Transparency and Monitoring in Agricultural Trade: Policy Options for the Post-Bali Agenda

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Introduction

Transparency is an essential aspect of a well-functioning trade system. Providing transparency is an integral part of the agreements that set up the World Trade Organization (WTO) and, indeed, the WTO Secretariat devotes much of its resources to monitoring compliance with obligations undertaken by member governments. One author has concluded that “transparency mechanisms appear to be a particularly cost-effective tool for avoiding unnecessary obstacles to trade” (Moïsé 2012).

There is little doubt that transparency has improved in the trade system as a whole in the past two decades, along with more exhaustive monitoring and surveillance activities. Transparency in the specific area of agricultural trade has also improved, although many issues still have to be addressed. The Secretariat, through the WTO website, provides ample information on the Agreement on Agriculture (AoA) and on related negotiations.

The monitoring of the obligations of WTO Members by the Committee on Agriculture has generated a considerable amount of information on agricultural policies. The strong point of the domestic support notifications is their inclusion of supporting tables that together enable a relatively detailed picture of the type and extent of support offered by the notifying country. The weakness is that the categories into which the support is classified neither provide adequate information on the trade impacts of the policies nor give detailed descriptions of the policies themselves. Moreover, the ways in which different countries choose to notify policy measures is strikingly inconsistent.

1. General transparency obligations

The current system of transparency provisions for the WTO is based on Article X of GATT 94 (Publication and Administration of Trade Regulations), which states (in part) that laws and regulations pertaining to trade must be "published promptly in such a manner as to enable governments and traders to become acquainted with them" (WTO 1995). Similar obligations are in the specific agreements that were negotiated in the Uruguay Round. Hoekman and Kostecki (2009, p. 71) report that there are in all about 200 notification requirements in the WTO agreements.

Other transparency mechanisms also exist. The Dispute Settlement mechanism itself is an important part of the process of transparency, shining a spotlight on particular issues while adding to the collective wisdom of trading partners. The spotlight can be turned on the issue of transparency itself. The establishment of the Trade Policy Review Mechanism (TPRM) has contributed significantly to the understanding that countries have of each other’s policies and is particularly useful for small countries whose trade ministries lack the resources to undertake the necessary research.
2. Transparency obligations in agricultural trade

With respect to the provision of information on trade-related rules, the general obligations mentioned above apply equally to agricultural regulations and decisions. However, three general problems hamper full transparency in this area: the policies themselves change frequently and in ways that could significantly impact trade, the details of the policies are often complex and their implementation (often the key to understanding their trade effects) is subject to local administrative decisions that are not always publically available, and the sensitivity of farm policies may prevent governments from making programme details widely available.

The main vehicle for monitoring and surveillance in the area of agricultural trade is the notification to the Committee on Agriculture (established in Article 17, AoA) of the levels of domestic support, along with parallel notifications on export subsidies, tariff-rate quotas and new green box measures. The obligation of WTO Members to submit notifications is contained in Article 18 (Review of the implementation of the commitments) of the AoA. The Committee on Agriculture is charged with reviewing progress in the implementation of commitments. The document includes guidelines on the intended frequency and timing of notifications; however, they seem to carry insufficient legal weight to over-ride the reluctance of members to provide information that can lead to criticism (Brink 2010, p. 34).

The monitoring of obligations by the Committee on Agriculture has generated a considerable amount of information on agricultural policies. The weakness is that the categories into which the support is classified neither provide adequate information on the trade impacts of the policies nor give detailed descriptions of the policies themselves. Moreover, the ways in which different countries choose to notify policy measures is strikingly inconsistent. This implies that any aggregation across countries is suspect, and even notifications by the same country over time can be rendered less useful by changes in the allocation to support categories. The problems stem in part from the lack of clarity of the agreed notification procedures (and in the terms of the AoA itself) and in part from the desire of governments to show their compliance with the schedules.

The problems in the domestic support notifications that need to be addressed include the following:

- The definition of non-product-specific support, and hence the significance of de minimis, allowances is unclear. Questions have been raised about the categorization of crop insurance premium support and other subsidies as non-product-specific when to the individual farmer the support is product-specific;

- The level of de minimis allowances for developing countries, particularly those with no notified base period for Aggregate Measures of Support, is dependent on the value of production used. No definition of value of production exists, and countries have used different concepts in their notifications;

- The treatment of input subsidies in some developing countries is controversial. Some countries include these as Development Programmes (Article 6.2) but the definition of the measures falling under this heading is not clear;
The measurement of market price support (MPS), including the use of administered prices, reference prices and eligible quantities, gives rise to a number of ambiguities. Administered prices have been changed by some countries with no corresponding changes in domestic producer prices. Reference prices can be out of line with current market conditions, leading to misleading interpretations of market price support. The reporting of eligible quantities for MPS calculations is currently inconsistent among countries. Moreover, relatively small changes in policy can be reflected in large changes in the "eligible quantity" reported.

These and other examples of the lack of clarity in the way domestic support is defined and consequently notified give considerable scope for countries to present their policies in an inconsistent manner (Orden, Blandford, and Josling 2010).

The value of the notifications as a way of tracking the effectiveness of the AoA disciplines over time is seriously compromised by the delay in notifications to the Committee. Though several of the major countries have made an effort to bring their notifications more up-to-date, many still lag behind. Developing countries are now the main laggards. Notification of domestic support has slipped the most, with 43 per cent of the required notifications for the period up to 2011 still missing. Almost 40 per cent of required notifications on export subsidies over that time period have not been supplied.1 Some of these issues stem from the fact that concern with the trade effects of domestic support has been focused almost exclusively on industrial countries. These countries have traditionally been the major players in the support of agriculture, both by maintaining high prices and giving generous subsidies. By contrast, developing countries often taxed their agricultural sectors in the past and, in any case, were deemed to be less likely to engage in costly subsidy programmes for their large farm population. As a result, the constraints included in the AoA have not been onerous on developing countries, and they, in turn, have not appeared to take the notification requirements seriously. This situation may change in the future. As Brink points out (2011, p. 51), if the Doha Round draft modalities eventually become incorporated into a revised AoA, the bulk of allowable trade-distorting support will be available to developing countries as result of the larger de minimis limits applied to the large value of agricultural production.

Among the most pressing issues in the area of notification of agricultural policies is that of spending under the green box (AoA, Annex 2). At present, countries have to report spending under the 12 main headings of Annex 2 but are not required to justify their classification decision – unless requested to do so in a meeting of the Committee on Agriculture. Compared to the detailed reporting required for subsidies by the Subsidies and Countervailing Measures (SCM) Agreement, the requirements for notifying green box under the AoA are relative undemanding.2 Indeed, in some cases, the SCM reporting includes policy details pertaining to agricultural subsidies (which are covered by that Agreement as well as by the AoA). Policy changes since the introduction of the AoA (and supported by the AoA disciplines) have led to a greater interest in the green box, and new policy instruments have been introduced that may not fit conveniently into the categories in Annex 2.

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1 The corresponding figures for missing notifications of tariff quotas and special safeguards are a more modest 11 percent for each category. A recent report by the WTO Secretariat (WTO, 2013) documents the status of notifications in the several areas of reporting on agricultural trade obligations.

2 Under the ASCM, any specific subsidies must be notified to the SCM Committee no later than June 30 each year, and notifications must be sufficiently detailed "to enable other Members to evaluate the trade effects and to understand the operation of the notified subsidy programmes."
Another such underserved area is the monitoring of export restrictions and taxes for agricultural goods. This topic received attention in 2008, when the first of two price surges for food commodities hit agricultural markets. Governments in several exporting countries began to limit supplies, leading to rapid increases in prices. Importing countries faced the prospect of being unable to secure adequate supplies from abroad. However, until this point, WTO Members had little in the way of consistent data on available stocks and were thus unable to assess the significance of exporter policies. Obligations on exporters to take into account the impact of export restrictions on the food security of importing countries is explicit in Article 12 of the AoA, along with the requirement that advance warning be given to the Committee on Agriculture “as far as is practicable” and consult with importing countries that “have a substantial interest” in the matter. In 2008, and again in 2010, notice was not given and consultations do not appear to have been undertaken.3

A further issue that arose in the context of the sharp price increases of basic foodstuffs in 2008 and 2010 was the growing use of maize and soybeans as biomass for ethanol and biodiesel. This matter was also not illuminated by WTO notifications, as the subsidies paid to companies that used biofuels were not consistently reported to the WTO Committee on Agriculture (Josling, Blandford and Earley 2010). They conclude that “WTO notifications provide little insight into the magnitude of biofuels subsidies. In both the agricultural support and industrial subsidies contexts, US, EU and Brazilian notifications of biofuel support have fallen far short of their potential in terms of coverage, timeliness and transparency.”

3. Towards improvements in monitoring

The topic of improving the monitoring and surveillance of agricultural trade rules has been raised in the Doha Round. The most recent “modalities” document, dating from December 2008, includes in Annex M the text of a new version of Article 18 of the Agreement on Agriculture. Proposed changes to Article 18 would significantly increase transparency (WTO 2008). Under the heading of “objectives”, the new Article calls for the “effective surveillance of compliance with obligations” by ensuring transparency and giving Members the opportunity to “assess the contribution of the [AoA disciplines] to the long-term objective of a fair and market-based agricultural trading system.” The Agriculture Committee could establish subsidiary bodies (sub-Committees) to look at particular issues in more depth. In addition, there is the possibility of submitting a provisional notification pending the final notification.

With regard to specific aspects of notification, the proposed Article 18 would require the one-off notification of the administration of its tariff-rate quota commitments, as well as annual notifications of the imports entering under those commitments. Members would also be required to notify the use of the Special Safeguard Measure (and the current Special Safeguard if retained) along with triggers and remedies. In addition, the revision of notification rules “shall require that a Member that provides support that it claims is consistent with Annex 2 of the Agreement shall include in the initial notification a summary of the measure” (WTO 2008).

These changes could bring needed clarity to the monitoring process, though ambiguities in the rules themselves are unlikely to be resolved in this way. In the realm of changes in practice, one change could include the notification of biofuel subsidies, as discussed above. As both the SCM Agreement and the

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3 The WTO Secretariat has summarized the somewhat limited information contained in the notifications called for by Article 12 (WTO 2013a). Since 1995, eight members have notified 14 export prohibitions and restrictions, including four new members of the EU. The notifications largely relate to wheat and wheat flour.
AoA require notifications of such subsidies, one could coordinate the information and oblige countries to provide enough information to allow a reasoned view of the impact of the development of biofuels on agricultural markets.

With respect to changes in monitoring the green box, besides the more complete notification of the policies themselves, one suggestion has been made that the Committee on Agriculture develop a “thematic work programme” on the topic (Cerda 2009, p. 577). This could pave the way for more focused work on the trade policy implications of the shift in domestic support to such measures. The green box currently contains so many programmes with different output effects that the trade rules may need to be revisited. In this respect, the data collected by the OECD for the Producer Support Estimate (PSE) calculations already includes relevant information relating to the administration of direct farm payments, particularly the extent to which they require production to maintain eligibility.

The Doha draft modalities (WTO 2008) include suggestions for making the notification of export taxes more effective. The draft text provides for notification within 90 days of the application of an export restriction (Paragraph 172), including the reasons for such a measure and periodic reporting to the Committee on Agriculture of the status of the restriction. Such restrictions would “not normally be longer than 12 months” unless an extension was agreed by “affected importing Members” (paragraph 179). Combined with better information on stock levels, such as is emerging as a result of the Agricultural Market Information System (AMIS) that combines the resources of the OECD, the FAO and other institutions, information on export restrictions would benefit the smooth functioning of the markets for food and agricultural products.

**Conclusion**

The most immediate improvement to transparency would follow from the adoption of the proposals in Annex M of the Doha Draft Modalities. Though negotiated as a part of a package, there seems to be no reason why it should not stand alone. The proposal does not involve changes in national regulations and does not appear to favour any country over others. It would merely replace the somewhat vague obligations in Article 18 with requirements that are more detailed. Resources could be made available for the developing countries that would have difficulty preparing notifications, though there could be a side-benefit to those countries themselves from having to describe policy measures in an agreed format.

More coordination within the WTO could also improve transparency and reduce overlapping activities. The notifications of subsidies made under the SCM Agreement have much in common with those under domestic support under the AoA. The SCM notifications are more descriptive and lack some of the structure of the AoA tables. There may be a case for combining the two notifications and allowing each committee to consider the combined report from their different viewpoints. This is particularly appropriate in the matter of biofuel subsidies, where coordinated information from the SCM and domestic support notifications, augmented by agreements on how such subsidies should be reported, would be valuable.

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4 In the Non-Agricultural Market Access talks in the Doha Round, the EU proposed additional disciplines on export taxes. In order to increase the predictability of export taxes, the EC proposed that WTO members “undertake to schedule export taxes on non-agricultural products in their Schedules of Concessions and bind the export taxes at a level to be negotiated” (Korinek and Bartos 2011). The same change would greatly improve transparency in agricultural markets as well.
References


