

TRANSPARENCY AND NOTIFICATION REQUIREMENTS

Anna Varyanik
Legal Affairs Officer
Accessions Division

Geneva, 12 February 2019

OUTLINE

1. Transparency in WTO accession negotiations: first exposure
2. WTO principles and concept of transparency
3. Transparency requirements in WTO Agreements
 - Examples of specific Agreements
4. Accessions *acquis*: history, numbers, overview
 - “WTO+” accession-specific transparency commitments
5. Compliance with transparency and notification commitments
 - Performance of Article XII Members
 - Secretariat’s assistance and support

ACCESSION NEGOTIATIONS - TRANSPARENCY

- The WTO is a contractual organization
 - All its Members are bound by the rules and disciplines in the WTO Agreements and their individual market access commitments
- Working Party process:
 - Ensures that an acceder's legislative and regulatory framework becomes compliant with WTO rules
 - Memorandum on the Foreign Trade Regime
 - Submission of legislation
 - Q&R cycles
 - LAP, Accession Checklists and Questionnaires, etc.
 - Draft notifications (STEs; industrial subsidies; customs valuation; SPS; TBT; export subsidies; agricultural policies; etc.)
- Process of learning and preparation for WTO membership



WTO – BASIC PRINCIPLES

- **Non-Discrimination**

- Most Favoured Nation (MFN)
- National Treatment (NT)

- **Predictability**

- Through binding – access to markets

- **Undistorted “fair competition”**

- Anti-dumping, Subsidies and Countervailing measures, Safeguards

- **Transparency**

- Publications, Notifications, TPR

- **Encourage development**

- Assisting developing countries to increase their participation in the multilateral trading system

Why transparency?

To ensure that trade flows

- smoothly,
- predictably, and
- Freely

Collective surveillance

TRANSPARENCY – BASIC TYPES OF REQUIREMENTS

- Publication of relevant information on trade
 - Article X:1 of the GATT 1994
 - Article III of the GATS
 - Article 63 of the TRIPS Agreement
 - Article 1 of the Trade Facilitation Agreement
 - *Etc.*
- Notification of new trade-related measures and legislation
- Availability of other instruments to ensure access to trade-related information
 - **E.g.:** establishment of enquiry points/contact points
 - Responses to Members'/traders' requests
 - *Etc.*



NOTIFICATION REQUIREMENTS - SOURCES

How many notification obligations are there?

- Annex 1A: 175 requirements
 - 106 ad-hoc
 - 43 one-off
 - 26 regular (17 annual, 3 semi-annual, 2 every 2 years)
- Annexes 1B + 1C: around 40 requirements
- Accession Packages (“WTO+” notification commitments)

NOTIFICATIONS – “WHY?” & “WHEN?”

- **Advantages**

- Transparency
- Collective surveillance

- **Disadvantages**

- Scope of notification?
- Costs: production, circulation, analysis

- *Ad-hoc*: if ... then notify
- One-off: “snap-shot”
- Regular
 - every 6 months: semi-annual
 - annual
 - other periodicities



NOTIFICATIONS – “WHAT?” & “HOW?”

- Legislation
- Changes in legislation
- Stock: measures in place
- Changes: Measures taken in a given period
- Step by step: individual actions

- Guidelines
- Formats
- Samples (notifications already submitted)

What needs to be done?

- National coordination
- Data preparation
- Presentation
- Review: oral and written questions

EX.: ARTICLE III OF THE GATS – “TRANSPARENCY”

1. Each Member shall **publish promptly** and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Member shall promptly and at least annually **inform the Council for Trade in Services** of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.
4. Each Member shall **respond promptly to all requests** by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also **establish one or more enquiry points** to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the “WTO Agreement”). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.
5. Any Member may **notify to the Council for Trade in Services any measure**, taken by any other Member, which it considers affects the operation of this Agreement.

EX: TRADE FACILITATION AGREEMENT - 1

▶ **Art.1.1 Publication:**

- ▶ Members shall promptly publish general trade-related information in a non-discriminatory and easily accessible manner
 - ▶ Example: import and export procedures; appeal procedures; applied rates of duties and taxes; import, export and transit restrictions; etc.

▶ **Art. 1.2 Info available through internet:**

- ▶ Each Member shall make available and update to the extent possible the information it provides to the public regarding import, export and transit procedures.
- ▶ One of the WTO languages
 - ▶ Example: forms and documents required to import, export and transit; contact information on enquiry points etc.



Article 1
Publication &
Availability
of Information

EX: TRADE FACILITATION AGREEMENT - 2

• Article 1.3: Enquiry points

- Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries and provide required documentation within a reasonable period of time
- Possibility to establish/maintain one regional enquiry point
 - Any interested person may request specific information from a Member about import, export or transit requirements



Article 1
Publication &
Availability
of Information

EX: TRADE FACILITATION AGREEMENT - 3

•Article 1.4: Notifications

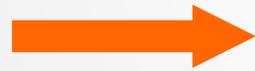
- Each Member shall notify the Trade Facilitation Committee of
 - the official places of publication of measures under Art. 1.1
 - the addresses of the websites referred in Art. 1.2
 - the contact details of its enquiry point(s) (Art. 1.3)



Article 1
Publication &
Availability
of Information

EXAMPLE: SPS AGREEMENT – ARTICLE 7 AND ANNEX B

Members shall



**establish an Enquiry Point
AND
designate a Notification Authority**



**notify other Members of new or changed
SPS regulations when**



**no international standard exists
OR
the new regulation is different
than the international standard**

AND

**regulation may
have significant
effect on trade**

EX: TBT AGREEMENT

How does the TBT Agreement promote transparency?

Each WTO Member is required to

- Submit a statement on implementation and administration
- Notify draft and adopted technical regulations and CAPs
- Publish all technical regulations, CAPs and agreements
- Establish an Enquiry Point

EX: TBT AGREEMENT – NOTIFICATIONS -1

- Basic document: G/TBT/1/rev. 11 or higher
- Art. 15.2, 10.2 and 10.10 - “one-time”
 - Art. 15.2: Statement on the implementation and administration of the Agreement
 - Art. 10.2: Enquiry point(s)
 - Art. 10.10: Designation of a Government authority for implementation of notification obligations

All Members

- Technical regulations and CAPs – *ad-hoc*

EXAMPLE: TBT AGREEMENT – NOTIFICATIONS - 2

- Annex 3 - Code of Good Practice – paragraph C “one-time” - ISO/IEC Information Centre in Geneva
Notification of standardizing bodies having accepted the Code
All Members
- Annex 3 - Code of Good Practice – paragraph J “every six months” - ISO/IEC Information Centre
Work programme on development of standards

All standardizing bodies having accepted the Code

EX: SERVICES - NOTIFICATIONS

- Basic document: S/L/5
- Changes in regulations affecting trade in scheduled sectors (art. III.3)
Ad-hoc, at least annually when conditions met
- Enquiry point (art. III.4)
All Members
 - Requests from other Members
- Contact point (art. IV.2)
Developed WTO Members
 - Facilitate Access of Service suppliers from developing country Members
 - Commercial and technical aspects of services supply
 - Registration, recognition and obtaining of professional qualifications
 - Availability of services technology
- Existing recognition measures (Art. VII.4)
All Members – one-time
- Treatment of permanent residents (Art. XXVIII:(k):(ii):2)
All Members – one-time
- MFN exemptions:
Termination: Annex on Article II exemption (para. 7)
Members with such exemptions

EXAMPLE: TRIPS - NOTIFICATIONS

- Art. 63.2 - “one-time” – Notification of laws and regulations
All Members
- Copyright and related rights
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Layout designs of integrated circuits
- Undisclosed information
- Art. 69 - “one-time”
Notification of contact points for enforcement
All Members



TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – HISTORY AND NUMBERS

36

Article XII Members -

Nearly

300

Transparency-related commitments

74

Commitments under the Transparency section of WPRs



Over
200

Commitments spread across all sections of the WPRs (191) and, in some cases, the Accession Protocols

All Article XII Members

undertook Transparency-related commitments

TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – PATTERNS - 1

• Transparency

	Ecuador	Bulgaria	Mongolia	Panama	Kyrgyz Republic	Latvia	Estonia	Jordan	Georgia	Albania	Oman	Croatia	Lithuania	Moldova	China	Chinese Taipei	Armenia	FYROM	Cambodia	Nepal	Saudi Arabia	Viet Nam	Tonga	Ukraine	Cape Verde	Montenegro	Samoa	Russian Federation	Vanuatu	Lao PDR	Tajikistan	Yemen	Seychelles	Kazakhstan	Liberia	Afghanistan
Publication of information on trade Notifications		1	1	1							1			1	4	3	1		1	1	1	2	1	1	1	1	1	4	1	1	1	1	1	3	1	1
	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1			1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

• State ownership and privatization

	Ecuador	Bulgaria	Mongolia	Panama	Kyrgyz Republic	Latvia	Estonia	Jordan	Georgia	Albania	Oman	Croatia	Lithuania	Moldova	China**	Chinese Taipei	Armenia	FYROM	Cambodia	Nepal	Saudi Arabia	Viet Nam	Tonga	Ukraine	Cape Verde	Montenegro	Samoa	Russian Federation	Vanuatu	Lao PDR	Tajikistan	Yemen	Seychelles	Kazakhstan	Liberia	Afghanistan
Commitment to report on ongoing privatization process/programme		1	1		1	1	1		1	1		1	1	1		1	1	1	1		1	1		1	1	1	1	1		1		1	1	1	1	1
Transparency and notification commitments on SOEs/STEs	1	2	1	1	1	1	1	1	1	1	1	1		1		4	1	1	1	1	1		1	1	1	1	1	1	1	1		1	1	1	1	

TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – TRANSPARENCY SECTION – PUBLICATION - 1

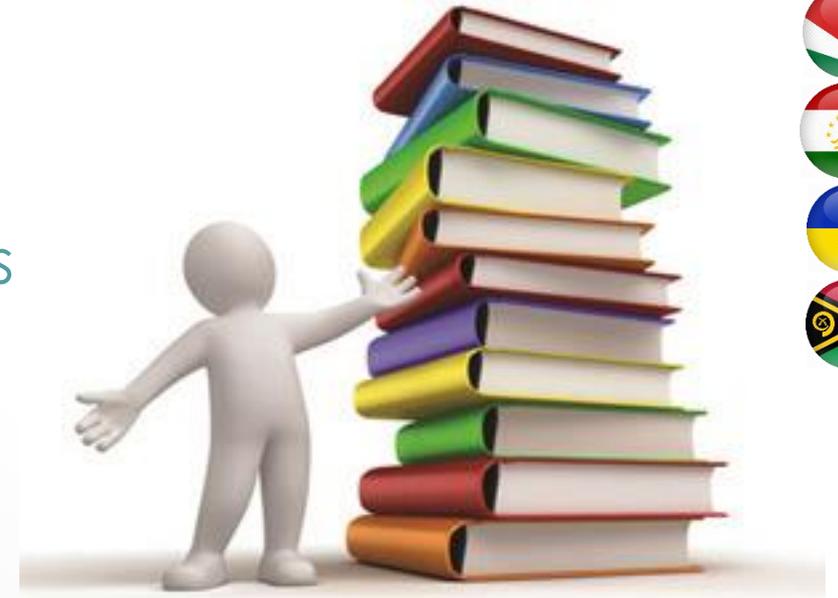
- **Publication of information on trade**
 - description of the acceding governments' domestic regime for the publication of legislation/regulations on trade
- **Pre-2008: only half of WPRs / post-2008: all WPRs**
- Publication of “all laws, regulations, decrees, judicial decisions and administrative rulings of general application pertaining to or affecting customs issues, trade in goods, services or intellectual property”
 - Commitment to publish legislation and measures related to trade and investment – 1 Member



- **Transition periods:**
 - **7 Members:** "grace period" for the establishment/designation of either an official journal or website

26

Members



TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – TRANSPARENCY SECTION – PUBLICATION - 2

- **Method of publication**
 - Official Gazette/Journal
 - a newspaper
 - a website
- **Level of detail to be attached to such publications**
 - i.e., the names of the authorities responsible for implementing a particular measure, the effective date of the measure and a list of the products and services affected, identified by appropriate tariff line and classification
- **Commitment on regular updates**
- **Period to be granted for consultation and comments, prior to enforcing a new trade-related measure**
 - **10 Members:**
 - **2 weeks** (Armenia, paragraph 215; Bulgaria, paragraph 40)
 - **reasonable period, i.e. no less than 30 days** (Cape Verde, paragraph 262; Montenegro, paragraph 273; Tajikistan, paragraph 343; Ukraine, paragraph 499; Vanuatu, paragraph 134)
 - **reasonable period, i.e. no less than 60 days** (Viet Nam, paragraph 518)
 - **reasonable period** (China Protocol 1.2(C) 1 and 3 (a));
 - **30 days** (Seychelles, paragraph 407)
 - **60 calendar days** (Chinese Taipei, paragraph 219)



TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – TRANSPARENCY SECTION – PUBLICATION - 3

• **Period: specific references – 15 Members**

- Emergency and security exceptions granted under the WTO Agreement
- Impediment to law enforcement
- “or be otherwise contrary to the public interest or prejudice the commercial interests of particular enterprises, public or private” - Vanuatu
- *Special case*: exception also extends to the commitment on publication - Tonga



• **Extension of publication commitment:**

- to trade-related measures taken at any level of the government
- to legal acts adopted or issued by a competent body of a customs union



• **Other commitments:**

• **Enquiry points:**

- establishment
- notification
- timeline for provision of replies after receipt of a request by an enquiry point



• **Non-disclosure of confidential information**



• **Availability of translations of legislation in one of the official WTO languages**



• **Submission of information to the Integrated Data Base (IDB)**



• **participation in the WTO mechanisms (TPRD and others)**



• **Extension of commitment to official letters**



TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – TRANSPARENCY SECTION - NOTIFICATIONS

• Notifications

- ensuring adherence to the notification requirements of the WTO Agreement
- specifically, ensuring the effective implementation of initial notification requirements from the date of accession
- **24 Members** expressly committed to submit initial notifications upon accession
 - with exceptions – Montenegro, Seychelles, Tajikistan
 - Circulation of all draft notifications to the accession Working Party for review – Mongolia
 - With deadlines for some notifications even prior actual WTO accession - Panama

34
Members



• Transition periods:



• **8 Members:**

- to submit all initial notifications within six months from the date of accession, with some exceptions - 5
- as per the schedule attached to the WPR – Oman, China
- to notify specific initial notifications (customs valuation; subsidies and countervailing measures; trade-related investment measures (TRIMs); import licensing; rules of origin) within a specific timeframe after accession – e.g., 90 days

• Notification of implementation of the phased commitments, annually

- **3 Members** – Ecuador, Bulgaria, Panama

TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – STATE OWNERSHIP AND PRIVATIZATION

- **To notify ongoing privatization programmes**

- Annually - 19
- every 18 months - Bulgaria
- every two years - Mongolia
- periodically - 5
- upon request - Afghanistan

26
Members

- **To notify enterprises falling under Article XVII of the GATT 1994**

- Any enterprise - 17
- Those specifically mentioned - 4

31
Members

- **To provide annual reports on other issues related to its economic reforms as relevant to obligations under the WTO - 13**

- **To operate state trading enterprises**

- in transparent manner – Chinese Taipei
- full transparency of STEs' import and export procedures – Chinese Taipei
- notification of the products imported/exported by SOEs/STEs – Lao PDR
- provision of other information – Chinese Taipei
 - E.g., “annual reports on the volumes of tobacco and alcoholic products manufactured in Chinese Taipei and on taxes paid by TTWMB by taxable category, to ensure adequate transparency after the tax reform”



TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – PATTERNS - 2

- Other sections of Working Party Reports

	Ecuador	Bulgaria	Mongolia	Panama	Kyrgyz Republic	Latvia	Estonia	Jordan	Georgia	Albania	Oman	Croatia	Lithuania	Moldova	China**	Chinese Taipei	Armenia	FYROM	Cambodia	Nepal	Saudi Arabia	Viet Nam	Tonga	Ukraine	Cape Verde	Montenegro	Samoa	Russian Federation	Vanuatu	Lao PDR	Tajikistan	Yemen	Seychelles	Kazakhstan	Liberia	Afghanistan
State-owned, state-trading enterprises and privatization	1	3	2	1	2	2	2	1	2	2	1	2	1	2		5	1	2	1	1	1	1	1	2	2	2	2	2	1	1	1	1	2	2	2	1
Ordinary customs duties																										1								1		
Tariff rate quotas, tariff exemptions																								1												
Application of internal taxes to imports																	1																			
Quantitative import restrictions, including prohibitions, quotas and licensing systems																1	2							1			4							5		
Rules of origin																											1	1	1					1	1	1
Pre-shipment inspection								1	1					1			1		1		1	1		1	1	1	1	1		1	1	1				
Anti-dumping, countervailing duties and safeguard regimes																				1				1	1				1	1	1	1		1	1	1
Customs tariffs, fees and charges for services rendered, application of internal taxes to exports and minimum export prices																														1				1		1
Export subsidies				1																					1										1	
Industrial policy, including subsidies			1	1											1	1							1	1	1		1		1	2	1			1	1	1
Technical barriers to trade							1								5						1	1	1	1	1		1	1	1					1		
Sanitary and phytosanitary measures				1	1																2		1				1							1	1	
Trade-related investment measures (TRIMs)	1																		1								1							1	1	
Free zones, special economic areas															1																					
Agricultural policies		1													1																					
Trade Agreements	1	1	1		1	1	1	1	1	1	1	1	1	1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

TRANSPARENCY COMMITMENTS OF ARTICLE XII MEMBERS – OTHER SECTIONS

• Regional Trade Agreements

- To comply with the notification provisions under the WTO Agreement and/or
- To provide copies of their preferential trade arrangements to the Committee on Regional Trade Agreements

• Ordinary customs duties, Internal taxation

- To notify tariff rate information and statistics of imports as part of the special mechanism/negotiations of **tariff adjustment/compensation** – Kazakhstan 
- To notify, within a specified period of time, the General Council annually about the status of the **tax exemption**, including its scope and level – Armenia 

34
Members

• Transitional Review Mechanism

China - Article 18 and Annex 1A of the Protocol of Accession:

- To provide, during a specified period, information on a range of areas to relevant WTO bodies, on an annual basis

“1. Those subsidiary bodies of the WTO which have a mandate covering China's commitments under the WTO Agreement or this Protocol shall, within one year after accession and in accordance with paragraph 4 below, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of this Protocol. China shall **provide relevant information**, including information specified in Annex 1A, to **each subsidiary body** in advance of the review. [...]

2. The **General Council shall**, within one year after accession, and in accordance with paragraph 4 below, **review the implementation by China of the WTO Agreement and the provisions of this Protocol**. [...]

4. The review provided for in paragraphs 1 and 2 will take place after accession in each year for **eight years**. Thereafter there will be a final review in year 10 or at an earlier date decided by the General Council.”

NOTIFICATIONS – COMPLIANCE (ALL MEMBERS)

- Compliance with notification requirements has not been fully satisfactory (WT/MIN(96)/DEC para. 11)
- Why?
 - **Substantial difficulties**
 - to modify legislation, etc.
 - to implement reductions agreed in the schedules
 - **Other difficulties**
 - human resources
 - lack of experience



NOTIFICATIONS - DOCUMENTATION

- Technical Cooperation Handbook on Notification Requirements: WT/TC/NOTIF
- List of all notification requirements in Annex 1A: G/NOP/W/2/Rev.1
- Timing: G/NOP/W/5
- Compliance: G/L/223

Ministerial Decision

- General obligation to notify
- Central Registry of Notifications (CRN)
- Working Group on Notification Obligations and Procedures (G/NOP series)

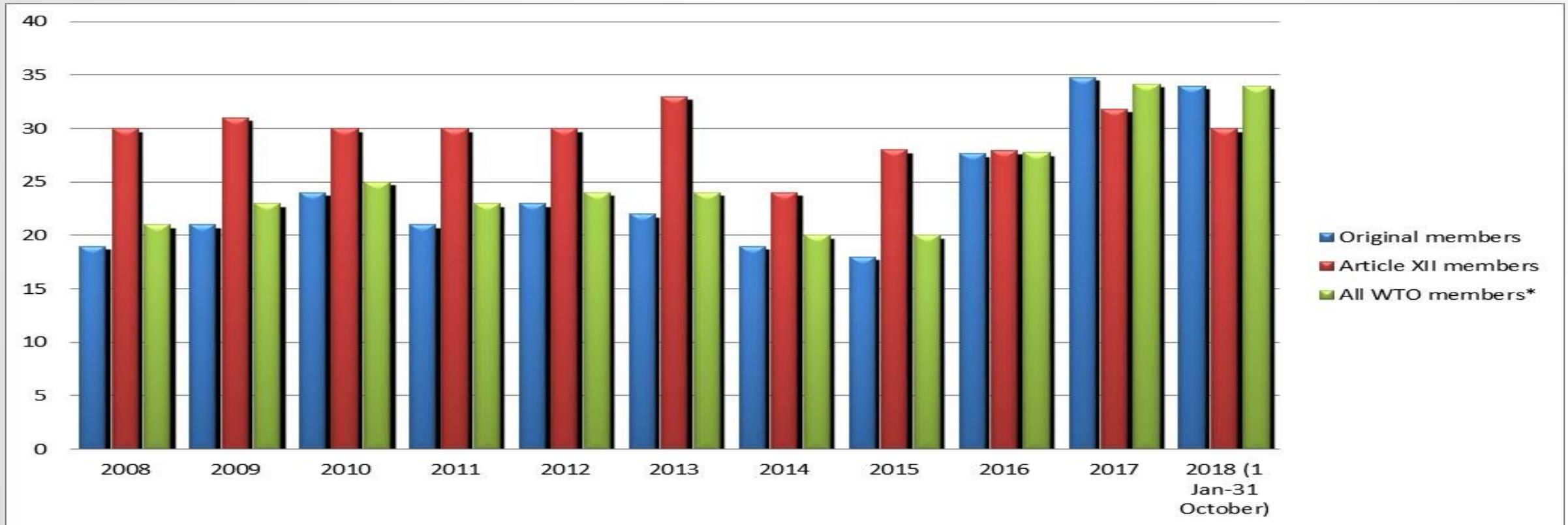
NOTIFICATIONS – CENTRAL REGISTRY OF NOTIFICATIONS (CRN)

- Entry point in the Secretariat for ALL notifications (WT/INF/124)
- A call every year for each Member - “tailor-made” listing of regular notifications
- Reminders - “tailor-made” list of unfulfilled regular notifications

WORLD TRADE ORGANIZATION	G/TBT/N/...
	(00-0000)
Committee on Technical Barriers to Trade	Original: English
NOTIFICATION	
The following notification is being circulated in accordance with Article 10.6.	
1. Member to Agreement notifying: If applicable, name of local government involved (Articles 3.2 and 7.2): <input type="text"/>	
2. Agency responsible: Ministry of Industry Name and address (including telephone and fax numbers, e-mail and web-site addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above: <input type="text"/>	
3. Notified under Article 2.9.2 [], 2.10.1 [], 5.6.2 [], 5.7.1 [], other: <input type="text"/>	
4. Products covered (HS or CCCN where applicable, otherwise national tariff heading. ICS numbers may be provided in addition, where applicable):	
5. Title, number of pages and language(s) of the notified document:	
6. Description of content:	
7. Objective and rationale, including the nature of urgent problems where applicable:	
8. Relevant documents:	
9. Proposed date of adoption: Proposed date of entry into force:	
10. Final date for comments:	
11. Texts available from: National enquiry point [] or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body: Website:	

NOTIFICATIONS – PERFORMANCE OF ARTICLE XII MEMBERS

AVERAGE NUMBER OF NOTIFICATIONS MADE ANUALLY



Source: DG's 2018 Annual Report on Accessions
WTO Central Registry of Notifications database

NOTIFICATIONS - SECRETARIAT'S ASSISTANCE

- Post-accession support
- Specialised workshops: Geneva, regional/national
- Module on notifications in every “general” TA activity
- Focal points



THANK YOU!

Questions?