	83	50	83	87	77
India	100	100	100	66	66	75	83	74	77
Indonesia	100	100	75	100	83	0	0	47	50
Japan	100	100	100	100	100	100	83	79	86
Republic of Korea	100	100	100	100	100	25	66	53	63
Mexico	100	100	100	16	16	25	16	26	41
Russia	100	100	75	0	0	75	83	43	55
Saudi Arabia	80	100	100	66	66	0	16	15	12
South Africa	100	100	0	100	66	0	0	31	27
Turkey	100	100	100	83	50	25	50	74	68
USA	100	100	100	100	100	100	100	68	72
EU	100	100	100	100	100	100	100	100	100

Source: WTO Doc G/L/223/Rev.26 and Rev.30 (Author's calculations of compliance percentage)

Table 3.4 records the compliance performance of selected WTO members who figure in the second group of 'Other Important Trading Countries' on periodic notification requirements outside agriculture. Among several of these countries, fulfilment of annual or biennial notification requirements on quantitative restrictions and import licensing appears to be particular areas of weakness. What is remarkable is that even developed countries such as New Zealand, Norway and Switzerland have shown poor performance in respect of import licensing. On the positive side it must be underscored that all the WTO members figuring in Tables 3 and 4 have fulfilled their obligation to notify their laws and regulations on a one- time basis.

In sum, it would be fair to make the assessment that, in the first 26 years of the entry into force of the WTO Agreement, that is up to 2020, in fulfilling their notification obligations in the Agreements in Annex 1A of the Marrakesh Agreement, the top 50 trading nations among the WTO members have shown an overall level of performance that can be regarded as reasonably satisfactory. There remain, no doubt, one or two areas of weakness, such as Quantitative Restrictions and Import Licensing, in which a handful of members, including a few developed country members have fallen well short of full compliance.

Table 3.4: Compliance Performance of 'Other Important Trading Countries' with Periodic Notification Obligations on Selected NTMs (Percentage)

Member	AD	CVD	Subsidy	State Trading		QR		Import Licensing	
				1995-2017	1995-2020	1995-2017	1995-2020	1995-2017	1995-2020
New Zealand	100	100	100	100	100	75	83	21	36
Norway	100	100	100	100	66	0	33	42	36
Switzerland	OTN	OTN	100	100	100	50	66	68	72
Chile	100	100	100	100	83	0	0	37	36
Kazakhstan	NA	100	100	100	75	50	50	11	27
Hong Kong China	OTN	OTN	OTN	100	100	100	100	100	100
Chinese Taipei	100	100	100	100	100	50	83	71	72
Egypt	100	100	0	50	33	0	16	0	0
Malaysia	100	100	100	83	83	0	33	42	41
Nigeria	0	0	0	50	16	0	0	26	41
Pakistan	100	100	0	83	83	0	0	0	0
Philippines	100	100	100	83	83	25	66	63	59
Singapore	100	100	100	100	100	100	83	58	59
UAE	90	100	25	0	83	0	0	0	0
Ukraine	100	100	100	83	100	100	100	100	100

Source: WTO Doc G/L/223/Rev.26 and Rev.30 (Author's calculations of compliance percentage)

3.3 Compliance Situation of Least Developed Countries and Island Developing Countries with Tiny Economies

After reviewing the situation of the top 50 trading nations among WTO members we concluded above that there is only a mild compliance deficit in the fulfilment of notification obligations by these countries. However, when we look at the compliance situation of members with weaker economies and less-developed administrative infrastructure, we find the situation to be very different. What the WTO membership needs to consider is not stepping up pressure for compliance but reduction of the burden of compliance on them.

Table 3.5 shows the compliance situation of LDC members in respect of two selected notification obligations in agriculture (D:1 and ES:1) and four in NTMs.

Table 3.5: Compliance by LDC Members with Selected Notification Obligations

Member	Agriculture notification DS:1	Agriculture notification ES:1	Subsidy Article 25.1 ASCM	State Trading Article XVII. 4 (a)	Import Licensing Article 7.3 of Agreement on IL	Quantitative Restrictions Goods Council Decision G/L/59/ Rev.1
Afghanistan	0	100	66	25	0	66
Angola	0	4	0	0	0	0
Bangladesh	50	40	0	0	14	16
Benin	8	0	0	0	0	0
Burkina Faso	92	92	60	33	23	0
Burundi	88	88	50	33	14	0
Cambodia	91	94	50	33	61	16
Central African Republic	0	0	0	0	0.5	0
Chad	86	80	0	0	10	0
Congo, Democratic Republic	100	0	25	0	0	0
Djibouti	0	50	0	0	0	0
Gambia	75	56	0	0	18	16
Guinea	21	35	0	0	5	0
Guinea-Bissau	0	0	0	0	0	0
Haiti	17	76	0	16	27	0
Laos P.D.R.	20	13	50	20	5	16
Lesotho	8	96	25	0	14	0
Liberia	0	0	0	0	0	0
Madagascar	69	62	75	0	27	0
Malawi	71	81	50	50	23	0
Mali	83	100	75	100	40	100
Mauritania	0	0	0	0	0	0
Mozambique	0	0	0	0	0	0
Myanmar	50	100	100	0	0	0
Nepal	89	88	0	0	11	0
Niger	0	0	0	0	0	0
Rwanda	0	0	0	0	10	0
Senegal	83	96	0	40	20	0
Sierra Leone	0	0	0	0	0	0
Solomon Is.	0	0	0	0	0	0
Tanzania	0	0	0	0	0	0
Togo	100	85	75	50	14	0
Uganda	38	38	0	0	5	0
Yemen	0	0	0	0	0	0
Zambia	62	85	50	66	10	0

Source: Percentage of compliance is the author's calculation based on WTO Document G/L/223/Rev.30

Note: There is no uniformity in the source document on the period for which data on compliance is indicated for the six selected notification obligations. For subsidy notifications under Article 25.1 of ASCM only the four biennial notifications that fell due in 2015, 2017,2019 and 2021 are included; for state trading notifications under Article XVII. 4 (a) six biennial notifications that fell due in 2012, 2014, 2016, 2018, 2020 and 2022 have been taken into account; for import licensing, the entire period 2001-22 is covered; and for quantitative restrictions under the Goods Council Decision of 2012 ((G/L/59/ Rev.1) all six notifications under the decision are included. To keep it simple, we have calculated the percentage of compliance for the period for which data has been provided in the source document.

The Table 3.5 reflects a dismal situation of compliance by LDC Members. The worst position is for QR notifications: out of 35 LDC Members only six have made notifications and as many as 29 have not made any notifications at all in the last 10 years since the Goods Council adopted the decision on new procedures for notifications in the area. Four out of the six LDC Members that have made the notification have done so only once against the six biennial notifications that have fallen due. The position is only a little better in the two out of three other NTM notification requirements included in our analysis: out of the 35 LDC Members there is no notification at all from 22 on subsidy and from 24 on state trading during the period covered by the Secretariat report. The LDC members have performed a little better on import licensing and in agriculture (on both DS:1 and ES:1)

3.4 Island Developing Countries

Table 3.6 shows the equally unsatisfactory compliance situation in WTO members that are island developing countries with tiny economies, although it must be acknowledged that there are some exceptions. In respect of subsidies almost all Caricom members have a good record of compliance, and among them Saint Vincent and the Grenadines has a record approaching full (100 per cent) compliance on agriculture notifications in domestic support and export subsidies.

Table 3.6: Compliance by Selected Island Developing Country Members

Member	DS1	ES1	Subsidies	State Trading	Import Licensing	QR
Antigua and Barbuda	0	0	50	0	10	0
Cape Verde	0	8	0	0	20	0
Dominica	0	12	50	0	10	0
Grenada	0	0	50	0	20	0
Saint Kitts and Nevis	0	0	50	0	5	0
Saint Lucia	0	19	75	0	32	0
Saint Vincent and the Grenadines	96	92	25	0	5	0

Source: WTO Document G/L/223/Rev.30

Note1: The compliance percentages for DS1 and ES1 are those reflected in WTO Document G/L/Rev.30 and for others they are the author's calculations based on the data given in the same document.

What is the main reason for non-compliance with notification obligations of LDCs and other WTO Members with small economies or administrations? At the outset, the most important reason was that government personnel were not sufficiently familiar with the complexities of rules in the WTO Agreement relating to notification requirements. To some extent this gap was filled up by the issuance of the Technical Cooperation Handbook on Notification Requirements of the WTO Agreement. Further the WTO Secretariat has been providing technical assistance to government personnel through regular programmes undertaken at the country or regional level or at the Geneva headquarter office. The real constraint is that these WTO Members do not have enough personnel earmarked to attend to WTO work, either at the missions at Geneva (when they have one) or in the capitals. When the author was a staff member (as Deputy Director General) in the WTO Secretariat in 1995-99, non-compliance of notification requirements was already a big implementation issue, and the Secretariat held consultations with delegations to identify the root cause of lack of compliance by members. At that time, one representative had informed that the member concerned had only two officials in the Mission at Geneva attending to all the international organizations at the station. In the capital too there were only two officials attending to all international organizations. The real capacity constraint was not lack of familiarity with the subject but the paucity of personnel to gather information from various agencies, analyse and collate them for submission of notifications.

It needs to be appreciated that it is not enough for the government of a WTO Member to submit the required notifications. It must also have dedicated staff to follow the developments in each area or with respect to each Agreement to be able to understand,

identify and study the implications for the trade interest of the WTO member concerned. For this a much larger complement of staff is necessary in the Missions and in the capitals than what the governments of members with small economies can afford to put in position. Further, with a very low share of world trade the day-to-day developments in trade policies around the world do not have that much significance for them so as to justify the allocation of finance for a large complement of staff for the purpose either in the Missions or in the capitals. As a result, compliance with notification obligations suffers. The implication of the low share of world trade of these members is also that other members are hardly affected by annual or biennial changes in their trade policies. It follows from our analysis that there would be logic in considering reduction of the periodicity of notification obligations for LDCs, small island developing country members other WTO members with tiny economies. This has been done to some extent by cutting down on the notification requirement for domestic support in agriculture (DS1) for LDCs from annual to once in two years. The provision for a one-time notification in such areas as anti-dumping and countervailing duty measures has also helped LDCs to lighten the burden of notification. But we need to do more.

4. The Way Forward

A great deal of preliminary work has already been done in the General Council during the debate over the last four years on the Draft General Council Decision proposed at the initiative of the European Union, Japan and the United States for improving compliance with notification obligations. It was a false step by the co-sponsors of the Draft General Council Decision to suggest punitive action against members that miss the deadline for notifications, and the suggestion may have pushed back a possible agreement by a few years. But the controversial elements have now been dropped, and the latest version of the revised Draft no longer includes 'administrative measures' such as the suggestion to make representatives of the member concerned ineligible to be nominated for presiding over WTO bodies. The ideas of imposing financial penalties and encouraging counter-notification have been withdrawn. What is more, the orientation of the Draft General Council Decision has been changed somewhat, from one that emphasised only on enforcing compliance to one that looks also at difficulties of members in fulfilling their notification obligations. The General Council is perhaps poised to approve revival of the Working Group on Notifications and Procedures originally established by Ministers in 1994 to undertake the task to make recommendations for improving compliance with notification obligations. Members should give high priority to resolving differences that remain on the mandate of the Working Group. Once the Working Group has commenced work it would need to do hard work on the simplification of formats of notifications as this could contribute significantly to improvement in compliance.

The suggestion in the Draft General Council Decision for the Trade Policy Review Body to ensure that 'all trade policy reviews include a specific and standardized focus on the Member's compliance with its notification obligations' appears to be consistent with the objective of the Trade Policy Review Mechanism to help in obtaining improved adherence by members to the WTO rules, disciplines and commitments. It is possible, however, that the language has created anxiety among developing countries and there is suspicion on the full implication of the words 'specific and standardized focus'. The use of simpler language might help to resolve the matter. In the 12th Revision of the Draft General Council Decision an additional sentence has been proposed, asking for inclusion in the Secretariat report of specific information on notification compliance by the member. What needs consideration is whether in the General Council Decision it is necessary to go beyond including this simple sentence asking the Secretariat to include in its report for the Trade Policy Review a section dealing with compliance with notification obligation.

Expanding the scope of the Draft General Council Decision beyond the Annex 1A Agreements and to cover the GATS and the TRIPS Agreement is a tougher issue. There are a number of notification requirements in the GATS of which three on transparency, economic integration and recognition of academic qualification are in regular use. There is dissatisfaction among developing countries on the adequacy of notifications under Article III:3 of the GATS, which provides for transparency. The TRIPS Agreement contains only one requirement for notification of laws and regulations on intellectual property rights, but during the debates in the General Council some developing countries have given a call for establishing new notification requirements in some areas (Article 66.2 of the TRIPS Agreement for instance). The co-sponsors have already conceded

that they would be willing to look at expansion of the scope of the Draft General Council Decision at a later stage. What will help to achieve progress is a paper on behalf of developing counties giving at least a broad indication of the steps they envisage being taken to strengthen transparency in the GATS and the TRIPS Agreement.

In the author's assessment, in recent years the compliance performance of the 50 or so top trading countries among WTO members has 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. Even here there is no need for a drastic remedy, and it would be adequate to maintain some pressure on members in default through normal discussion and dialogue within the subsidiary Committees. However, the situation on compliance is dismal for LDCs, island developing countries and other members with limited administrative infrastructure. For them there is a crying need to reduce the frequency of periodic notifications so that the obligation is commensurate with their administrative infrastructure. They could be required to submit periodic notifications after reasonably long intervals, such as once in five years. Another alternative would be to require them to submit the periodic notifications only in the year when their TPR is taken up.

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