

**EU NOTIFICATION AUTHORITY AND ENQUIRY POINT FOR THE SPS AGREEMENT:
EXPERIENCE AFTER THE REVISION OF THE TRANSPARENCY GUIDELINES
OF DECEMBER 2008**

Workshop on the Transparency Provisions of the SPS Agreement -
Geneva, 19 and 22 October 2010 - Reflection Note

The following communication, received on 6 October 2010, is being circulated at the request of the Delegation of the European Union.

I. FOREWORD

1. In view of the Workshop on Transparency organized by the WTO/SPS Secretariat in the margins of the forthcoming SPS Committee, the European Union would like to update its submissions¹ prepared for previous transparency workshops.
2. As a result of the important revision made to notification formats from 1 December 2008, as explained in document G/SPS/7/Rev.3 (20 June 2008)², the EU SPS Notification Authority and Enquiry Point (EU SPS NA/EP) has prepared a study on notifications from 1 December 2008 to 31 July 2010. Particular reference is made to one of the main modifications, namely: the wider scope under point 8 which refers to the existence of international standards covering the measure in question and deviation from, or conformity with, these relevant standards.
3. The aim of this paper is two-fold:
 - (a) to highlight the importance of correctly filling out point 8 to help other interested parties to verify the likely effect of the proposed legislation on their external trade. The study will also look at EU practice in this regard;
 - (b) to point out the lack of transparency in import requirements of plant health regulations and to encourage WTO Members to work further in this field.

¹ Background: In 2003 the European Union (then the European Communities) submitted a document explaining SPS operational procedures, how the European Commission works in coordination with its member States and what were the main activities undertaken since January 2000 (G/SPS/GEN/456 of 5 December 2003, "The EC Notification Authority and Enquiry Point for the WTO Agreement on the Application of Sanitary and Phytosanitary Measures: Operational Procedures and Recent Experience"). In 2007, the European Union presented complementary information outlining the experience gained in meeting its obligations on transparency (G/SPS/N/GEN/803 of 10 October 2007 "The EC Notification Authority and Enquiry Point for the SPS Agreement: Experience acquired in the operational procedures and recent experience").

² G/SPS/7/Rev.3 (20 June 2008) "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) as of 1 December 2008".

II. INFORMATION ON INTERNATIONAL STANDARDS INVOLVED IN EU LEGAL PROPOSALS

4. In the document "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) as of 1 December 2008" (G/SPS/7/Rev.3), the new agreed format for notifications has been improved providing a more complete source of information concerning the origin of the measures, their scientific basis and the possible effect on international trade.

5. One of the main improvements accomplished by the revision of the notification model was the new format of point 8. Point 8 needs to be filled out more comprehensively to help everybody understand the scope and modifications made in a new or changed measure.

8. Existence of international standard, guideline or recommendation	If a relevant international standard, guideline or recommendation exists, put a cross in the box provided for the appropriate standard-setting organization and give the appropriate reference of the existing standard, guideline or recommendation, e.g., Codex standard number, ISPM number, OIE Code chapter. Indicate whether the proposed regulation conforms to the relevant international standard and if not, describe, whenever possible, how and why the proposed regulation deviates from the international standard, guideline or recommendation. If no international standard, guideline or recommendation exists, put a cross in the box "none".
---	---

6. The most important requirement is to point out the existence, or not, of an international standard and, if relevant, to explain the reasons for deviating from an existing standard.

7. Based on the database managed by the WTO/SPS Secretariat "SPS Information Management System (SPS IMS)"³, the EU SPS NA/EP has prepared a short study of the compliance with International Standard Setting Bodies (ISSB) of the notifications issued since the date of coming into effect of the revised notification formats, 1 December 2008, until 31 July 2010. (See Annex I for a detailed breakdown of data.)

8. The total number of notifications issued (regular, addenda, revision, corrigenda and emergency) amounted to 2,201 documents. Reference to international standards is only necessary for regular and revised notifications, so only these have been taken into account for the study. In total 1,337 notifications contained information on point 8 on ISSB.

9. For information on notifications issued by Member, during the period studied, China notified the highest number of drafts (191), followed by Brazil (155), United States (143), Canada (108), Peru (104) and Bahrain (72). The European Union (EU) notified 46 proposals (see Annex I, Figure 1).

10. Out of all the studied notifications, 792 notifications (59%) have not specified if they are in conformity with any international standard; 205 (15%) do not follow any existing international standard; and 340 (25%) are in compliance with existing international standards. Of the 205 proposals not following the relevant international standard, 103 did not give any explanation or reason for the deviation (see Annex I, Table 2).

³ The European Union would like to thank the WTO/SPS Secretariat for the effort in developing and putting into place the database SPS Information Management System (SPS IMS) that allows a complete breakdown of all the documents and records relevant under the SPS Agreement. Without it, this study could not become reality. See: <http://spsims.wto.org/default.aspx>.

11. Concerning the ISSB (see Annex I, Table 3):
- (a) 759 did not identify any ISSB as relevant for the measure;
 - (b) 304 identified Codex as relevant;
 - (c) 117 identified OIE as relevant and
 - (d) 137 identified International Plant Protection Convention (IPPC) as relevant.
 - (e) 20 identified a different standard (such as EU or other governments' legislative acts, Gulf Cooperation Council Standardization Organization (GSO), Cartagena Protocol on Biosafety, WHO documents etc.).
12. The European Union has in five instances issued SPS notifications informing WTO Members about new measures that deviate from existing international standards. One notification G/SPS/N/EEC/338, is not relevant⁴ and the deviation found in the other four is explained fully and supported by scientific assessment. Of the four notifications, only one (G/SPS/N/EEC/372) received comments from other WTO Members. They were replied to in full (see Annex II).
13. This data shows that WTO Members need to increase their efforts to look for the appropriate international standard relevant to the measure, and in the case of any deviation, it is necessary to give an appropriate description about how and why this was decided upon, as per point 8 of the notification format request.

III. PUBLICATION OF IMPORT REQUIREMENTS CONCERNING SPS

14. Access to information about SPS import requirements is key in trade facilitation, and is of great interest to both importers and exporters. However, a lack of transparency in this area is one of the major barriers to trade, particularly for plants and plant products where this is possibly the most substantial barrier within the SPS area. According to the agreements within IPPC, lists of regulated pests, as well as import requirements for regulated plant products, should be available; either published or on request. The European Union has published its plant health import requirements on "Europa" portal.⁵ The European Union would encourage all WTO Members, who have not already published information on regulated pests and/or import requirements for plants and plant products, to do so.
15. The IPPC webpage provides all the means for publication, either of the legislation or by virtue of a link to a national webpage. The European Union welcomes this initiative. Some countries have published databases, providing the import requirements for regulated plant products. Others, even if not all members of IPPC, have made available links to lists of regulated products and the related requirements. Furthermore, lists of regulated pests have been published, on the IPPC webpage, by a considerable number of the members of the IPPC.
16. Publication of import requirements adds significantly to transparency. However, publication requires prior assessment of risks and mitigating measures. The European Union would encourage trading partners to take on this task, enabling them to publish import requirements, rather than to provide this information only in import permits.

⁴ Notification G/SPS/N/EEC/338 found no reference in any ISSB, but, incorrectly stated that it did not conform to an existing standard.

⁵ European Union on plant issues http://ec.europa.eu/food/plant/index_en.htm.

17. Technical assistance may be useful within this area. The European Union has already committed to provide financial support to set up the IPPC helpdesk.⁶ The European Union would encourage other WTO Members to also contribute to this worthwhile project to ensure its long term viability.

18. The European Union would like to announce that besides the information already published on EU web pages⁷, a database covering the phytosanitary import requirements will be available in the near future.

IV. CLOSING REMARKS

19. The EU SPS EP/NA ensures a transparent procedure in submitting proposals, responding to comments of other Members, explaining legislative initiatives and distributing legal texts. The European Union refers to scientific assessments to justify its legal proposals, and provides consultation periods to receive trading partners' concerns. The European Union would be happy to share this expertise with other Members.

⁶ The financial contributions for the coming three years (2011-2013) dedicated to IPPC are a total of €1,300,000.00: €400,000.00 to support the IPPC helpdesk and €900,000.00 to support travel of delegates from developing countries to attend IPPC meetings.

⁷ Find below several links to relevant EU web pages:

EU export helpdesk http://exporthelp.europa.eu/index_en.html

EU pesticides database http://ec.europa.eu/sanco_pesticides/public/index.cfm

EU on plant issues http://ec.europa.eu/food/plant/index_en.htm.

ANNEX I

Detailed Breakdown of Data

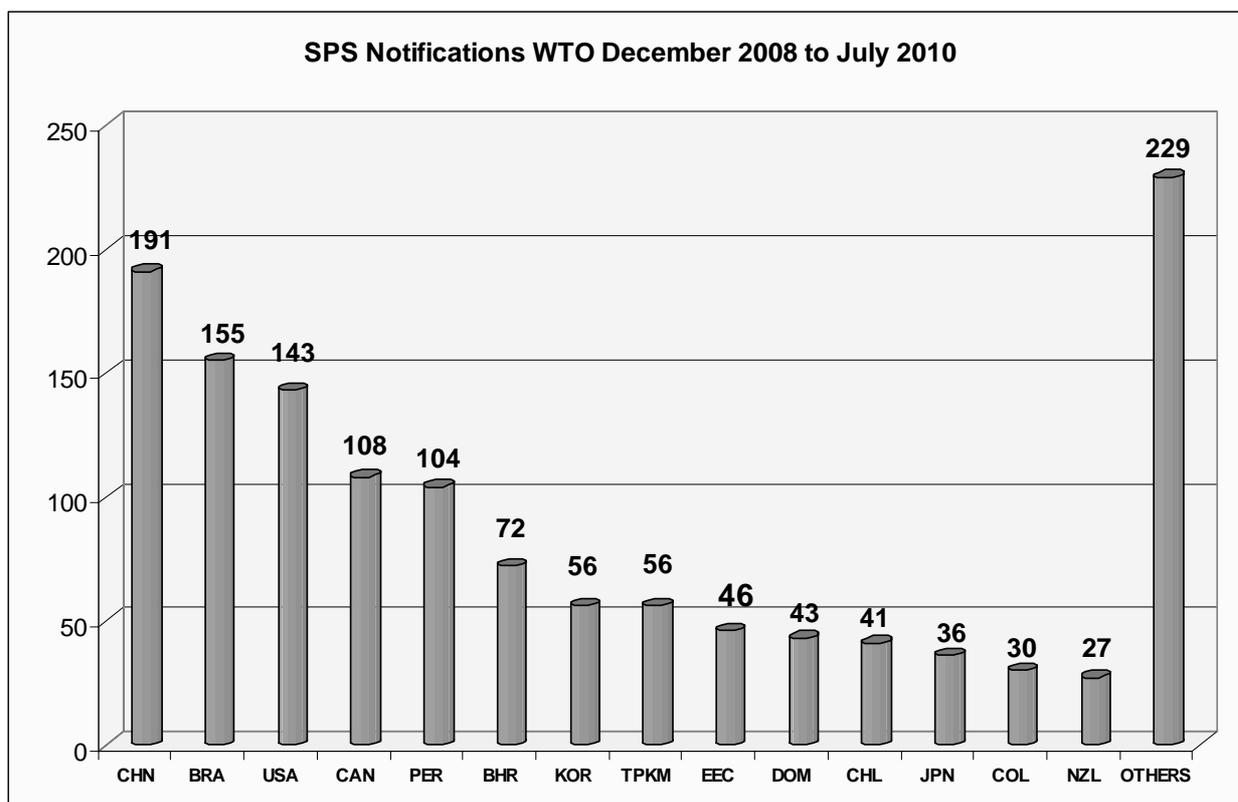
Table 1: Concerning ISSB conformity (WTO Members from 01/12/2008 to 31/07/2010)

Documents issued: 2,201; Regular/revision notifications¹: 1,337

Identifying ISSB of reference

CODEX	304 (23%)
OIE	117 (9%)
IPPC	137 (10%)
Other/No reply	20 (1%)
NONE	759 (57%)

Figure 1: By notifying Member



¹ Only regular and revision notifications are taken into account, no emergency measures, addenda or corrigenda.

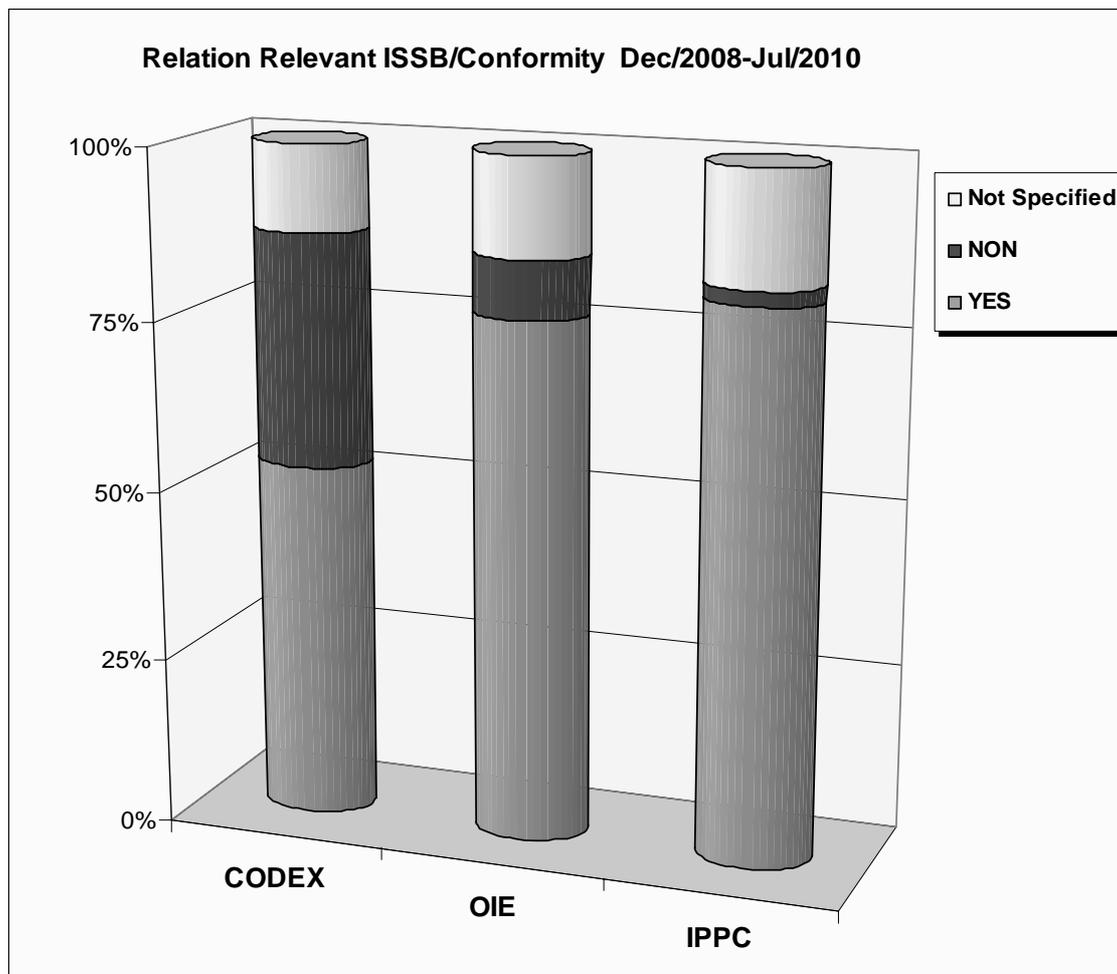
Table 2: Identifying Conformity to any International Standard (Total of 1,337)

Not Specified	792 (59%)
No Conformity	205 (15%)
Yes	340 (25%)

Table 3: By ISSB of reference/Compliance (See Figure 2)

By ISSB of reference/Compliance								
	YES		NO		Not Specified		Total	
CODEX	161	44%	104	89%	39	49%	304	54%
OIE	90	25%	10	9%	17	22%	117	21%
IPPC	111	31%	3	3%	23	29%	137	25%
TOTAL	362		117		79		558	

Figure 2



ANNEX II

EU SPS Notifications which Imply Deviations from Existing International Standards

Document Symbol	Date of distribution	International standard, guideline or recommendation	Conformity with International Standard
G/SPS/N/EEC/338	24/12/2008	None	No (<i>The European Union should have not ticked this point. As no reference was found to any ISSB, it was incorrectly stated that the measure did not conform to an existing standard</i>).
G/SPS/N/EEC/342	23/06/2009	Codex Alimentarius Commission, CAC/RCP 15 - 1976, World Organization for Animal Health, Chapter 2.10.2 of the OIE Terrestrial Code.	No, control of all Salmonella serotypes.
G/SPS/N/EEC/358	6/10/2009	Codex Alimentarius Commission, General Standard on Food Additives (GSFA) Provisions for Neotame.	No, some maximum levels are different from GSFA provisions following discussions with the industry, manufacturers and EU member States, in particular taking into consideration technological needs.
G/SPS/N/EEC/361	4/12/2009	Codex Alimentarius Commission, GSFA	No, the GSFA is currently under development. There are some deviations from GSFA in the eventual directive to be adopted which may be expected to reflect the particular circumstances of additive uses in the European Union (good manufacturing practice, technological need, consumer considerations).
G/SPS/N/EEC/372	15/03/2010	Codex Alimentarius Commission, Standard for live and raw bivalve molluscs CODEX STAN 292-2008.	No, new scientific advice has demonstrated the need to review the EU approach as regards marine biotoxins. Major shortcomings of the mouse bioassay were in particular identified which justified the proposed changes. The European Union intends to contribute to the on-going discussions at Codex level at the working group in charge of the draft list of methods for the determination of biotoxins in bivalve molluscs.