PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS

COMMUNICATION FROM ARGENTINA, AUSTRALIA, CANADA, COSTA RICA, THE EUROPEAN UNION, JAPAN, NEW ZEALAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU, AND THE UNITED STATES

Revision

The following communication, dated 1 November 2018/29 March 2019, is being circulated at the request of the Delegations of Argentina, Australia, Canada, Costa Rica, the European Union, Japan, New Zealand, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States.

Draft General Council Decision

Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements

Decision of X Date

The General Council,

Recognizing that transparency and notification requirements constitute fundamental elements of many WTO agreements and a properly functioning WTO system, and thus of Members' obligations;

Acknowledging the chronic low level of compliance with existing notification requirements under many WTO agreements; and

Desiring to strengthen and enhance transparency and improve the operation and effectiveness of notification requirements;

Decides:

General

1. To reaffirm existing notification obligations and recommit to providing complete required and timely notifications under the following WTO Agreements and Understandings within the remit of the Council for Trade in Goods, for which there is regular annual reporting provided by the Secretariat (G/L/223/Rev. 2 and its revisions), including the:

(a) Agreement on Agriculture

(b) Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping) Agreement on Subsidies and Countervailing Measures Agreement on Safeguards Understanding on the Interpretation of Article XVII of the GATT 1994 (State Trading)
Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation)
Agreement on Import Licensing Procedures
Agreement on Rules of Origin
Agreement on Preshipment Inspection
Decision on Notification Procedures for Quantitative Restrictions (G/L/59/Rev.1)
Agreement on Trade Related Investment Measures
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Technical Barriers to Trade
Agreement on Trade Facilitation, Section I

2. To instruct appropriate committees, working groups or other bodies, such as the Working Group on Notification Obligations and Procedures (Working Group), to assess and report annually to their designated supervisory bodies on Members’ compliance with notification obligations under the agreements listed in paragraph 1, take appropriate steps to reinforce compliance with the notification requirements under such agreements (for example, by carrying out notification workshops), and to make recommendations, as appropriate, on means by which greater compliance can be encouraged and achieved.

3. To instruct the Working Group to meet before [x date] to develop recommendations on improving Member compliance with notification obligations under the agreements and Understandings listed in paragraph 1. The Working Group will consult with appropriate committees, other working groups and bodies as appropriate, and consider both systemic and specific improvements that can help Members improve compliance with notification obligations. The Working Group will also consult with the WTO Secretariat as appropriate, including the WTO Institute for Training and Technical Cooperation (ITTC) to assess the contribution of WTO trade-related technical assistance to improving notification compliance, as well as the Central Registry of Notifications. The Working Group will report to the Council for Trade in Goods on its findings before [x date], and provide updates at each subsequent meeting.

4. In light of the particular importance Members attach to the WTO’s work to reform agriculture, and in order to strengthen and enhance the effectiveness of the review process of the implementation of commitments in the Agreement on Agriculture, the Committee on Agriculture is requested to review and update its Notification Requirements and Formats (G/AG/2), taking into account recommendations made by the Working Group and other bodies described in paragraphs 2 and 3.

5. To instruct the Working Group to work with the Secretariat to update the Technical Cooperation Handbook on Notifications (WT/TC/NOTIF/INF/3) and present it to the Council for Trade in Goods for its [x date] meeting.

6. To instruct the Trade Policy Review Body to ensure that beginning in 2019 [20XX] all trade policy reviews include a specific, standardized focus on the Member’s compliance with its notification obligations under the agreements and Understandings listed in paragraph 1.

7. To encourage Members, at any time, to provide a counter notification of another Member concerning notification obligations under the agreements and Understandings listed in paragraph 1.

8. That beginning in [x date], a Member that fails to provide a required notification by the deadline provided under an agreement, Agreement or Understanding listed in paragraph 1, (a) paragraph 1(a) within [720 days] [2 years] following the year that a notification is required by, or has failed to provide any prior required notification under an Agreement or Understanding listed in paragraph 1, will be subject to the administrative measures under paragraph 11.

For the purposes of this Decision, the SPS Committee and TBT Committee, respectively, will develop guidelines on the conditions under which a Member shall be deemed to have failed to provide a required notification with respect to ad hoc notifications for the Agreement on the Application of Sanitary and Phytosanitary Measures and Agreement on Technical Barriers to Trade such that administrative measures shall be applied pursuant to paragraph 11 of this decision. This decision shall not apply to ad hoc notifications under the TBT or SPS Agreements until the relevant guidelines have been adopted.
7. Notwithstanding paragraph 6, with respect to the notification referred to as DS:1 in the Committee on Agriculture’s Notification Requirements and Formats (G/AG/20) or has failed to provide any prior required notification, that], the deadline for the purposes of paragraphs 8, 10(b), and 11 of this Decision shall be two years following the notification deadline required under G/AG/2. This paragraph shall cease to operate once an update of G/AG/2 has been adopted. An update of G/AG/2 is encouraged within two years of this Decision.

8. A Member that fails to provide a required notification within the deadline referenced in paragraph 6 or the deadline set out in paragraph 7 is encouraged to submit a Committee on Agriculture’s relevant committee by [x date] of each subsequent year six months after the relevant deadline and every six months thereafter an explanation for the delay, the anticipated time-frame for its notification, and any elements of a partial notification that a Member can produce to limit any delay in transparency.

9. (b) paragraph 1(b) by the relevant deadline or has failed. If a Member fails to provide any prior required notification as referred to within the deadline referenced in paragraph 6 or the relevant committee by [x date] and by [x date] of each subsequent year, an explanation for the delay, the anticipated time-frame for its notification, and any elements of a partial notification that a Member can produce to limit any delay in transparency; and

(c) deadline set out in paragraph (a) as far as ad-hoc notifications are concerned, the Members shall follow current practice under G/AG/2 may request the Secretariat to provide information in researching the matter and, in full consultation with the relevant Member, and only with the approval of that Member, provide a notification on its behalf.

10. A developing country Member encountering difficulties to fulfill its notification obligations is encouraged:

(a) to request assistance and support for capacity building from the Secretariat, either in the form of WTO trade-related technical assistance or as ad hoc assistance for a particular notification. The Secretariat shall advise Members on the most appropriate assistance available; and

10. Each developing country Member is encouraged to submit to the relevant committee and to the Working Group by [x date] or [x date] months after the deadline referenced in paragraph 6 or the deadline set out in paragraph 7 and by [x date] of each subsequent year, every six months thereafter, information on those notifications under the agreements, Agreements and Understandings listed in paragraph 1, that it has not submitted due to a lack of capacity, including information on the assistance and support for capacity building that the Member requires in order to submit complete notifications.

11. If a Member fails to provide a complete notification within one year of the deadline set out in paragraph 8(a) or (b), the Member may request that the Secretariat assist the Member in researching the matter and, in full consultation with the relevant Member, and only with the approval of that Member, provide a notification on its behalf.

12. For an agreement, Agreement or Understanding listed in paragraph 1, if a Member fails to provide a complete required notification within one year of the deadline set out referred in paragraph 8(a) or in the deadline set out in paragraph 7, and that Member has not requested assistance from the Secretariat identified in paragraph 9 or if such assistance is requested but the Member has not cooperated with the Secretariat, the following administrative measures shall apply to that Member:

(a) After one but less than two full years from a notification, the deadline referenced in paragraph 6 or the deadline set out in paragraph 7, the following administrative measures shall be applied to the Member at the beginning of the second year:

(i) representatives of the Member cannot be nominated to preside over WTO bodies;
(ii) questions posed by the Member to another Member during a Trade Policy Review need not be answered;

(iii) the Member shall be assessed a supplement charge by the Secretariat at the rate of [x]% per cent of its normal assessed contribution to the WTO budget, to be effective in the following biennial budget cycle, that may be used for the purpose of providing Members with technical assistance to fulfil notification obligations, including through the ITTC;

(iv) the Secretariat shall report annually to the Council for Trade in Goods on the status of the Member's notifications; and

(v) the Member shall be subject to specific reporting at the General Council meetings.

(b) After two but less than three full years, A year after the administrative measures in subparagraph (a) are applied, the following administrative measures shall also be applied to the Member at the beginning of the third year, in addition to the measures in subparagraph (a):

(i) the Member shall be designated as an Inactive Member with notification delay;

(ii) representatives of the Member will be called upon in WTO formal meetings after all other Members have taken the floor, and before any observers; and

(iii) when the Inactive Member with notification delay takes the floor in the General Council it will be identified as such.

(c) The commencement of the administrative measures identified in paragraph 12 shall not apply to a developing country Member that has submitted information on the assistance and support for capacity building that the Member requires, as set out in paragraph 10, if the Member still fails to provide the required notification.

13. When the administrative measures identified in paragraph 11 will be applied to any Member, the Director-General will notify the Ministers of those Members responsible for the WTO of the administrative measures being applied with respect to those Members. Once any such Member comes into compliance with its notification requirements, the administrative measures will cease to apply.

14. Taking into account the decision of Ministers at the 11th Ministerial Conference to recommit to the implementation of existing notification obligations for fisheries subsidies (WT/MIN(17)/64;WT/L/1031), and recognizing the significant contribution that enhanced fisheries subsidies notifications would make to the negotiation and implementation of prohibitions on harmful fisheries subsidies, the Rules Negotiating Group will develop enhanced notification procedures as part of the ongoing fisheries subsidies negotiations in that body, in consultation with the Committee on Subsidies and Countervailing Measures as appropriate.