

**Committee on Agriculture
Special Session**

IMPROVING MONITORING AND SURVEILLANCE MECHANISMS

Contribution by the G-20¹

The following communication, dated 19 June 2007, is circulated at the request of the G-20.

(A) Mandate, Principles and Objectives

1. As stated by the G-20 in its communication of October 2005, the cause of enhanced monitoring and surveillance mechanisms is an important part of a new Agreement on Agriculture. Experience with the current Agreement has shown that the system put in place to monitor the implementation of disciplines and commitments was too flexible and inefficient allowing for abusive infringement of the already insufficient commitments to agricultural reform in the Uruguay Round Agreement on Agriculture, such as delays and lack of information in the notification process. Experience has also demonstrated that the current institutional structure for surveillance has not been able to confront and solve those failures and shortcomings, nor has it been adequate to apprehend the reform process in a structured, dynamic and comprehensive manner.

2. There seems to be general recognition that this should not continue under the new rules and, consequently, the issue of monitoring and surveillance has to be dealt with as one of the main improvements to be introduced into the Agreement. Major improvements in the substantive commitments will be strengthened with a completely revised set of disciplines regarding monitoring and surveillance to ensure that the new obligations are properly complied with. Therefore, monitoring and surveillance is a necessary complement to disciplines and commitments, and not their substitute, because without them no monitoring and surveillance is possible.

3. A transparent, effective and development-friendly system for monitoring and surveillance is a central element to complement, support and reinforce Members' commitment to establishing "*a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets*".²

4. In recognition of this, paragraph 48 of the July 2004 Framework states:

"Article 18 of the Agreement on Agriculture will be amended with a view to enhancing monitoring so as to effectively ensure full transparency, including through timely and complete notifications with respect to the commitments in market access, domestic support and export competition. The particular concerns of developing countries in this regard will be addressed."

¹ Argentina, Bolivarian Republic of Venezuela, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Zimbabwe.

² Doha Ministerial Declaration, at paragraph 13.

5. Building on these general principles, Members' work in this area should be guided by the following elements and objectives:

- i) the improvement in monitoring and surveillance refers to all the aspects of the reform process and is not limited to any pillar of the negotiation (see paragraphs 16 and 48 of the Framework);
- ii) the concerns of the developing country Members must be fully and properly addressed;
- iii) the process of monitoring and surveillance should not only focus on individual commitments but also on the interrelationship of these commitments and their consistency with the overall objective;
- iv) the final structure and outline of the monitoring and surveillance provisions will depend on the nature of the substantive provisions of the new Agreement on Agriculture; and
- v) the new rules should ensure transparency and accountability in the implementation of the new set of obligations and they must complement the substantive obligations so that they can boost the reform process.

6. With these elements in mind, this paper outlines some ideas on how to improve monitoring and surveillance of trade in agriculture with respect to two interrelated issues: **notifications** and **institutional structure for surveillance**. Both are of fundamental importance for Members to achieve the necessary level of transparency and accountability. They must complement each other. In this context, the enhancement of the agriculture-related WTO bodies is a central condition for Members to meet their commitments in a comprehensive and timely manner.

(B) Instruments to improve monitoring and surveillance

1) NOTIFICATIONS

Strengthening notification requirements of Article 18 of the AoA

- Establish a clearer and stronger obligation to notify all information on current agricultural programmes/measures necessary for Members to assess compliance with established disciplines across the three pillars of agriculture.
- Set out a predictable schedule for annual notification requirements, without prejudice to notification on *ad hoc* bases, where appropriate.
- Ensure a reasonable period after the end of a reporting period for Members to complete their notification requirements. Establish common fixed deadlines by type of notification. Ensure that notifications use a reporting period (calendar, financial or marketing year) that is consistent with the period used for the individual Member's commitments.
- Ensure that information in notifications be clear and sufficiently specific to enable Members to evaluate, at least, the operation and the effects of notified measures. Notification by key subsidizing developed country Members must include all measures from national, regional and local government levels. Sources of relevant information (including websites) should be identified. In addition, sufficient explanations should be offered as to how values and figures have been calculated. Members should indicate enquiry point(s) to clarify issues related to notified measures or assist Members in obtaining further information about relevant programme/measure. Set deadlines by which enquiry point(s) should react to Members requests.
- Establish incentives for Members to comply with notification requirements, such as the use of estimates in order to meet deadlines, while requiring final data to be submitted within an agreed period.

- Encourage the use of non-dispute consultations to enhance and facilitate information exchange between Members.
- Provide for effective and operational S&D: longer timeframes; technical assistance and support by the Secretariat in the preparation and analysis of notifications.
- Introduce specific notification requirements applicable to cotton.
- Encourage Members to make counter-notifications under Article 18.7 of the AoA.³

Content of notifications (minimum requirements)

- CROSS-CUTTING
 - With a view to enhancing compliance through dialogue and exchange of information, developed country Members shall notify intended changes in measures/programmes at the latest [xx] days before their entry into force ("pre-notification stage").⁴ Developing country Members declaring themselves in a position to do so should notify intended changes. Allow reasonable time for other Members to make comments in writing, discuss the information provided. Notifying Member to take these written comments and these discussions into account.⁵
 - New or modified programmes/measures must be notified on an *ad hoc* basis [at the time of their entry into force] [within [xx] months after introduction].⁶
 - Members should attach the text of the domestic legal basis (laws, regulations, etc.) for each notified measures/programmes, in one of the WTO official languages. In addition, Members must identify precisely in their notifications where the requirements, criteria, terms or conditions relating to disciplines and commitments are reflected in Members' domestic legal basis (laws, regulations or administrative procedures).
 - Establish a comprehensive, one-off notification requirement [xx] months after the end of the implementation period for Members to report on compliance with agreed commitments in all 3 pillars. In addition, the Secretariat should make a one-off factual report on compliance with commitments in all 3 pillars (overview of the implementation of the agreed results), with particular emphasis on the situation of key subsidizing Members.
 - Information must be provided in the prescribed format (to be developed later and annexed to this document).
 - A database shall be established by the Secretariat compiling all measures notified by each Member (in the 3 pillars) relating to each product, and will be updated according to notifications.
- DOMESTIC SUPPORT
 - Annual notification
 - Develop an annual reporting requirement encompassing the Current Overall Trade Distorting Domestic Support, Current Total AMS, Current Product Specific AMS support, Current Total and Product Specific Blue Box support, Green Box and *De Minimis* in relation to their respective commitments.

³ See *e.g.* Article 5.5 of the Agreement on Import Licensing Procedures.

⁴ See *e.g.* Article 2.9.1 of the Agreement on Technical Barriers to Trade.

⁵ See *e.g.* Article 2.9.4 of the Agreement on Technical Barriers to Trade.

⁶ For developed country Members this would be in addition to the "pre-notification stage".

- Notifications will be submitted no later than [xx] months after the end of a Member's reporting cycle (financial year, calendar year, marketing year).
- Information to enhance the existing DS:1 requirements. For support measures subject to policy specific criteria (Green, Blue, Article 6.2), provide information relating to the name and description of measures with reference to criteria including the legislative references, the amount of annual support (total, per programme/measure, per producer) and data sources. For AMS measures, details of the calculation of support by measure and sources of data.
- Developed country Members, especially the key subsidizing developed country Members, must provide information on the value and volume of production for all products and for the total of all agricultural production. Developing country Members must provide information on the value and volume of production for products benefiting from domestic support and for the total of agricultural production.
- Where a particular product receives product-specific or non-product-specific support from a range of measures that are classified in different categories under the AoA (*i.e.* AMS, Blue Box, Green Box), Members will be required to provide the sum total amount of support provided to the product. This would be additional to the current requirement of providing disaggregated information on the types of support for each product.
- Provide detailed explanations if there are significant⁷ changes in support levels or patterns of the programmes.
 - Information necessary to ensure programmes meet necessary criteria for classification, and to provide a base level of data including production levels for monitoring future effects on production. Information regarding the type, volume and area of production/livestock heads by recipients of each domestic support measure regardless of its form or categorization as product-specific, non-product-specific, Amber, Blue, or Annex 2 support. Objective and expected duration of the programme/measure. The basic parameters and structure of the programme/measure such as support or administered prices, eligibility criteria for recipients, government purchase amounts, base year production levels by product, etc. The base period used and details on applicable base areas/yields or livestock numbers. A justification of how the programme/measure is production-limiting or has no requirement for production. An explanation as to why any support notified as non-product-specific only favours agriculture producers in general:
 - Annex 2 support (Green box): Information along lines of existing DS:2, with how measure meets each and every one of the applicable policy-specific criteria. In addition, information on how measure meets the fundamental requirement and the basic criteria in paragraph 1 of Annex 2. Identification of the relevant base periods. Current production levels and areas by product. Information regarding the current annual type, volume and area of production/livestock heads by recipients of each form of Annex 2 support. [*To be further developed in light of policy-specific criteria*]
 - Article 6.2 support: Information along lines of existing DS:2.

⁷ To be defined as a percentage of increase in support of a major programme/measure. A "major" programme/measure, in turn, could be defined as one accounting for more than [xx]% of total support provided in each support category.

- Blue Box support: Information along lines of existing DS:2, with how measure meets each and every one of the applicable policy-specific criteria. Identification of the relevant base periods. Information regarding the current annual type, volume and area of production/livestock heads by recipients of each blue box support measure. Current production levels and areas by product. For blue box payments that do not require production, Members will provide details in each annual notification of how price linked payments are calculated for each product.
- AMS support: For support measures over a certain monetary threshold introduce a requirement to notify, when the support measure is put into effect, a description of the programme and how it provides support, how support will be measured and reported in relation to the OTDS, Total AMS, PS caps and BB caps. Products supported. If support is to be classified as non-product-specific support, a justification of this. Information regarding the current annual type, volume and area of production/livestock heads by recipients of any measure included within AMS support.
- De minimis: same type and level of information as provided in AMS.
- EXPORT SUBSIDIES
 - Notification requirements would apply only during the implementation period, provided that notifying Member can demonstrate that its export subsidies have been completely phased-out by then.
 - Along the lines of current requirements: by product category, outlays and volume commitments, and annual usage of export subsidies by outlays and volume. Information by type of export subsidy. Total exports for the product categories with export subsidy commitments. Usage of Article 9.1(d) and (e) export subsidies by developing country Members.
 - Notifications must use a reporting period (calendar, financial, marketing year) that is consistent with the period used for the individual Members' commitments.
 - With respect to agricultural products for which Members have made reduction commitments in the Uruguay Round, notifications must include information on the budgetary outlay for, and the quantity of supported exports of, these products. Product-specific notifications must correspond exactly to the products for which a Member has made reduction commitments.
- EXPORT CREDITS [*Check against G-20's paper – JOB(07)/70*]
 - New provision.
 - Up-front notification for each entity (and programme, if applicable) providing export financing support: the measures (applicable legal basis) providing export finance support, the products to which export financing support may be extended; the maximum repayment period; description of the starting point of credit; how applicable minimum interest rates are set; description of how premium rates are determined and premiums collected; and description of maximum risk sharing available. Any subsequent changes to be notified [promptly] on an *ad hoc* basis.
 - An on-going annual notification to monitor the self-financing discipline: by entity (and programme, if applicable), information on the total amounts of export financing support provided and information necessary to demonstrate compliance with the terms and conditions; the total amount of revenue earned from premiums charged;

and the total amount of operating costs and losses, as defined in paragraph 3.4(g) [See TN/AG/W/3, *Draft Possible Modalities on Agriculture*]⁸. If an annual notification for any entity shows an operating loss, then the Member shall provide an explanation of the causes and spell out the planned actions taken towards ensuring that the programme will be self-financing within the required time frame.

- An annual notification, during the implementation period, to be developed in light of how non-conforming export credit might be phased out.
 - Notification must include information on the corrective action taken or envisaged to bring the programme back into conformity within a period of [xx] months from the date of the notification, including specific actions to increase premiums, reduce risk exposure, reduce operating costs and/or recovers losses.
 - Notifications must use a reporting period (calendar, financial, marketing year) that is consistent with the period used for the individual Members' commitments.
 - Notifications must include information on a country-specific basis of the destination of supported exports.
 - With respect to agricultural products for which Members have made reduction commitments in the Uruguay Round, notifications must include information on the budgetary outlay for, and the quantity of supported exports of, these products. Product-specific notifications must correspond exactly to the products for which a Member has made reduction commitments.
 - Notification requirements: (1) pursuant to the terms of paragraph [], provided to Least-Developed and Net Food-Importing Developing Countries, and (2) in relation to exceptional circumstances, pursuant to paragraph [], to be developed.
 - Failure to provide notifications prevents other Members from enforcing the rules. If transparency rules are not respected, the burden of proof must shift in dispute settlement to the subsidizing Member to demonstrate compliance with its commitments (cf. Article 10.3 of the Agreement on Agriculture).⁹
- FOOD AID [*Check against G-20's papers – JOB(06)/150 and JOB(07)/70*]
- New provisions.
 - **Emergency food aid:** On a six monthly basis, a donor Member shall notify information on emergency food aid transactions. Information on *inter alia* type of operation, beneficiaries, duration, emergency appeals, associated needs assessment.¹⁰ No "pre-notification" requirement [see above notification of intended changes].
 - **Non-emergency food aid:** information on these food aid transactions, including the recipient, product(s), volume, total costs, the organisation which prepared the needs assessment on which the donation was made, and the specific food aid needs being met.
 - **Annual:** a consolidated annual notification of all emergency and non-emergency food aid transactions.

⁸ To be read in light of JOB(07)/70, in particular heading "Measuring the Cost of ECG Programs".

⁹ See JOB(07)/70, *G-20 Reaction on the Agriculture Chair's Challenge Paper*, at p. 5.

¹⁰ See *e.g.* JOB(06)/150, at paras. 14-16.

- EXPORTING STATE TRADING ENTERPRISES
 - New provisions.
 - Information on all government financing and underwriting of losses provided to exporting STEs that are to be eliminated, whether this is upon entry into force of the DDA Agreements or over an agreed implementation period, to be developed.
- MARKET ACCESS¹¹
 - Provide information on domestic consumption, where appropriate.
 - Provide information on applied tariff rate. [Frequency to be determined]
 - **TQ administration:**
 - Upfront notification of how TQs will be administered, and ad hoc notification of subsequent changes.
 - Enhance transparency with information on the details of re-allocation mechanisms applicable to importers or to supplying countries, if any, and ad hoc notification of subsequent changes to these policies and mechanisms.
 - **TQ fill rates:**
 - Annual notification of tariff quota fill.
 - Enhance transparency with information including, explanations for decreases in fill rates beyond a certain threshold (e.g., decreases greater than 10% of the TQ volume); information on imports where TQs are administered on an applied tariff basis; information on the application of any re-allocation mechanisms and other actions taken to enhance fill rates (e.g., to remove / relax provisions with respect to TQ administration).
 - Require, for developed countries, publicly available information on in-quota fill during a quota year (e.g., through web-sites, as many Members already do).
- SSM [To be further developed]
 - New provision.

Special and Differential Treatment

- Developing country Members will be entitled to S&D treatment, including:
 - Longer timeframes for submitting notifications
 - Domestic support: within [xx] months after the end of the reporting cycle
 - Other pillars: within [xx] months after the end of the reporting cycle
 - Secretariat will be available to assist developing country Members in preparing notifications:
 - A capacity building programme will be developed and implemented to assist developing country Members to better engage in the monitoring and surveillance process, including programmes to assist developing countries in preparation as well as analysis of notifications.

¹¹ Consider other notification requirements based on results in tariff escalation, tariff simplification, tropical products, as well as in light of Articles VIII, X and XIII of the GATT 1994 and the Agreement on Import Licensing Procedures, etc.

- Recognize that additional resources may be required to provide this service.

2) INSTITUTIONAL STRUCTURE FOR SURVEILLANCE

Enhancing the functions of the WTO institutions, to enable fuller and deeper examination of policies across the 3 pillars

- Creation of a Sub-Committee on Monitoring and Surveillance (SCMS).¹² To be convened as many times as necessary to review Members' notifications, including the notification at the end of the implementation period, and conduct the reviews outlined below.¹³
- Annual report and high-level debate on progress of the agriculture trade reform process. Factual report to be prepared by the Secretariat, as a basis for recommendations (on inconsistencies and possible additional measures) by rapporteur(s)/discussant(s)/panel of experts to be chosen by the Chairman of SMCS in consultation with Members. Report and recommendations to be updated, if necessary, after discussions within the SCMS. Report should address issues such as trade flows, price movements, creation of market opportunities, interrelationship between cuts in subsidies and market access, impacts on developing countries, including NFIDCs and LDCs. Special attention should be given to key subsidizing Members' performance as to compliance with commitments.
 - Secretariat will undertake a thematic work programme focusing on a key topic for each SCMS meeting. Secretariat will prepare a factual report on the selected theme. Chairman will appoint rapporteur/discussant/panel of experts to elaborate report with conclusions and recommendations. Members will be able to pose questions to any Member. Report and recommendations to be updated, if necessary, after discussions within the SCMS.
- Review of Members' agricultural policies and conformity with commitments. Chairman of SCMS to appoint rapporteur(s)/discussant(s)/panel of experts to make suggestions and recommendations, based on the Secretariat's report. Report and recommendations to be updated, if necessary, after discussions within the SCMS. Review to be undertaken on a rolling basis to be determined in advance. Frequency of review will be determined in accordance with a Member's share of global trade and the importance of the commitment by each Member (*i.e.*, key subsidizing Members should be examined more frequently).
- (One-off) Report/Overview on the Implementation of Commitments. Factual report by the Secretariat, as a basis for recommendations by rapporteur(s)/discussant(s)/panel of experts to be chosen by the Chairman of SMCS in consultation with Members. Dedicated session of the SCMS to discuss the final document. Report and recommendations to be updated, if necessary, after discussions within the SCMS.
- Special Report on S&D implementation and development concerns. Factual report by the Secretariat, as a basis for recommendations by rapporteur(s)/discussant(s)/panel of experts to be chosen by the Chairman of SMCS in consultation with Members. Dedicated session of the SCMS to discuss the final document. Report and recommendations to be updated, if necessary, after discussions within the SCMS.

¹² Uruguay reserves its positions on this point.

¹³ This is without prejudice to Members' rights to raise, including in the regular Committee on Agriculture meetings, any matter relevant to the implementation of commitments or any measure which it considers ought to have been notified by another Member.

- Special report on the implementation of cotton-related commitments. Factual report by the Secretariat, as a basis for recommendations by rapporteur(s)/discussant(s)/panel of experts to be chosen by the Chairman of SMCS in consultation with Members. Report and recommendations to be updated, if necessary, after discussions within the SCMS.
- Examinations and discussions in the SCMS will be scheduled well in advance of the meetings to provide adequate time for the Member under scrutiny to submit overdue notifications. This will also enhance the delegations' ability to engage in an in-depth, well informed discussion.
- Reports and recommendations are to be made publicly available by the Secretariat [within [xx] days from the meeting at which they were discussed] [upon circulation to WTO Members].
- Questions and answers posed by Members in the context of the review processes above will be made publicly available by the Secretariat (including on the WTO website) within 30 days of the question/answer being submitted. A list of overdue responses will be provided by the WTO Secretariat at each SCMS meeting and will be available to the public, including on the WTO website. Ensure that Member to whom the question is addressed has a reasonable time-period to answer.
- Observer organizations to the SCMS will be invited to deliver presentations on global agriculture trade reform and agricultural policies in key subsidizing WTO Members.

Giving incentives to avoid or restrict non-compliance with notification requirements

- Overdue notifications
 - *Preventive measure 1:* [xx] days before the deadline to submit its notification, a Member must notify the other Members [through the Chairman of the SCMS] of whether it intends to submit such notification by the deadline. Where such Member considers that the notification by the deadline will not be possible, it may request an extension of no more than [xx] days to complete its work.
 - *Preventive measure 2:* where final data is not available by the deadline to submit notification, Members should be allowed to use estimates in order to meet deadlines. Final data must be submitted within an agreed period of no more than [xx] days after such data becomes available, but not later than [xx] days after "provisional" notification is filed.
 - Require Members who are late in notifying to submit by the time of filing of the notification an explanation of why they have not met the deadline and when they intend to do so.
 - After failure to meet the deadline for notification by any Member, the Chairman of the SCMS must [promptly] appoint a facilitator to (i) assess the reason(s) for such a failure and (ii) issue a report with appropriate recommendations within [30] days.
 - If a Member does not submit its notification within [xx] days from circulation of the facilitator's report, and until such notification is made, such Member will not be entitled to request the insertion of items in the SCMS' agenda. Nor will it be entitled to pose any question to other Members in relation to any matter under examination at the SCMS.
 - At least 10 days before a meeting of the SCMS, the Chairman must circulate to Members a list of overdue notifications. The issue of overdue notifications must be

an item in the SCMS' agenda whenever an overdue notification exists. At those meetings, Members who are late in notifying must report on the reasons for their lack of compliance and indicate when they intend to file their respective notifications.

- Require the Secretariat to provide an annual public report (including in the WTO website) listing overdue notifications.
- Insufficient information
 - Use of estimates [see above].
 - Early warning of inability to conclude notification [see above].
 - Where specific required information has not been provided in a notification, an explanation shall be provided in the notification itself.¹⁴
 - Where a Member considers that a notification does not contain the required information, and without prejudice to direct consultations with the notifying Member, that "interested Member" may request the Chairman of the SCMS to appoint a facilitator to (i) assess whether there is a failure in notification and, where appropriate, (ii) issue recommendations within [xx] days of the request. Other "interested Members" may join in the procedure led by the facilitator, if they so request. Notifying Member will have [xx] days to apply the recommendations of the facilitator. In case of disagreement as to whether the notifying Member has complied with the facilitator's recommendations, the facilitator will be [promptly] reappointed to issue a new report. Where there is a finding of non-compliance by the facilitator, and until compliance is achieved, the notifying Member will not be entitled to request the insertion of items in the SCMS' agenda. Nor will it be entitled to put any question to other Members in relation to any matter under examination at the SCMS.
 - Require the Secretariat to provide an annual public report (including in the WTO website) identifying Members' non-compliance with information/content requirements.

Review of Monitoring and Surveillance Mechanisms

- After [xx] years from entry into force, SCMS must conduct review of M&S mechanisms (notification requirements and institutional structure) in order to introduce necessary modifications with a view to improving the system. Set a deadline for the conclusion of the review process.

¹⁴ See *e.g.* Article 25.4 of the Agreement on Subsidies and Countervailing Measures.