

**THE EC NOTIFICATION AUTHORITY AND ENQUIRY POINT FOR THE WTO
AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY
MEASURES: OPERATIONAL PROCEDURES AND RECENT EXPERIENCE**

Special Meeting of the SPS Committee on the Operation of Enquiry Points – 31 October 2003
Reflection Note

The following communication is being circulated at the request of the Delegation of the European Communities.

Foreword

1. In document G/SPS/W/103/Rev.1, the Secretariat recirculated a questionnaire, aiming to update information from Member on the "Operation of their Enquiry Points and National Notification Authorities".¹ In question 25 of the questionnaire, it invited Members to provide any additional relevant information. The European Communities (EC) Notification Authority and Enquiry Point (ECNA/EP) took the opportunity to make several elaborated statements or suggestions, issues raised in papers prepared by Members for the Special meeting.² To supplement these, we have prepared this paper to explain our operational procedures, because we believe that to improve the quality of the exchanges with other Enquiry Points it is important for them to understand how the ECNA/EC works. To achieve this, it is first necessary to explain (1) why there is an 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. Further elaboration on the answers provided to question 25 of the questionnaire is included at the end of this paper.

A.1 Why an EC Notification Authority and Enquiry Point, and how it works

2. By Decision 94/800/EC³, the European Council approved on behalf of the European Community (with regard to that portion of them which falls within the competence of the European Community) the "*The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*" and the Agreements in Annexes 1, 2 and 3; including the "Agreement on the Application of Sanitary and Phytosanitary Measures ("the SPS Agreement").⁴ This is why we refer to

¹ Submitted for the first time at a Special Meeting of the SPS Committee on Transparency Provisions, 1999.

² G/SPS/GEN/455

³ Of 22 December 1994, concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994). Official Journal No L336, 23 December 1994, pp. 1-2.

⁴ Published for EC purposes in the Official Journal of the EEC, N° L336 of 23 December 1994, pp. 40-48.

European Communities ("EC") and not to European Union ("EU"). In fact, these two concepts do not always overlap concerning the transit of goods, but that issue is not relevant for this meeting. Furthermore, Article 133 of the EC treaty, confers to the European Commission the powers to implement the Common Commercial Policy (including International Treaties).⁵ Article 133 hence falls in the area of "shared competences" between the EU member States and the European Commission. For instance, the European Commission official attending the special meeting had previously held a coordination meeting with the EC member States.⁶

3. Another consequence for the European Commission is that, as it is responsible for the EC's implementation of Article 13 (and as a consequence the SPS Agreement) it has to take the necessary measures to fulfil the requirements.⁷ To this aim and in application of the transparency provisions (Article 7 and Annex B) the European Commission designated a single central government authority responsible for the implementation of the provisions concerning notification procedures, as well as one Enquiry Point responsible for the provision of answers to all reasonable questions from interested Members, and for the provision of relevant documents. We try to avoid using the terms "government" and "national", instead we use "European Commission" (EC); for instance we say the "EC Notification Authority" and "EC Enquiry Point". Unit SANCO/E03 (International food, veterinary and phytosanitary questions) is responsible for the obligations of both the EC Notification Authority (NA) and Enquiry Point (EP) (ECNA/EP).

4. It is the responsibility of the ECNA/EP to submit notices of new harmonized proposals that will apply to the totality of the EC territory. But it is also the responsibility of the ECNA/EP to notify other legislation from EC member States that may affect trade. Both cases are explained below.

A.2 Procedure for the notification of EC proposals

5. The European Commission prepares legislative proposals in close cooperation with the EC member States in "Standing committees". These standing committees are of a management nature (Management Committee) or of a regulatory nature (Regulatory committees) and consist of representatives from the EC member States chaired by a European Commission representative with responsibilities in the area concerned.

6. The Standing Committee structure has been recently changed by Regulation EC No. 178/2002 which created a single new structure, the "Standing Committee on the Food Chain and Animal Health" (SCFAH) with responsibility for the entire food supply chain, from on farm animal health

⁵ The Treaty establishing the European Community (Amsterdam consolidated version) Part Three: Community policies Treaty (Maastricht consolidated version). JO C 340 DU 10/11/1997, p. 237 – VCL See Annex I.

⁶ These meetings are called "Article 133 expert committees" or more usually "133 Committee" after Article 133 mentioned above. They are normally held in Brussels but can also be held *in situ* and are not exclusively for WTO matters; they apply also to other international organizations in which the European Communities has a single voice, such as for many CODEX committees and the FAO.

⁷ Article 13: "Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement."

issues, to the product that arrives on the consumer's table.⁸ The SCFCAH replaces four committees: the Standing Veterinary Committee, the Standing Committee on Foodstuffs, the Standing Committee on Animal Nutrition and part of the Standing Committee on Plant Health (plant protection products and pesticides residues); the structure of the six other Standing Committees remains unchanged.⁹ The legislative proposals, before being submitted to the European Commission, undergo numerous discussions at the different Standing Committees, and at a given moment are notified to the WTO. (See flow charts 1 & 2)

A.3 Procedure for the notification of EC member States' proposals

7. In the European Union, the member States retain powers to adopt legislation, especially in areas related to consumer health and safety. However, as the risk exists of creating barriers between EC member States, Directive 98/34/EC establishes a procedure obligating the EC member States to notify the European Commission and each other, all draft technical regulations concerning products before they are adopted in national law.¹⁰ This facilitates the evaluation of the regulations by the European Commission services and also by other member States. Only a few acts, cleared through this procedure, are being notified by the ECNA/EP. It is noteworthy to recall that once the European Communities adopts a regulation that covers the area notified by the member States, the EC member State repeals existing national conditions that may be in place and instates the single harmonized trade conditions for the whole of the EC territory.

8. How the European Commission and the EC member States work together: The division of competences has been explained in document W/SPS/14 (10 May 1995). To ensure internal coordination within the Community, EC member States established "contact points" (and not "Enquiry Points"). The rules are the following:

- (i) Notifications of draft Community measures are made by the ECNA/EP to the WTO. Comments and requests for information from WTO Members should be addressed to the Community Enquiry Point.
- (ii) Notifications of draft EC member State measures (other than the transposition of Community legislation) which have been cleared by the procedure established by Directive 98/34/EC are made by the ECNA/EP. The notification indicates the member State in which the draft measure originates. The procedure has been explained in Section A.3.
- (iii) Comments and requests for information from WTO Members should be addressed to the EC Enquiry Point and to the contact point of the Member State concerned.

⁸ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 lays down the general principles and requirements of food law, establishes the European Food Safety Authority and lays down procedures in matters of food safety Official Journal L 031 , 01/02/2002, pp.: 1-24.

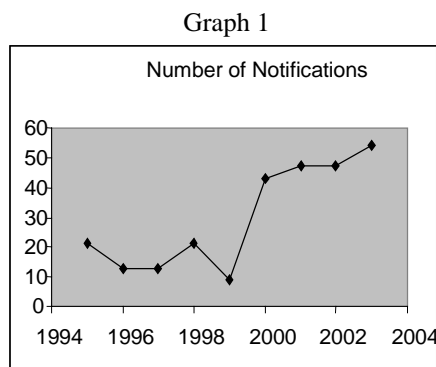
⁹ The resulting seven Standing committees have responsibilities in the following areas: 1. Food Chain and Animal Health; 2. Propagating Material and Ornamental Plants; 3. Propagating Material and Plants of Fruit Genera and Species; 4. Agricultural, Horticultural and Forestry Seeds and Plants; 5. Community Plant Variety Rights; 6. Zootechnics; and 7. Plant Health.

¹⁰ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 lays down a procedure for the provision of information in the field of technical standards and regulations (O.J. No. L204, 21/7/1998 pp. 37-48). Also known as the TRIS procedure.

B. Overview of activities

B.1 Notifications

9. As illustrated in graph 1, the European Communities submitted 185 notifications since January 2000, a significant increase in the number of notifications as compared to the initial five years from 1995 to 1999 (total = 77).



10. This increase is also evident in the amount of notifications submitted by other WTO Members

11. Why is this? As a whole, the WTO circulated 467 notifications in 2000 compared to 360 in the preceding year.¹¹ A similar increase in notifications is observed from the United States, that submitted a total of 370 notifications up to year 1999, but submitted 163 in 2000 alone.¹² New Zealand passed from 76 notifications during the first five years of implementation to 28 in 2000.

12. Concerning the increase of notifications from the European Communities this can be attributed as a consequence of the BSE and dioxin crises and the resulting significant increase of proposals for European Parliament and Council legislation in the area of public and animal health. Another reason is the increased number of plant protection product authorizations under review. SPS notifications since 2002, resulting from new EC legislations in areas are shown in Table 1. Units beginning with "D" form part of the Directorate for Food Safety: production and distribution chain; those beginning with "E" belong to Directorate for Plant health, animal health and welfare and international questions.

Table 1

SPS areas covered by EC legislation notified to the Agreement

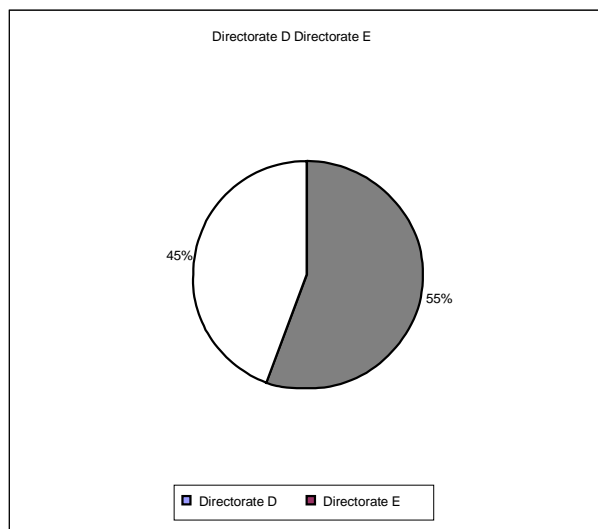
	Number of notifications	% of total notifications
SANCO D/03: Chemical and physical risks	49	27.8
SANCO E/01: Plant health (PPP and Plant Quarantine)	46	26.1
SANCO D/02: Biological risks	30	17.0
SANCO E/02: Animal health and Welfare, zootechnics.	29	16.5
SANCO D/04: Food law and biotechnology	9	5.1
SANCO D/01: Animal Nutrition	8	4.6
SANCO E/03: International Food veterinary and phytosanitary questions	3	1.7
ENV C/04: Biotechnology and Pesticides	2	1.1
Total	178	100

¹¹ Source: Document Dissemination Facility of the WTO (<http://www.wto.org/wto/ddf/ep/search.html>).

¹² Addenda and corrigenda are excluded from this calculation.

13. The split between these two directorates is shown in Graph 2.

Graph 2



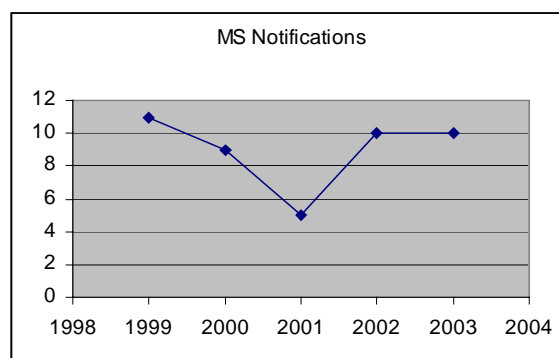
14. The Unit notifying the most is D/03 because it is responsible for amendments to the list of authorized food additives (sweeteners, colours, gelling agents etc) food contact materials and food contaminants. Next follows Unit E/01 with 46 notices, three-quarters of which correspond to EC legislation related to plant protection products. The Unit responsible for biological risks, although third in volume, has produced the largest amount of pages notified and comments received from WTO Members because this Unit prepares proposals in the area of food hygiene, inspections, and food-borne diseases such as BSE. The apparently low rate of notification of Unit E/02 is due to the fact that the European Communities follows OIE standards, so numerous proposals are not required to be notified.

15. All texts notified by the European Communities are distributed by e-mail to a list of WTO Members prior to any request, although numerous countries have had to be removed from this list following continued error messages.

B.2 EC member States notifications (see also paragraphs 7 and 8)

16. The rate of growth in the quantity of notifications from EC member States is stable at 5 to 10 per year. The actual figures are 8, 5, 10 and 10 for 2000 through to October 2003 respectively, and correspond to roughly $\frac{1}{5}$ of the EC notifications. Preparing these notifications is very laborious and time consuming because of the numerous consultations. It should be recalled again that when the European Communities covering the area notified, the EC member States cancel existing national regulations and instate harmonized trade conditions for the whole of the EC territory.

Graph 3



C. Sending and receiving comments

C.1 Comments received

17. As from the end of 2000, the ECNA/EP has centralized the reception of comments from third countries. This has been an improvement in the operative procedures as compared to the previous practice¹³ because it allows analysis of the comments (Graph 4) as well as the rapid assessment of the potential impact of some proposals with a view to introduce amendments to minimize the effects of the measure. For instance, a recent proposal relating to import health conditions for queen bees and their attendants prompted comments from four countries that have been taken into consideration in amending the proposal.

18. As of end 2000, the ECNA/EP kept track of 86 comments it has received. In the graph can be seen that the countries belonging to the Cairns Group have submitted around 40 per cent of all comments.¹⁴ Next is the United States with 30 per cent, almost half of these concerning animal by-products i.e. meat and bone meal, gelatin, tallow, yellow fat, etc. affected by the new BSE related legislation.

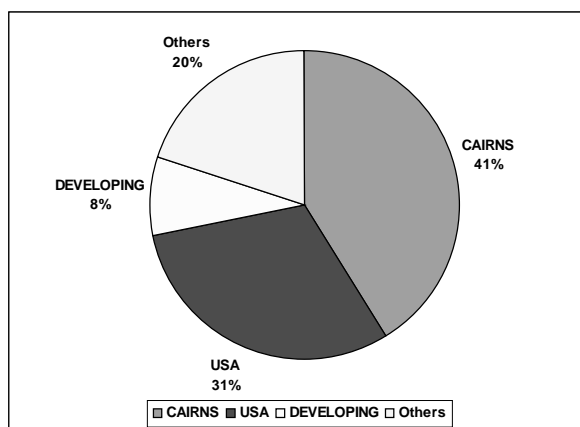
19. The ACP and developing countries are less active and have only sent eight comments¹⁵; this can be an indication of the lack of skilled staff for analyzing EC proposals instead of lack of impact on their exports to the European Communities. This point has been raised several times by developing countries but cannot be resolved without thorough knowledge of the specific constraints faced by each country.

20. All comments from Members receive a reply, and this involves a high degree of coordination between the ECNA/EP, the different European Commission services involved and the EC member States.

C.2 Comments sent

21. The European Communities is often seen exclusively as a net importer of agricultural products, but it is also a significant exporter. Furthermore, the European Communities is frequently the object of SPS-related trade restrictions and as a consequence, numerous comments have been sent to other WTO Members (Graph 5). The ECNA/EP centralizes this information and has tracked 72 comments (i.e. comments sent by fax) to 17 countries.¹⁶ The submission of comments involves a very high degree of coordination between the European Commission and the EC member States,

Graph 4



¹³ Comments were assigned to the competent service that handled the reply separately.

¹⁴ Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, Uruguay.

¹⁵ Cuba, Dominican Republic, El Salvador, Haiti, Honduras, India, Kenya, Nicaragua, Pakistan, Sri Lanka, Uganda, Zimbabwe.

¹⁶ In 2001, the ECNA/EP submitted a total of 27 comments to countries, specifically: Argentina (1), Australia (2) Brazil (2) Korea (5) Mexico (1), Bulgaria (1), New Zealand (1), Peru (1), Thailand (1), Uruguay (1) and United States (15). In 2002, the ECNA/EP submitted a total of 22 comments to: Australia (2), Brazil (3), Canada (2), China (1), Indonesia (1), Japan (1), Korea (2), Mexico (2), New Zealand (1), Peru (1), Philippines (1) and the United States (5). In 2003 up to October, the ECNA/EP submitted comments to: Australia (2), Chile(1), Mexico (1), New Zealand (4), Thailand and the United States (6).

because Article 133 of the treaty establishes a "shared responsibility" between the European Commission and the EC member States. There are four kinds of situation leading to comments.

22. The most frequent case is that an EC member State requests the ECNA/EP to react in the name of the European Union. In these cases, the proposed comments are circulated to other EC member States or discussed in a Standing Committee responsible for this kind of legislation.¹⁷ Thereafter, the comments are drafted by a European Commission official with responsibilities in the relevant Standing Committee and discussed with other European Commission services before being submitted. Another less frequent case is a reaction from a European Trade Association to a particular proposal. In this case the responsible service takes the initiative of

drafting the comments. The third case would be a European Commission service reacting to a proposal that goes against international harmonization (OIE, IPPC, CODEX). Finally, it may happen that an EC member State, having bilateral actions with a specific WTO Member, requests the ECNA/EP to support its actions; a classic case would be trade barriers created in response to a disease outbreak within the European Communities (such as FMD) maintained after the disease has been eradicated.

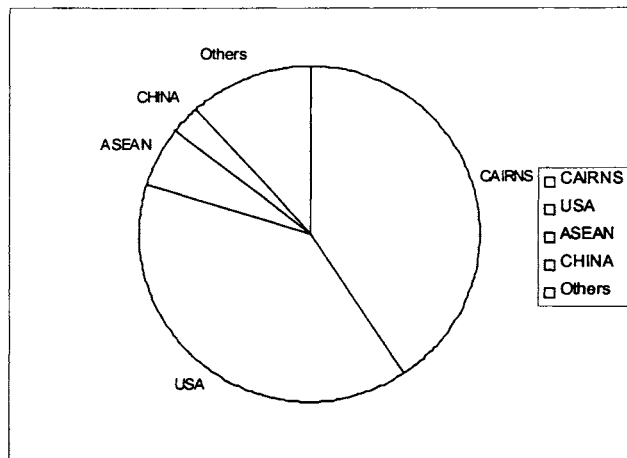
D. Suggestions made by the European Communities in its response to the questionnaire and their justification

23. Question 25 of the questionnaire asks for "*Comments about the operation of an Enquiry Point, or suggestions for those who are to establish an Enquiry Point*". Now, that the particularities of the European Communities have been outlined, and the volume and nature of the ECNA/EP work explained the EC's suggestions made in its response to the questionnaire can be explained. We hope this can assist Members in reflecting on establishing Enquiry Points or Notification Authorities

D.1 Centralize the Enquiry Point and Notification Authority in a single unit

24. In document G/SPS/ENQ/14 and subsequent addenda the addresses of Enquiry Points (EP) are given. Frequently countries indicate two or three separate addresses, normally for plant health, animal health and food legislation. Document G/SPS/NNA/4, and addenda, list the addresses of the Notification Authorities (NA). Our experience in exchanges with other countries is very clear: the communication is simple with countries in which there is a single address for the Notification Authority and Enquiry Point, and difficulties increase when there are distinct addresses and or if there is more than one Enquiry Point. The difficulties we have encountered are the following: (1) the qualified interlocutor is difficult to identify; more than one address is involved in the exchanges and the initial sender is not necessarily the end user of our information or request; (2) although the comments are sent to the Enquiry Point it is normally the National Authority that replies, this creates an unnecessary supplementary step; (3) no record of the exchanges is kept; (4) messages bouncing back occurs frequently because of change of addresses creating extra work in the ECNA/EP mail list maintenance.

Graph 5



¹⁷ See footnote 9.

D.2 Professional skills of the "Official in charge"

25. In moments of "mail overflow" is not easy to deal with all incoming mail on a single day so that priorities in handling mail have to be set. In view of the increasing trend in the number of notifications, from around 360 per year up to nearly 700 at present, and the associated increased number of comments and replies to be sent and received, it is necessary to identify sensitive notifications and important messages, such as those conveying comments. In view of the very technical nature of the exchanges, and to ensure that the correct priorities are set, the official in charge of "good management practices". Additionally, the official in charge must have scientific or technical background and sufficient experience on SPS measures so as to enable her or him to rapidly identify sensitive messages. Experience with the working methods of CODEX, IPPC and OIE are also of importance. Attempts have been made to circumvent the lack of experience by printing all incoming mail and presenting it to "experts". This is not a solution because it is not always easy to identify the importance of the original message especially if the "subject" line is vaguely worded; in the worst case a sensitive message is identified but the period to send comments has expired.

26. In creating or redirecting messages it is important to make full use of the "subject" line; modern systems allow up to 134 characters. The official in charge has to select special words (from the text) and write an "appealing" subject line. For instance, to select a problematic food additive (or pesticide) from a notified list or to indicate the mail is for urgent comments. Our experience is that to ensure follow up, the subject line should be clear, informative and appealing to the reader.

27. Another important task for the official is to create a network of persons with the required knowledge to handle comments, replies, examine notices, etc. In doing so, the official must highlight the main points and make these clear to the person asked to respond to the message. For this the official has to have sufficient background to create pre-defined mail messages (templates) and to select the appropriate people from various mailing lists according to subjects.

D.3 Simple methods

28. If possible, it is best to use simple working routines rather than sophisticated methods such as the construction and maintenance of complicated databases that require skilled secretarial support that may either not be available or beyond the budget. As way of example, the ECNA/EP receives regular faxes, probably created by computer, that still use an old address (and incorrect fax numbers) for the ECNA/EP. This is a sign of a "database" that has not been updated. In fact it is a burdensome activity: maintaining and up-dating the different mailing-lists and fax numbers can require at least 15 minutes per day!

29. It has also been our experience that messages are best addressed to "names" instead of to "services" or "units". In fact, the problem of overflow exists also on the interlocutor side and important message can be easily pass unnoticed.

30. Finally, our experience also shows that for VERY important issues, the responsible official must walk to the desk of the person(s) we are expecting to react and negotiate with her/him a commitment and calendar for their response.

D.4 Databases

31. The EC experience is that the combination of a database with civil servant mobility leads to situations in which the database becomes "the problem" instead of "the solution", because the updating and fine tuning of the database consumes more time than the use of other methods.

32. The tasks for an Enquiry Point are handling and reassigning messages received and identifying those which require a fast reaction (written replies, submission of questions, etc). For this, careful reading of the mail is essential. In the past, in putting data into the database was a compulsory

step in mail handling that become an "end-point" in itself, replacing the main task of correct mail reassignment. On the other hand, our experience shows it is best to train officials to use existing databases in WTO, CODEX, IPPC, FAO, OIE, CEE, EC member States' web sites, etc. which provide access to notifications, legislation and standards in such a way that any skilled person can access all the required information. In fact using other databases is applying synergies (i.e. mobilizing knowledge and time invested by other persons in maintaining their databases) instead of building yet another database with duplicate information. The SPS Secretariat has an excellent database and very user friendly tools to handle it; the WTO database is "the EC database" for SPS notifications.

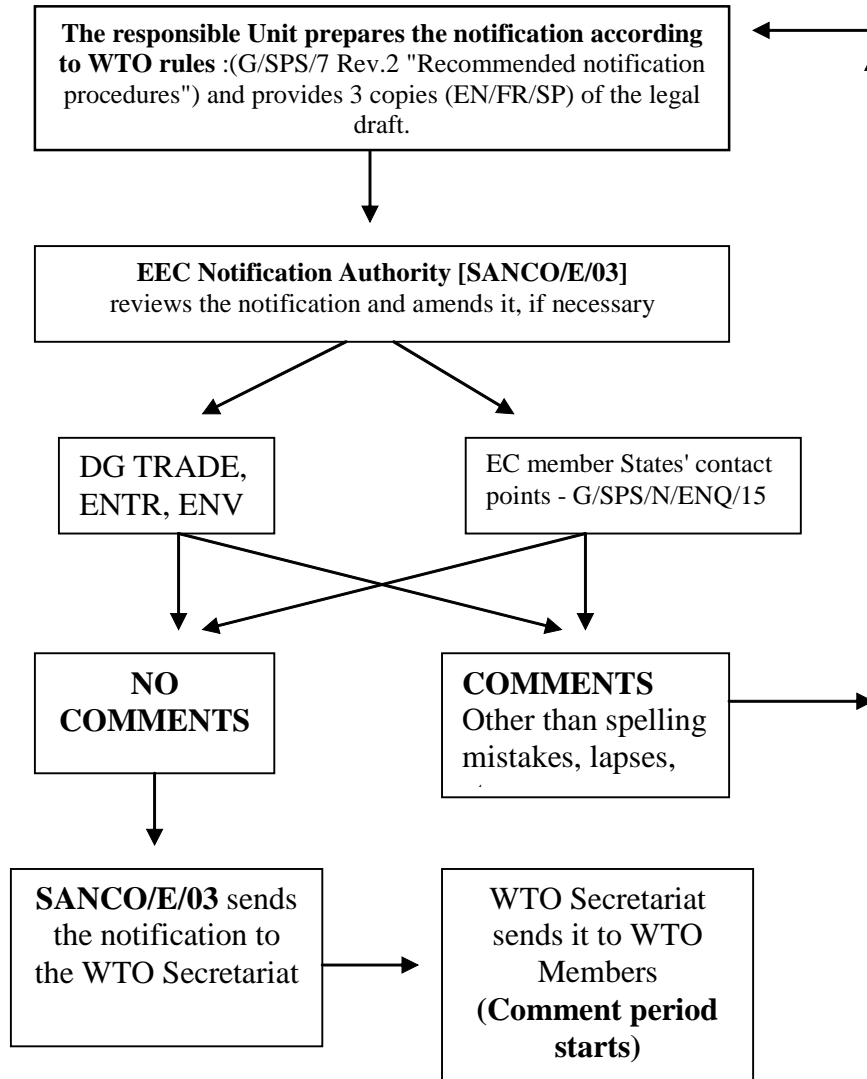
D.5 How many people?

33. There is no need for a very large number of officials but instead many networks. In fact, a single subject could require the review of lawyers, customs or trade expert, scientists, etc. The "Official in Charge" should have the ability to build up these networks and keep track of any commitments. In the European Communities, we are lucky to have regular meetings of experts attending Standing Committees, Scientific Committees, etc. All of the official attending these committees are very busy and work under pressure, so we must be skilful in adding our demands to their agendas. This requires a clear and very short presentation of the case with an explanation of the contribution we expect from them. What is best is a "pyramid" with a very large base and very few people on top.

34. Another feature to think about is continuity in the job. If rotation is frequent, it could be a good idea to have two other officials doing stages of 2-3 month with the multiple aims of (a) training them in the international aspect of creating SPS standards, (b) bringing this knowledge to other departments and (c) making possible a fast replacement of the responsible official in case of need.

**Flow chart 1:
Notification of SPS measures to the WTO**

Notification preparation in cooperation with the responsible service and in consultation with other services and with EC member States' Contact Points



**Flow chart 2:
Notifications of SPS measures to the WTO - Timing for notifications and
handling of comments**

