
Committee on Sanitary and Phytosanitary Measures

**WORKSHOP ON TRANSPARENCY
HELD ON 15-16 OCTOBER 2007**

Note by the Secretariat¹

Table of Contents

	<u>Page</u>
I. SUMMARY	2
II. BACKGROUND INFORMATION.....	3
A. QUESTIONNAIRE ON THE OPERATION OF ENQUIRY POINTS AND NATIONAL NOTIFICATION AUTHORITIES	3
B. THE WORKSHOP PROGRAMME.....	3
C. SECRETARIAT INPUTS PRIOR TO THE WORKSHOP	3
D. MEMBERS' INPUTS PRIOR TO THE WORKSHOP	4
E. SPS INFORMATION MANAGEMENT SYSTEM.....	5
III. DISCUSSIONS HELD DURING THE WORKSHOP	5
A. NATIONAL/INSTITUTIONAL CHALLENGES.....	5
B. THE COMPILATION OF PROPOSALS (G/SPS/W/215).....	6
C. MENTORING MECHANISM	7
D. BEST PRACTICES/PROCEDURAL TIPS	7
IV. RECOMMENDATIONS ARISING FROM THE WORKSHOP	8
V. NEXT STEPS	9

¹This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

I. SUMMARY

1. The Secretariat of the WTO organized a special workshop on the transparency provisions of the SPS Agreement on 15-16 October, back-to-back with the SPS Committee meetings. This was the third SPS workshop on transparency organized by the WTO Secretariat, the first two having been held in 1999 and 2003.

2. The meeting was open to all Members, observer governments and organizations with observer status in the SPS Committee. Various funding arrangements made it possible for a large number of developing country and LDC participants to not only attend the workshop but also the subsequent Committee meetings. Close to 100 Members were present during the workshop, with more than 163 total participants.

3. The objective of the workshop was to enhance the implementation of transparency obligations and identify best practices for drawing benefits from a transparent system.

4. In addition to brief presentations from the Secretariat and from the Enquiry Point of Chile, participants worked in break-out sessions with the objective of identifying concrete actions which could be taken at the national and international level to enhance the use and usefulness of the transparency provisions. The breakout sessions, led to the identification of a number of recommendations for follow-up action at different levels.

5. The Committee will consider the recommendations resulting from the workshop during its next meeting starting on 31 March 2008. At that time, the Secretariat will provide an update on those recommendations which involve specific inputs from the Secretariat. Members are also invited to inform the Committee of any relevant actions they have taken which might be of interest to other Members.

6. The public website version of the SPS Information Management System was launched during the workshop and hands-on demonstrations were held to introduce the functions and capabilities of the system to interested participants.

7. New Zealand and Australia led a practical workshop on how to manage an Enquiry Point/National Notification Authority and will prepare a step-by-step procedural manual on this topic.

Presentations from the workshop are available through the SPS gateway of the WTO website (http://www.wto.org/english/tratop_e/sps_e/wkshop_oct07_e.htm).

II. BACKGROUND INFORMATION

A. QUESTIONNAIRE ON THE OPERATION OF ENQUIRY POINTS AND NATIONAL NOTIFICATION AUTHORITIES

8. In preparation for the workshop, the Secretariat circulated a questionnaire on the Operation of Enquiry Points and National Notification Authorities (G/SPS/W/103/Rev.2) and issued an Analysis of the 58 replies to the Questionnaire in June 2007 (G/SPS/GEN/751/Rev.1). The individual replies, including those which were submitted after the completion of the Analysis, are available on the WTO Members' website (under WTO resources).

9. Some of the issues that stand out in the replies include the following:

- need for enhanced interaction among EPs/NNAs;
- interest in best practices and any accompanying hardware and/or software tools;
- need to raise awareness at the political level and with the private sector;
- difficulties in obtaining full texts and/or summaries of notified measures;
- consideration of whether measures, which conform to international standards, should be notified to the WTO;
- need for enhanced interaction among WTO EPs/NNAs and the national contact points of the three standard-setting bodies;
- more regular provision of HS codes in notifications;
- difficulty of screening notifications.

10. Most of these issues were addressed directly or indirectly during the workshop and some concrete actions were recommended.

B. THE WORKSHOP PROGRAMME

11. The workshop programme (G/SPS/GEN/794/Rev.1), was developed in light of the discussions in the context of the Second Review of the Operation and Implementation of the SPS Agreement, the transparency agenda item of the Committee, the results of the above-mentioned questionnaire, and specific suggestions from Members.

12. The programme consisted of brief presentations by the Secretariat and one from the Enquiry Point of Chile on managing the flow of notifications. Discussions in break-out sessions based on an indicative list of issues compiled by the Secretariat complemented discussions at the plenary level. The question addressed during the first break-out session was "What it takes to be transparent and benefit from a transparent system". The focus of the second session was on identifying concrete actions, which could be taken at different levels, to enhance the use and usefulness of transparency provisions.

C. SECRETARIAT INPUTS PRIOR TO THE WORKSHOP

13. In addition to the Analysis of the Replies to the Questionnaire, the Secretariat prepared an Overview Regarding the Level of Implementation of the Transparency Provisions of the SPS Agreement (G/SPS/GEN/804) as well as a Compilation of Proposals Regarding the Revision of the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) (G/SPS/W/215).

14. The overview regarding the level of implementation of the transparency provisions of the SPS Agreement covered aspects which the Secretariat is in a position to track (such as notifications) but not others where the Secretariat does not have access to the relevant information (such as provision of comments on notifications). The new SPS Information Management System, which provides detailed information on notifications as of 1 June 2007, was used to prepare the overview.

15. The Overview noted that:

- There are still a number of Members which have not notified an Enquiry Point and/or a National Notification Authority.
- Considering all types of notifications, a total of 8,217 notifications had been submitted to the WTO by 31 August 2007. There were 1,157 notifications from 1 January to 31 August 2007.
- 94 Members have submitted at least one notification to the WTO. The share of notifications from developing countries and LDCs, that followed on upward trend over the year, reached 42 per cent;
- About a quarter of the regular notifications circulated during the months of June, July, and August did not provide for a comment period. Those notifications which indicated a deadline had provided on average 40 days for comments (as calculated between the deadline provided and the distribution date of the notification).

16. The Compilation of Proposals Regarding the Revision of the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) consolidates suggestions and proposals put forth by Members, in particular in the context of the Second Review of the Implementation of the SPS Agreement and in discussions with regard to transparency at meetings of the SPS Committee. It also incorporates prior decisions of the Committee relating to transparency (e.g. unofficial translations, recognition of equivalence) as well as some suggestions from the Secretariat based on the experience gained in the past years.

17. Some of the proposed changes/clarifications contained in the document include:

- encouraging Members to notify all regulations that are based on, conform to, or are substantially the same as an international standard, guideline or recommendation, if they are expected to have a significant impact on trade;
- clarifying that the 60-day comment period to be provided in regular notifications should begin with the circulation of the notification by the WTO;
- encouraging the provision of website links to texts of regulations, where these exist; and
- encouraging the use of addenda for announcing the adoption or entry into force of a regulation.

D. MEMBERS' INPUTS PRIOR TO THE WORKSHOP

18. Three specific submissions were received from Members as inputs for the workshop. Points raised in China's Proposal on the Amendment to the "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement" (G/SPS/W/212) related mainly to the definition of the 60-day comment period, provision of documents requested within five days and the circulation of addenda regarding the adoption or entry into force of new regulations. These were reflected in the Compilation mentioned above and further discussed during the workshop.

19. The issues raised in New Zealand's proposal on Technical Assistance for Operating the SPS Notification Authority and SPS Enquiry Point (G/SPS/W/214) concerned the development of a practical procedural manual and a mentoring mechanism. The European Communities's Reflection Note on Experience Acquired in the Operational Procedures and Recent Experience, including on comments received from other Members on EC notifications (G/SPS/GEN/803), was also presented during the workshop.

E. SPS INFORMATION MANAGEMENT SYSTEM

20. In addition, the public website version of the SPS Information Management System (SPS IMS) was launched during the workshop (<http://spsims.wto.org>). Given the increasing number of SPS-related documents and information circulated over the years, it has become a challenge for Members, the WTO Secretariat and other interested parties to manage the information flow. The SPS IMS is a tool for searching and reporting on WTO's SPS-related information. It contains data on notifications, all SPS-related documents issued by the WTO, details of specific trade concerns and contact information on Enquiry Points and Notification Authorities. Its interface is in English, French and Spanish and work is in progress to make the full dataset available in the three languages. It builds on information available from Documents Online and the Central Registry of Notifications but includes additional data and advanced searching/reporting functions specific to the area of SPS. There will be a new release of the system in March 2008 with some enhancements.

21. The system is expected not only to enhance the Secretariat's efficiency and analytical capabilities but also Members' ability to access and report on SPS information according to their specific needs. For example, the discussion held during the well-attended demonstration sessions indicate that many delegations are expecting to use the system to filter and assess incoming notifications with more ease and promptly alert relevant stakeholders. One of the recommendations of the workshop was for the Secretariat to pursue further dissemination and training efforts on the SPS IMS. At the same, the FAO International Portal on Food Safety, Animal and Plant Health was identified as a useful source for accessing comprehensive SPS information going beyond WTO-related matters. The importance of the complementarities of efforts at the international level was emphasized.

III. DISCUSSIONS HELD DURING THE WORKSHOP

22. A significant portion of the workshop was dedicated to two break-out sessions at which four groups were formed based on language (two in English, one in French, and one in Spanish). Rapporteurs from each group reported on the discussions at the plenary level.

The discussions that took place during the breakout sessions not only identified concerns and constraints of Members but also pointed to possible solutions regarding the implementation of transparency provisions.

A. NATIONAL/INSTITUTIONAL CHALLENGES

23. Members underlined a number of national issues which affect the performance of a country in implementing and benefiting from transparency provisions.

24. Securing awareness at the political level and among the public at large was identified as a starting point for enhancing the use and usefulness of transparency provisions. A Member first had to identify SPS transparency issues as a priority, give it the visibility it required as well as the budgetary commitment.

25. Members pointed to the challenges of identifying the most appropriate agencies to function as the National Notification Authority or the Enquiry Point. Some competence in SPS matters was necessary but more important was securing the information flow among various government agencies and with the WTO and other Members. Members were reminded that according to paragraphs 3 and 10 of Annex B of the SPS Agreement each Member was obligated to designate only one notification authority and establish one Enquiry Point. In practice, more than one Enquiry Point was tolerated but not more than one National Notification Authority.

26. National SPS Committees, with public and private sector representation, were one way to address the coordination problems in channelling outgoing notifications and reacting to incoming ones. Semi-informal networking, focused taskforces or having one publication for all official SPS communication could also be effective ways to enhance coordination.

27. For managing the inflow of notifications and alerting the relevant stakeholders to avoid market access problems, information technology tools could be useful. The Secretariat's weekly alert system for all new SPS documents and notifications was found very useful. The new SPS Information Management System would assist even further in filtering and reporting on SPS notifications at the national level. A first filtering of notifications could be done either at the product level or according to objectives of measures.

28. There were various cooperation efforts at the regional/intergovernmental level but these did not always deliver the expected results. A simple method could be to facilitate contact among Enquiry Points, for example through easy access to their email and telephone numbers. Members were reminded to verify the Enquiry Point information they had provided to the WTO and submit any modifications in a timely manner.

29. Continued training and political and institutional support were necessary for the sustainability of transparency efforts.

B. THE COMPILATION OF PROPOSALS (G/SPS/W/215)

30. There was some specific discussion regarding the Compilation of Proposals (G/SPS/W/215), however Members requested more time for discussion and reflection before modifying the Recommended Procedures contained in G/SPS/7/Rev.2.

31. With respect to the notification of measures conforming to international standards, discussion focused on the definition of significant impact on trade and on the additional burden as well as benefits of submitting as well as receiving even more notifications. A number of Members reminded the Committee that in the absence of mechanisms at the three referenced standard-setting organizations with regard to the use of their standards, it was important that the Committee facilitate the provision of this information in order to fulfil its task of monitoring the process of international harmonization stipulated in paragraph 4 of Article 12.

32. With respect to the definition of the 60-day comment period, there was some disagreement over the date at which the comment period should begin (i.e. notification to Secretariat or circulation by the Secretariat) and concerns about domestic regulatory procedures which constrain extension of comment periods or the provision of additional comment periods along with addenda to original notifications.

33. With respect to the provision of an interval between the publication and entry into force of measures, it was noted that this should not prevent the prompt implementation of trade facilitating measures.

34. Difficulties with respect to access to full texts of regulations and their translations were once again highlighted. Maintenance of national websites could facilitate access but for certain developing countries and LDCs, maintenance of such websites was costly. Some Members asked the Secretariat to provide assistance in accessing full texts of regulations and also to look into the possibility of using the SPS IMS for this purpose. With respect to translations, the Secretariat reminded Members that a mechanism had been developed for Members to inform others of the availability of unofficial translation through a supplement to the original notification. Unfortunately this mechanism was not frequently used.

35. Many Members called for the inclusion of HS codes in notifications to the extent possible as this helped better identify potential impact of the notified measures. The new SPS Information Management System would assist in managing incoming notification as it included the relevant HS Codes for each notification, either directly provided by the Members or assigned by the Central Registry of Notifications based on product information provided in the notification. Moreover, once the on-line submission of notifications became possible, it would include a drop-down list of all HS Codes, facilitating the selection of relevant codes. However, it was important that Members reserved the right to apply the notified measure to other products than those contained under the specified HS Codes. One Member also called for the retention of ICS Codes under item 3 of the notification format.

36. Concern was expressed that certain emergency measures were becoming permanent measures. Members should clearly indicate the period of application, including an end date, for all emergency notifications.

37. There was also a discussion regarding the extent to which comments submitted with respect to notifications could be shared with all WTO Members and through which mechanism. As indicated in the EC submission for the workshop (G/SPS/GEN/803), the European Communities had at times submitted documents to the Committee providing further explanations of EC policies, e.g. in relation to avian influenza, or other Members had circulated their comments relating to measures of the European Communities, e.g. Peru on the proposed changes to the EC Novel Foods Regulation. However, there was currently no formal multilateral mechanism for sharing comments with other Members.

38. Members were invited to submit written comments on the Compilation of Proposals contained in G/SPS/W/215 so that a revision could be circulated by the Secretariat well in advance of the next meeting of the Committee.

C. MENTORING MECHANISM

39. With respect to New Zealand's proposal regarding the establishment of a mentoring mechanism, there was rich discussion on the procedures that could be followed. The Secretariat agreed to develop a proposed mechanism for facilitating the mentoring. It was recognized that mentoring was about developing a supportive long-term relationship which might include visits or training workshops. Developing countries could also act as mentors and regional organizations could participate in the mentoring process. Arrangements and mechanisms for mentoring needed to be reviewed on a regular basis. A number of delegations stressed that this mechanism should complement and not substitute for other bilateral, regional, or multilateral efforts.

D. BEST PRACTICES/PROCEDURAL TIPS

40. The representative of the Enquiry Point/National Notification Authority of Chile made a presentation on how to manage and benefit from incoming/outgoing notifications. She pointed out that the legal tools were available but that they had to be complemented by a proactive and well-

coordinated system among the public and private sector stakeholders at the national level in order to reap benefits from transparency. Upon receipt of notifications, it was the Enquiry Point's responsibility to filter them and alert relevant stakeholders but a concerted effort by the private and public sectors was required to appropriately assess the potential impact of a notification and raise concerns as necessary at international fora. Awareness and competence with respect to the implementation of concepts such as equivalence and regionalization were also instrumental in using the transparency mechanism to maintain and/or expand trading opportunities.

41. With respect to New Zealand's proposal regarding the development of a practical procedural manual, issues discussed included the timing of notifications, the allocation of individual versus institutional contact addresses and procedures for staff turnover. It was important to keep the manual simple with a standard check-list of processes. New Zealand indicated that it would seek Member's comments on a draft manual in advance of the next SPS Committee. The final version would be made available electronically through the WTO website for easy access and further adjustments as necessary at the national level.

42. During one of the break-out sessions, Canada shared its experience with its good practice checklist, including electronic newsletters, alerts, and face-to-face meetings with stakeholders. At the same time, some developing country Members underlined their difficulties with respect to reliable electronic communication and the cost of holding meetings.

43. Several Members shared information on their working procedures during the break-out sessions.

IV. RECOMMENDATIONS ARISING FROM THE WORKSHOP

44. The recommendations arising from the workshop included the following:

- The revision of G/SPS/W/215 in light of discussions held during the workshop and any further suggestions from Members. Such suggestions should be submitted by 15 November. The revised proposal would be considered by the Committee at its next meeting.
- Preparation of a document by the Secretariat explaining transparency obligations and laying out some of the steps with respect to transparency obligations, including the intervals between various steps. The paper should underline concrete benefits of transparency and of the SPS Agreement as a whole. Some of the training materials already used by the Secretariat could provide useful guidance in identifying the steps to be taken by a Member upon reception of a notification with the potential to affect its exports.
- Development of a suggested mechanism for implementing the "mentoring" proposal contained in New Zealand's submission.
- More regular updates on the level of implementation of transparency provisions, similar to what was done in G/SPS/GEN/804.
- Further training and dissemination of the SPS Information Management System, which could serve as a vehicle for identifying notifications of interest and preparing newsletters/alerts at the national level. In addition, the Secretariat was encouraged to pursue its work with respect to a procedure for Members to submit notifications on-line.
- The development of a practical step-by-step procedural manual by interested delegations, namely Australia and New Zealand, which would be distributed for consideration by other Members. The finalized manual would be posted on the WTO website for access by all interested parties.

45. The recommendations mentioned above could be further accompanied by efforts at the national/regional level, including the following:

- Awareness-raising activities at the national level. It was noted that technical assistance activities offered by the WTO Secretariat would serve as a good opportunity to raise the profile of SPS issues.
- More proactive involvement in the identification of technical assistance needs.
- Using international standards as a point of departure for national legislation and participating actively in the work of the international standard-setting bodies, benefitting from Trust Funds where possible.
- Consideration of the development of websites at the national and/or regional level, and of assistance to Members in this regard.
- Further information exchange and sharing of best practices at the bilateral/plurilateral/regional level and use of appropriate regional entities.
- More active use of input into the FAO International Portal.

V. NEXT STEPS

46. The Committee will consider the recommendations resulting from the workshop during its next meetings starting on 31 March 2008. At that time, the Secretariat will provide an update on those recommendations which involve specific inputs from the Secretariat. Members are also invited to inform the Committee of any relevant actions they have taken which might be of interest to other Members.
