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**General Council
Council for Trade in Goods**

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PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 30 October 2017, is being circulated at the request of the Delegation of the United States.

INTRODUCTION

1. The upcoming 11th Ministerial Conference provides an opportunity to consider and evaluate institutional issues relating to the effectiveness and operation of the WTO.

2. Transparency, particularly the fulfilment of WTO Agreement notification requirements, is a critical cross-cutting issue where progress could be made in improving the institutional effectiveness of the WTO in the short time remaining until MC11.

3. Notification requirements constitute fundamental elements of many WTO Agreements, including the:

Agreement on Agriculture
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

4. It is broadly recognized that compliance with the notification requirements of the various WTO Agreements is inadequate. For example, the most recent report by the WTO Secretariat for the Committee on Subsidies and Countervailing Measures indicates that less than half of the WTO Members have provided their 2015 subsidy notification. The most recent report by the WTO Secretariat for the Committee on Agriculture from June 2017 shows that at least one third of the regular notifications are outstanding for the period 1995-2015. Those WTO Members listed in the report who had still not notified their domestic support for the year 2013 accounted for approximately 30% of the total value of agricultural production by WTO Members based on Food and Agriculture Organization statistics. Notifications concerning the Agreement on Import Licensing Procedures saw just 23% compliance in 2016, while the compliance rate regarding state-trading enterprises was only slightly better compliance at 26% in 2016. Fewer than 8% of Members submitted notifications for the Decision on Notification Procedures for Quantitative Restrictions for the 2014-2016 period, in line with the requirements of the Decision on Notification Procedures for

Quantitative Restrictions (QR Decision – G/L/59/Rev.1). Regarding Safeguards, just 34% of Members complied with their notification requirements as of 2016.

5. The notification requirements under the various agreements are intended to provide basic factual information regarding each Member's implementation of the relevant agreement. The chronic low-level of Members' compliance with existing transparency obligations undermines the proper functioning and operation of these agreements. The absence of this information also makes it difficult to develop, evaluate, and assess negotiating proposals to improve operation of the agreements. In addition, the lack of compliance with these obligations undermines confidence in the system – if Members can't comply with the most basic obligations, what certainty can there be that they are complying with the more substantive ones.

DEFICIENCIES IN EXISTING NOTIFICATION REQUIREMENTS

6. As briefly described below, notification requirements and procedures for many WTO agreements are not working as intended, and consideration needs to be given to ways to improve compliance with the requirements. In this regard, consideration should be given to tangible benefits for compliance and negative consequences for non-compliance. Compared to non-compliance with substantive obligations, the effects of which can be more easily quantified, transparency obligations are often perceived as not having a quantifiable, negative consequence and therefore to be less important than core trade disciplines. That is simply incorrect. Clearly, for example, un-notified subsidy programs can distort trade and can have a devastating impact on a Member's industry. Lack of transparency with respect to subsidy programs leaves the affected Member without the necessary information to understand and address the real cause of the injury to its industry. Therefore, we believe consideration needs to be given to enhancing the effectiveness of the transparency requirements, with the goal of strengthening notification obligations under the agreements, with a focus on a few discreet areas where compliance is most lacking or new disciplines are being contemplated. Employing administrative measures already implemented by other parts of the WTO, and promoting the use of counter notifications of Member's policies that should have been notified, as provided for in the Agreement on Agriculture, are some mechanisms that could enhance the effectiveness of WTO transparency requirements.

Fisheries Subsidies

7. The world's fisheries resources are rapidly being depleted. The Food and Agriculture Organization estimates that approximately 90% of global fisheries are overfished or fully fished. The global fishing fleet is estimated to be 250% larger than what is needed to fish at sustainable levels.

8. Harmful fisheries subsidies, particularly those that contribute to overfishing, overcapacity, and illegal, unreported and unregulated (IUU) fishing, have been estimated at approximately \$20 billion annually. These harmful fisheries subsidies are considered to be a major contributing factor in the unsustainable depletion of fisheries resources. However, notified fisheries programs appear to account for only a small portion of the \$20 billion in estimated subsidies. As noted above, the Secretariat found that less than half of all WTO Members provided notifications under the SCM Agreement for the January to June 2016 reporting period. With respect to fisheries subsidies, that proportion is likely to be substantially less. As an example, the United States recently counter-notified over 40 fisheries support measures that a major fishing Member had failed to notify.

9. WTO Members currently are negotiating potential new disciplines aimed at prohibiting the most harmful forms of fisheries subsidies. However, without a solid foundation of information regarding the scope, nature, and extent of existing fisheries subsidies, it has been and will continue to be difficult to craft appropriate and effective subsidy disciplines.

10. As an interim step, the United States proposes that Ministers take a decision at MC11 to re-commit to complying with their existing notification obligations under the Agreement on Subsidies and Countervailing Measures, and agree on additional new categories of information to be reported. With a more comprehensive picture of existing programs and their trade and conservation impacts, Members will be better positioned to develop fisheries subsidies obligations that would be effective in achieving the objectives of addressing the worst forms of subsidies, including those that contribute to overfishing, overcapacity, and IUU fishing.

Agriculture

11. Compared to 1995, more countries with a broader array of characteristics, including development status, account for a larger share of and play a more important role in agricultural production, subsidization, and trade. This means understanding distortions in agricultural trade today requires detailed information on agricultural policies from a wide variety of countries.

12. As noted above, the Secretariat found that one third of all WTO Members have outstanding notifications under the Agreement on Agriculture between 1995 and 2014. Domestic support and export subsidy notifications account for 70% of outstanding notifications. According to the Secretariat's report, 31 Members have not submitted any notifications on their domestic support measures, and 26 Members have not submitted any notifications on their export subsidies. Some countries that have substantial agricultural production, as well as significant agricultural policies, are more than five years behind in submitting their notifications. Further, discussions in the Committee on Agriculture have shown that notifications that have been woefully inadequate in explaining how policies are implemented and their effect on global markets.

13. WTO Members remain interested in continuing to negotiate agricultural trade liberalizing reforms. However, it has been and will remain difficult to engage in a successful negotiation on agriculture that meets the trade liberalizing objectives of the WTO when we lack basic data to give us a clear understanding of today's global agricultural trade landscape.

14. As an interim step, the United States proposes that Ministers take a decision at MC11 to re-commit to complying with their existing notification obligations under the Agreement on Agriculture and to commit to further strengthening the Committee on Agriculture as a forum for Members to discuss Members' implementation of agricultural policies. With a deeper understanding of the facts and problems we are all facing today, Members will be better positioned to strengthen agricultural disciplines in the context of today's landscape.

Technical Barriers to Trade

15. The WTO Agreement on Technical Barriers to Trade has four main notification requirements. Members inform the Committee of measures in existence or taken to ensure the implementation and administration of the agreement, under Article 15.2. Member 15.2 notifications include laws governing the transparent development of regulation and laws governing standardization, conformity assessment and metrology. Members also notify central government standardization bodies' acceptance and adherence to the Standards Code of Good Practice to the ISO/IEC Centre, according to Article 4.1. Members' bilateral and regional agreements are notified to the TBT Committee under Article 10.7. Last, Members notify proposed technical regulations and conformity assessment procedures, under Articles 2.9.2, 3.2 and 5.6.2 to the TBT Committee for WTO Member comment.

16. With regard to regular notifications of new laws implementing the TBT Agreement, acceptance of the Code of Good Practice, and notification of Agreements between Members, activity could be improved. While the total number of annual notifications of proposed technical regulations and conformity assessment procedures has gradually increased to over 2000 notifications and that trend is encouraging, there is still room for improvement given the disparity between those Members notifying and those that do not, with 83 Members not notifying any proposals in 2016.

Other Agreements

17. As noted above, compliance with regards to state-trading enterprise notifications was only 26% in 2016. This is a growing problem, as the notification compliance rate has been steadily decreasing compared to past years and the problem is starting to become systemically entrenched. According to the latest data circulated by the Secretariat, fifty-four Members have not made a notification under Article XVII:4 of GATT 1994 and paragraph 1 of the Understanding on the Interpretation of Article XVII of the GATT 1994 in the last ten years. Given the increasing role and impact that state-trading enterprises are having on trade, as well as ongoing privatization efforts taking place with many Members' enterprises, transparency is all the more important. In 2015, the Secretariat conducted a notification workshop for Members, providing information on

the notification requirements and what information has been typically provided by Members in their respective notifications. The Secretariat and some Members (including the United States) also offered to discuss bilaterally particular notification challenges on a case-by-case basis.

18. As of November 2016, the Secretariat reported that 96 Members have notified the Committee on Customs Valuation on customs valuation legislation. However, only 65 Members have notified on the check list of issues required under the Agreement on Implementation of Article VII of the GATT 1994. And 35 Members have not made either of these two notifications. The high number of outstanding notifications concerning customs valuation brings into question Members' commitment to an organization based in the rule of law.

19. Further examples of the low level of Member compliance with notification requirements are outlined in document G/L/223/Rev.24, "Updating of the Listing of Notification Obligations and the Compliance therewith as set out in Annex III of the Report of the Working Group on Notification Obligations and Procedures".

DRAFT MINISTERIAL DECISION

20. The Annex includes a draft Ministerial Decision that sets out proposed actions intended to improve compliance with, and the quality and effectiveness of, notification requirements in general, as well as under specific agreements. The United States proposes that Members consider adopting this decision at MC11 as an important contribution to improving the functioning of the WTO. If timing does not permit agreement to be reached for MC11, the United States proposes that Members consider continuing work on this proposal as a part of broader institutional reform post-MC11.

**Annex
Draft Ministerial Decision**

**Procedures to Enhance Transparency and Strengthen Notification Requirements
Under WTO Agreements**

Ministerial Decision of XX December 2017

The Ministerial Conference,

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 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 and timely notifications under the WTO Agreements within the remit of the Council on Trade in Goods, for which there is regular annual reporting provided by the Secretariat (G/L/223/Rev.24 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
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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.

2. To instruct appropriate committees, working groups or other bodies, such as the Working Group on Notification Obligations and Procedures, 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 Trade Policy Review Body to ensure that beginning in 2018 all trade policy reviews include a specific, standardized focus on the Member's compliance with its notification obligations under the agreements listed in paragraph 1.

4. At any time, Members are encouraged to provide a counter notification on behalf of the delinquent Member concerning notification obligations under the agreements listed in paragraph 1.

5. That beginning in 2018, a Member that fails to provide a required notification under an agreement listed in paragraph 1(b) by the relevant deadline or has failed to provide any prior required notification shall submit to the relevant committee by 1 November 2018 and by

1 November 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. If a Member fails to provide the complete notification within one year of the deadline, the Secretariat shall research the matter and, in consultation with the relevant delinquent Member, provide a notification on its behalf.

6. For an agreement listed in paragraph 1(b), if a Member fails to provide the complete notification within one year of the deadline and the delinquent Member fails to cooperate with the Secretariat so that the Secretariat is unable to obtain enough information to provide a notification, the following administrative measures shall apply to the delinquent Member:¹

- (a) After one but less than two full years from a notification deadline, the following measures shall be applied to the delinquent Member at the beginning of the second year:
 - (i) representatives of the delinquent Member cannot be nominated to preside over WTO bodies;
 - (ii) documentation will not be provided to delinquent Member delegations in Geneva nor to the Member's capital;
 - (iii) the delinquent Member's access to the WTO Members' web site will be discontinued;
 - (iv) the Director-General will contact annually the Minister of the delinquent Member responsible for the WTO, or any other official at the appropriate level emphasizing the question of notifications;
 - (v) the Secretariat will report annually to the Council on Trade in Goods on the status of the delinquent Member's notifications; and
 - (vi) the delinquent Member will be subject to specific reporting at the General Council meetings.
- (b) After two but less than three full years following a notification deadline, the following measures shall be applied to the Member at the beginning of the third year, in addition to the measures in paragraph 6(a):
 - (i) the Member will be designated as an Inactive Member;
 - (ii) the Inactive Member will be denied access to training or technical assistance other than that necessary to meet their WTO Article XIV:2 obligations; and
 - (iii) when the Inactive Member takes the floor in the General Council it will be identified as such.

7. At the beginning of each year when measures will be applied, the Director-General will notify the Ministers of the Members responsible for the WTO of the administrative measures being applied with respect to the delinquent Member. Once the Member comes into compliance with its notification requirements, the measures will cease to apply.

Improvements to Specific Notification Requirements

Agriculture

8. That 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 regularly review and update its Notification Requirements and Formats (G/AG/2),

¹ The proposed administrative measures are derived from WT/BFA/W/410, concerning administrative measures for Members in arrears.

taking into account recommendations made by the committees and other bodies described in paragraph 2 and consistent with paragraph 9.

9. Taking note of the discussions by Members in the Committee on Agriculture, it is recognized that the compilation of the required information and data with regards to the agricultural notifications may not be available within the time-frame [currently set forth] [established for submitting notifications] in G/AG/2. Therefore, Members [are encouraged to][shall] submit their notifications within the timeframes noted in G/AG/2 whenever possible, but shall submit them, no later than [720 days] [2 years] following the year in question.

10. That beginning in 2018, a Member that has not provided the required notification under the Agreement on Agriculture shall be required to submit to the Committee on Agriculture within 60 days of the notification deadline as noted in paragraph 9 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.

11. If a notification is not filed by the delinquent Member for the Agreement on Agriculture in accordance with paragraph 9, the administrative measures identified in sub-paragraphs 6(a) and (b) shall apply to the Member.

Fisheries Subsidies

12. That in order to strengthen and enhance the effectiveness of notifications of fisheries subsidies, each Member shall notify as part of its regular notifications under Article 25.3 of the Agreement on Subsidies and Countervailing Measures the following information to the extent possible:

- (a) program name;
- (b) legal authority for the program;
- (c) name of recipient;
- (d) vessel name and identification number;
- (e) catch data by species in the fishery for which the subsidy is provided;
- (f) status of the fish stocks in the fishery for which the subsidy is provided (overfished, fully fished, or underfished);
- (g) fleet capacity in the fishery for which the subsidy is provided;
- (h) conservation and management measures in place for the relevant fish stock; and
- (i) total imports and exports per species.

13. That each Member shall also provide, to the extent possible, information in relation to other subsidies that the Member grants or maintains to persons engaged in fishing or fishing related activities that are not covered by paragraph 12, in particular aquaculture and fuel subsidies.

Technical Barriers to Trade

14. In order to strengthen the notification of proposed technical regulations and conformity assessment procedures, Members are strongly encouraged to use the WTO TBT Committee's recommendation on Coherent Use of Notification Formats.²

² G/TBT/35.