Improving Transparency as a Tool for the Implementation of the WTO Agreement on Agriculture

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Agriculture transparency and WTO objectives

- Reducing information asymmetries among governments, and between the state, economic actors, and citizens.
  1. Governments: with transparency, surveillance improves implementation of existing obligations
  2. Analysts: comprehensive picture of effects of policy
  3. Economic actors: uncertainty about market conditions and requirements can be crippling
What matters for firms

- Uncertainty huge at extensive margin
- Transparency and certainty on NTMs is as much a factor for firms as is “binding” of tariffs
  - Services regulation; compliance with certification requirements
- Transparency really matters for small firms, and firms without access to private information about foreign markets
What matters for governments

- Verification that national law, policy, and implementation achieve the intended objective
- Knowing extent to which differing national laws are functionally similar, or recognizably similar
- Especially important with domestic policy
  - Behind the border measures hard to observe
Transparency in WTO

“degree to which trade policies and practices, and the process by which they are established, are open and predictable”.

Includes how:

- a rule or a policy is developed domestically
- the rule is enforced or a policy is implemented
- the rule is published
- other Members of the WTO are notified
- notification is discussed in Geneva
- Geneva results published.
Three generations of transparency

- “Right to know” since GATT 1947
  - Publication, enquiry points, notification
  - Sunlight as disinfectant, but not enough, thus:

- Monitoring and surveillance since the Tokyo Round
  - TPRM, “specific trade concerns”
  - Seek clarification; ask about what should have been notified
  - Process only includes Members, thus:

- Reporting and engagement since 2002
  - TBT and SPS Information Management Systems (IMS)
  - New Integrated Trade Intelligence Portal (I-TIP)
  - World Trade Report …
Institutional design matters

- Notification: “a transparency obligation requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other Members”

- Specific trade concern: “The [SPS] Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific [SPS] issues” (12.2)
What explains disputes pattern?
Agreements invoked in disputes, 2005-11

- AD  31
- SCM  27
- Safeguards  9
- TRIMs  8
- TBT  8
- SPS  7
- Agriculture  9
- GATS  5
- Customs  4
- Rules of origin  3
- TRIPS  3
- Licensing  1

*GATT invoked much more frequently, but not always as the main subject

The Great Pyramid of the Legal Order

Possible problems

Discussion and adjudication

Social interaction structured by and constitutive of rules
The great pyramid at WTO SPS cases 1995 - 2011

- Appellate body reports
- Matters raised in disputes
- Specific trade concerns
- Notifications
- Informal interactions

11K

25K+

328

25

4
Same pyramid in other committees?

- No “STC” in SPS 12:2,
- Similar language: Agriculture 18:6,
- That leads to Standard Item 2 on Agriculture agenda
  - Many questions; same sorts of things as STC
  - Q&A now online
  - No analytic summaries as in SPS and TBT
Data problems

- Formal notifications may not be accurate, or complete
- Real-time monitoring hampered by absent and late notifications
- Trade Policy Review process shows how to use “verified” third-party data
- Can shadow WTO notifications through OECD data
  - OECD Secretariat updates faster than Members
  - Controversial with India
Complementary but different classification systems for farm support policy

**OECD PSE**
- Policy Research
- Policies presented ‘at-a-glance’
- Definitions: includes ‘Borders Issues’ in ‘Measures of Support’ category

**WTO AoA**
- Schedule compliance
- 1. Market Access (tarriff, border issues)
- 2. Domestic Support (price support, direct payments)
- 3. Export Competition
Surveillance problems

- “Specific trade concerns” best in SPS, TBT
  - But few active participants; results not always reported

- Agriculture Q&A process improving
  - Many questions; same sorts of things as STC
  - Q&A now online
  - No analytic summaries as in SPS and TBT
Formal efforts to Increase transparency in the Committee’s Process 2009-2011

- Falconer Text
- Reinvigorate work of Ag Committee through improved transparency measures
  - Engagement in implementation discussions
  - Enhance quality and timeliness of notifications
  - Clarifying requirements through workshops
  - Sharing best practices
  - monitoring
Better Data

- For members who are worried about other members implementing their commitments, better data helps
- For analysts trying to understand the situation, better data
- For firms looking to manage their experiences at the border, better data helps
Types of Questions in Committee

- Who asks the questions?
  - Usually amongst the developed countries, many questions from developed countries to the developing and more and more by developing countries to developed.

- Who gets asked?
  - Sometimes capacity developing

- What kind of questions are being asked?
  - Subsidy levels, implementation, or understanding
What we are learning about the pyramid

- Most issues are not/need not be notified
- Most notifications occasion no questions
- Most disputes do not mention notifications
  - Only notify what will not cause dispute?
- Most disputes not preceded by questions in committee
The transparency trilemma

1. Surveillance system designed to monitor official obligations
   - Even the TPRM serves governments first

2. Analysts try to build picture of economic impact not implementation of commitments

3. Firms only served if
   - Governments publish information at home
   - All WTO data accessible, in user-friendly form