

**THE EC NOTIFICATION AUTHORITY AND ENQUIRY POINT FOR THE SPS  
AGREEMENT: EXPERIENCE ACQUIRED IN THE OPERATIONAL PROCEDURES AND  
RECENT EXPERIENCE**

Workshop on the Transparency Provisions of the SPS Agreement, Geneva, 15-16 October 2007 -  
Reflection Note<sup>1</sup>

The following communication, dated 27 September 2007, is being circulated at the request of the Delegation of the European Communities.

**I. FOREWORD**

1. In document G/SPS/W/103/Rev.2 (8 December 2006) the Secretariat circulated a "Questionnaire on the Operation of SPS Enquiry Points and National Notification Authorities". The aim of the questionnaire was to identify working tools, difficulties and constraints. The European Communities has replied to the questionnaire. In supplement to the response, this paper provides information on how the European Communities are operating their SPS Enquiry Point and Notification Authority.

2. In 2003 the European Communities submitted a document explaining the operational procedures in the European Communities, namely: (1) why there is a European Communities SPS Notification Authority and Enquiry Point (ECNA/EP) and how the European Commission works in coordination with its member States; and (2) what are the main activities undertaken by the ECNA/EP since January 2000 (G/SPS/GEN/456<sup>2</sup>). In 2007, the European Communities present complementary information and experience gained in the meeting of its obligations on transparency. The aim of this paper is to explain further how the 27 members of the European Communities (each one is also a member of the WTO in its own right) operate in the area covered by the EU treaties falling into the scope of the WTO/SPS Agreement. We are not going to repeat what was written in G/SPS/GEN/456, which is still valid.

**II. NOTIFICATIONS OF COMMISSION PROPOSALS TO THE EUROPEAN  
PARLIAMENT**

3. One of the particular features of the European Communities is the procedure to present proposals to the European Parliament for a system of co-decision with the Council. Co-decision is the procedure now used for most EC law-making in the area of public and animal health. In the co-

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<sup>1</sup> For further clarifications on what is presented in this document, please send e-mail to [sps@ec.europa.eu](mailto:sps@ec.europa.eu) to the attention of Enrique Beltrán Poveda, European Commission, SANCO DG/D3.

<sup>2</sup> 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".

decision procedure, Parliament shares legislative power equally with the Council. The procedure provides for two successive "readings" in each institution. If an agreement is reached in these readings, the law can be passed. If not, it will be put before a conciliation committee, composed of equal numbers of Council and Parliament representatives. Once this committee has reached an agreement, the agreed text is sent again to Parliament and the Council so that they can finally adopt it as law. Conciliation is becoming increasingly rare. Most laws passed in co-decision are, in fact, adopted either at the first or second reading as a result of good cooperation between the three institutions.

4. The European Communities believe that there are advantages in notifying proposals to the European Parliament at early stage because there is still time to introduce changes. The department handling the proposal can explain factually to the legislators the likely international impact of its legislation using the comments received. The European Communities have notified 20 COM proposals (see Annex I, page 6) and in some cases the responses submitted to the proposals were useful in explaining the international impact to the legislators.

### **III. EXPLANATION OF EC MEASURES AND POLICY DOCUMENTS (EC COMMUNICATIONS)**

5. The European Communities often submit communication (GEN) documents with the aim of clarifying or providing further explanations of EC policies. This is a service that targets countries that may have problems following new developments. Examples are new legislation adopted by the European Communities for the prevention of certain diseases that may disrupt international trade (G/SPS/GEN/641 of 20 March 2006, "Questions and answers on the EC control measures for Avian Influenza") or the harmonization of legislation in connection with the accession to the European Union of new members (G/SPS/GEN/737 of 20 October 2006, "Joint communication of Bulgaria, Romania and the European Communities").

6. Another example is an explanation of the implementation of TRACES<sup>3</sup>, adapting numerous pre-existing veterinary certificates to the electronic information exchange system. The Commission took this opportunity to simplify the legal framework by adapting numerous existing certificates under different legislation into two single texts. In the document, there was a full list of the HS positions concerned in the legislative text, several explanations on the changes, and information on numerous links and useful web sites.

### **IV. PROCEDURE TO HANDLE QUESTIONS RECEIVED**

7. The first action after receiving comments is to register these in the Commission system (ADONIS<sup>4</sup>) under a unique registry number. This registration is valid for the whole of the Commission services and identifies the message and the document attached. Then the Enquiry Point prepares a receipt notice indicating the contact person who will be in charge of the answer or of providing the elements for the reply. Also, we give a deadline of the time needed to send the official reply. We do the necessary to ensure the reply is ready within the proposed schedule. See below the study of the different kinds of questions the European Communities has received.

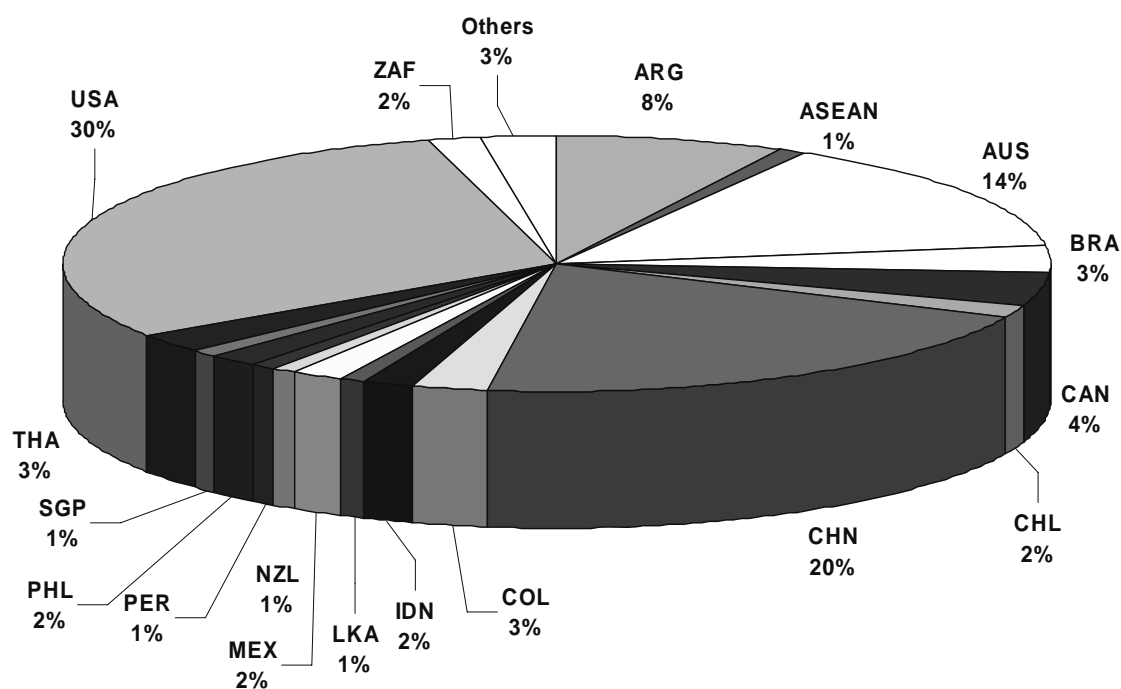
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<sup>3</sup> Trade Control and Expert System (TRACES), G/SPS/GEN/742, 1 December 2006.

<sup>4</sup> ADONIS is the European Commission's general document register. It is used to record correspondence and any other documents that do not have their own specific register.

A. QUESTIONS AND COMMENTS TO STANDARD NOTIFICATIONS

**Countries sending Comments  
to the EC (2003-2006)  
N=119**



8. Adding together the responses to questions and comments received in the period 2003-2006, there were 119 questions to the EC SPS notifications and 142 in the two exercises of the Trade Policy Review (TPR) of the European Communities (years 2004 and 2006). That makes a total of 261 questions and comments.

9. Graphs 1, 2, 3 and 4 of Annex III, page 8, identify the countries that sent comments during the years 2003, 2004, 2005 and 2006. A total of 21 countries submitted comments to the European Communities. There is a parallelism with the countries sending questions in the framework of the TPR (see para. 10). The subjects raised in these exchanges vary widely and depend notably on the legislative proposals notified in the year. We classify them in the following areas: animal by-products, aquatic animals, bees legislation, BSE GBR, contaminants, feed controls, food additives, food hygiene, live fish and molluscs, microbiological criteria, MRL for pesticides, plant quarantine, vitamins and wood packing materials.

B. QUESTIONS IN THE FRAMEWORK OF THE TRADE POLICY REVIEW DIRECTLY CONCERNED WITH SPS STANDARDS

10. Twenty-three countries sent questions to the European Communities in the last two exercises of the Trade Policy Reviews (TPR 2004 and 2006) regarding SPS issues. However, just eight countries participated in both TPRs: Argentina, Brazil, China, Colombia, India, Mexico, Thailand and the United States. The most active country was India with 34 enquiries (25 per cent of the total);

21 questions in 2004, 13 in 2006), followed by the United States (23) and Argentina (21). If we take into account members of the Cairns Group<sup>5</sup> it is notable that they account for almost half of the total of questions, both reviews taken together. In Annex III, page 10, there is a graph with the statistics of participation in the TPRs of 2004 and 2006.

11. The subjects raised during the Trade Policy Review can be categorized by these issues: animal by-products, ALOP (Appropriate level of Protection), contaminants, customs procedures, enlargement, equivalence, food additives, food law, hygiene, pesticides, private standards, RASFF reports, regionalization, residues, special and differential treatment or technical assistance. The TPR questions by subject matter during 2004 and 2006 are indicated in Annex IV, page 11.

12. There is a clear advantage in having the SPS Contact Point in the unit in charge of the replies because of the knowledge in connection to the SPS Agreement concerning the background of the Specified Trade Concerns in the issues raised and, above all, being able to follow-up the question in later contacts with the concerned countries.

C. QUESTIONS IN THE FORM OF A COMMUNICATION TO THE MEMBERS OF THE AGREEMENT (GEN SERIES DOCUMENTS)

13. One particularity of the current process are questions submitted by third countries in the form of a communication to the Members of the Agreement (G/SPS/GEN series documents). These exchanges are almost always in duplication of or in supplement to comments received directly. The European Communities replies also in the form of another communication. This procedure has some advantages in particular when the replies may be of interest to other WTO Members because they are also concerned.

<b>Comments made to the European Communities in the form of a communication</b>	<b>EC Response</b>
Bilateral notes (GMO)	G/SPS/GEN/337
Bilateral notes	G/SPS/GEN/338
G/SPS/GEN/354 by Argentina (GMO)	G/SPS/GEN/405
G/SPS/GEN/475 by Colombia G/SPS/GEN/470 by Papua New Guinea (Ochratoxin A in coffee)	G/SPS/GEN/490
G/SPS/GEN/475 by Colombia (Ochratoxin A)	G/SPS/GEN/533
G/SPS/GEN/681 by Peru (Novel Foods Regulation , NFR)	G/SPS/GEN/699

**V. CALLS FOR ADVANCE COMMENTS BEFORE A PROPOSAL IS DRAFTED**

14. The European Communities on several occasions have issued communications asking for early comments on Commission reports or submitting to public consultation (open to all the EC trading partners) proposals even before the draft has been sent for the normal procedure of adoption. The aim of these calls is to take into account all comments in presenting a draft that will be notified to the WTO Secretariat once a majority view is adopted in consultation with EC member States. This method is chosen when there is a need to modify legal acts requiring update, allowing the collection of information to enable the Commission to assess the impact of the concerned legislation on international trade. The European Communities is especially concerned with the views of developing countries and encourages them to reply to these consultations.

<sup>5</sup> Cairns Group (2007): ARG, AUS, BOL, BRA, CAN, CHL, COL, CRI, GUA, IDN, MYS, NZL, PAK, PAR, PER, PHL, ZAF, THA, URU. See at <http://www.cairnsgroup.org/map/index.html>

15. Examples are the communication (G/SPS/GEN/700 of 8 June 2006), "Public Consultation on the Impact Assessment of Regulation 258/97 on Novel Foods and Food Ingredients Communication from the European Communities" and the document "Call for Early Comments on a Commission Report on Animal by-products not intended for Human Consumption: Communication from the European Communities" (G/SPS/GEN/719 of 8 August 2006).

## **VI. OTHER ACTIONS**

16. The European Communities have received representatives of numerous delegations of third countries to see our working methods in practice. Also, members of our Enquiry Point have participated in conferences and seminars explaining how the European Communities fulfil their international obligations in the SPS field. To facilitate the tasks for our trading partners, the European Communities always circulate by e-mail all the texts notified prior to any request to all the contacts points according the official list of the WTO Secretariat.

## **VII. CLOSING REMARKS**

17. The EC SPS EP/NA ensures a transparent procedure in submitting proposals, responding to comments of third countries, explaining legislative initiatives and distributing legal texts. Further to this the European Communities is eager to listen to any suggestion or observation from their trading partners.

**Annex I: SPS Notifications concerning Proposals to the European Parliament in co-decision:**

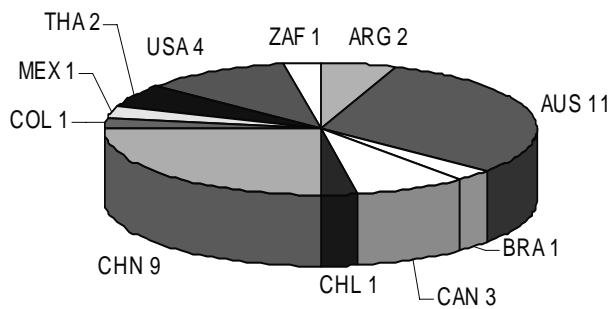
1. G/SPS/N/EEC/27 (2 May 1996): Meat products and other products of animal origin. *Proposal for a Council Directive amending Directive 77/99/EEC and Directive 92/118/EEC with regard to the rules applicable to minced meat, meat preparations and certain other products of animal origin.* COM (96) 68 Final.
2. G/SPS/N/EEC/33 (23 August 1996): Products of animal origin. *Third Countries Proposal for a Council Directive laying down the principles governing the organization of veterinary checks on products entering the Community from Third Countries and amending Directives 71/118/EEC, 72/462/EEC, 85/73/EEC, 91/67/EEC, 91/492/EEC, 91/493/EEC, 92/45/EEC, and 92/118/EEC.* COM (96)170 final.
3. G/SPS/N/EEC/36 (29 October 1996): Ungulates, hides and skins, bones and bone products not for animal and human consumption, apiculture products, game trophies, slurry, wools, feathers and honey. Doc. COM (96)393 final, pp. 7 - *Proposal for a Council Directive laying down animal health and public health requirements governing trade in imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(1) to Directive 89/662/EEC and, as regards pathogens, to Directive 89/425/EEC.*
4. G/SPS/N/EEC/87 (16 June 2000): Food supplements and nutrients marketed in dose form *Proposal for a directive of the European Parliament and of the Council on the approximation of the laws of the Member States relating to food supplements* (COM/2000/0222 final – COD 2000/0080 19).
5. G/SPS/N/EEC/94 (18 September 2000): Food products of animal origin – Separation of food hygiene from animal health controls COM(2000) 438 final, 14 July 2000, (167 pages ).
6. G/SPS/N/EEC/94/Rev.1 (23 July 2002): COM(2002)377 of 11 July 2002 "Proposal (presented by the Commission) for a Regulation of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption".
7. G/SPS/N/EEC/103 (24 November 2000): Animal by-products not for human consumption – BSE. COM(2000)574 final *Proposal for a Regulation of the European Parliament and of the Council laying down the health rules concerning animal by-products not intended for human consumption.*
8. G/SPS/N/EEC/103/Add.1 (7 February 2001): COM(2000)574 final *Proposal for a Regulation of the European Parliament and of the Council laying down the health rules concerning animal by-products not intended for human consumption,* (155 pages).
9. G/SPS/N/EEC/110 (8 February 2001): COM(2000)716. *Proposal for a Regulation of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Authority, and laying down procedures in matters of food,* (84 pages). The Commission expects comments on: Title II General Food Law; and Title IV Rapid Alert System, Crisis Management and Emergency Situations.
10. G/SPS/N/EEC/149 (14 February 2002): COM(2001)425 final "*Proposal for a Regulation of the European Parliament and of the Council on genetically modified food and feed*", (40 pages).

11. G/SPS/N/EEC/150 (14 February 2002): COM(2001)182 'Proposal for a Regulation of the European Parliament and of the Council concerning the labelling and traceability of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC', (8 pages).
12. G/SPS/N/EEC/153 (14 February 2002): COM(2001) 433 final [2001/0199 (COD)] *Proposal for a Directive of the European Parliament and of the Council amending Directive 2000/13/EC regarding the ingredients present in foodstuffs.*
13. G/SPS/N/EEC/165 (18 April 2002): COM(2002)153 final “*Proposal for a Regulation of the European Parliament and of the Council on additives for use in animal nutrition.*”
14. G/SPS/N/EEC/176 (2 October 2002): Document COM(2002) 400 final – 2002/0163 (COD) *Proposal for a European Parliament and Council Regulation on smoke flavourings used or intended for use in or on food.*
15. G/SPS/N/EEC/191 (3 March 2003): Foodstuff or feedingstuff of animal or plant origin COM(2003)52 final [2003/0030 (COD)] *Proposal for a Regulation of the European Parliament and of the Council on official feed and food controls*, (114 pages).
16. G/SPS/N/EEC/191/Add.1 (7 April 2003): Foodstuff or feedingstuff of animal or plant origin COM(2003) 52 final [2003/0030 (COD)] *Proposal for a Regulation of the European Parliament and of the Council on official feed and food controls*, (114 pages). Extension of comment period.
17. G/SPS/N/EEC/196 (11 April 2003): COM(2003) 117 final; 2003/0052 (COD) “*Proposal for a Regulation of the European Parliament and of the Council on maximum residue levels of pesticides in products of plant and animal origin.*”
18. G/SPS/N/EEC/239 (23 March 2004): Chemical substances: Persistent Organic Pollutants POP. COM(2003) 333 final "*Commission proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC*".
19. G/SPS/N/EEC/289 (02 August 2006): Pesticides – Residues “*Proposal for a regulation of the European Parliament and of the Council concerning the placing of plant protection products on the market*” [2006/0136/COD, COM(2006)388, 98 pages].
20. G/SPS/N/EEC/102/Rev.1/Add.2 (03 July 2007): Live farm and aquaculture animals; meat and meat products COM(2007) 292 final, 2007/0102 (COD) *Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/22/EC concerning the prohibition on the use in stock-farming of certain substances having a hormonal or thyreostatic action and of beta agonists.*

**Annex II: Countries sending comments to EC SPS Notifications:**

Figure 1: Year 2003

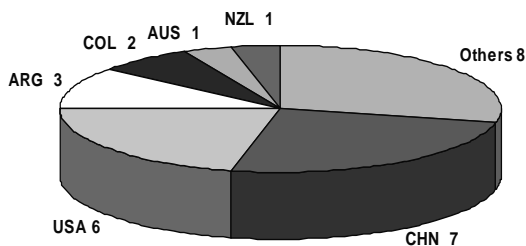
**2003 Comments received to EC notifications**



Country	Amount
ARG	2
AUS	11
BRA	1
CAN	3
CHL	1
CHN	9
COL	1
MEX	1
THA	2
USA	4
ZAF	1
Total	36

Figure 2: Year 2004

**Year 2004 Comments Received to EC notifications**

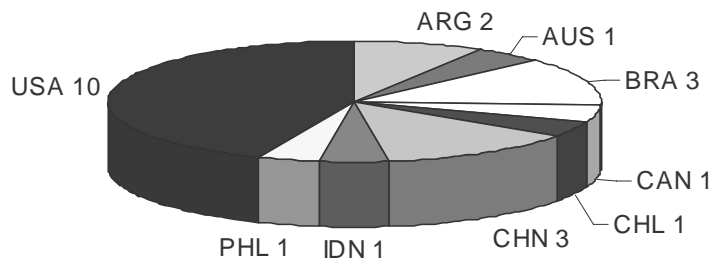


Country	Amount
Others	8
CHN	7
USA	6
ARG	3
COL	2
AUS	1
NZL	1
TOTAL	28



Figure 3: Year 2005

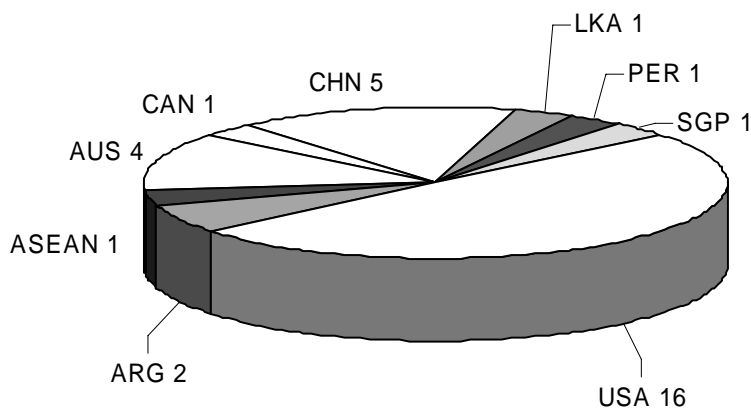
**Year 2005 Comments received to EC notifications**



Country	Amount
ARG	2
AUS	1
BRA	3
CAN	1
CHL	1
CHN	3
IDN	1
PHL	1
USA	10
USA	10
Total	23

Figure 4: Year 2006

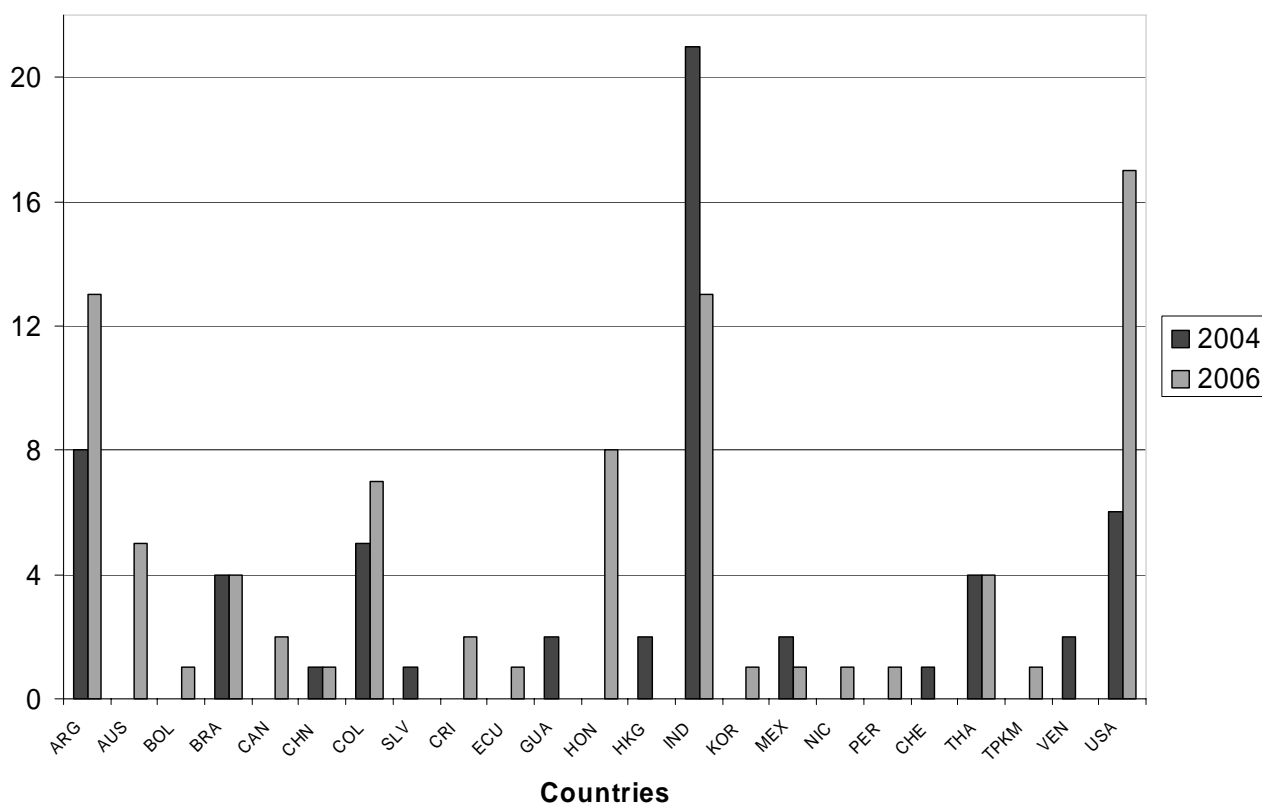
**Year 2006 Comments received to EC notifications**



Country	Amount
ARG	2
ASEAN	1
AUS	4
CAN	1
CHN	5
LKA	1
PER	1
SGP	1
USA	16
USA	16
Total	32

**Annex III: Countries participating in the Trade Policy Review of the European Communities:**

**TPR 2004-2006 Countries participating**



**Annex IV: Subjects of the questions to the Trade Policy Review of the European Communities:**

