

Committee on Sanitary and Phytosanitary Measures

**OVERVIEW REGARDING THE LEVEL OF IMPLEMENTATION OF THE
TRANSPARENCY PROVISIONS OF THE SPS AGREEMENT**

Note by the Secretariat¹

Revision

I. INTRODUCTION

1. In October 2007, the Secretariat circulated a background document (G/SPS/GEN/804) providing an overview regarding the level of implementation of the transparency provisions of the SPS Agreement. This document was intended to assist Members in their deliberations during the special workshop on transparency held in October 2007 and also during the Committee's discussions under the agenda item on transparency. As one of the recommendations of the workshop on transparency was for the Secretariat to circulate such an overview on a regular basis, the Secretariat has prepared this second and updated document.²

2. The document provides an overview regarding the level of implementation of the transparency obligations found in the SPS Agreement (Article 7 and Annex B) and of the Committee's Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.2, hereafter the "2002 Transparency Procedures"). It provides information in areas which the Secretariat is in a position to track (such as designation of Enquiry Points/Notification Authorities, circulation of notifications) but does not include those where the Secretariat is not directly involved (such as provision of comments on specific notifications).

3. At its meeting of April 2008, the SPS Committee adopted the revised Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.3, hereafter the "2008 Transparency Procedures"), which will take effect as of 1 December 2008.³ The 2008 Transparency Procedures include revised notification formats aimed at facilitating the provision of clearer and more specific information regarding new or modified SPS measures by Members. Therefore, future updates of this overview should be able to include information on some aspects which, are currently difficult to track.

4. In preparing this overview, the Secretariat has largely relied on the SPS Information Management System (SPS IMS), the public version of which was launched and presented in

¹ This 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.

² See G/SPS/R/47, para.44 for the recommendations arising from the workshop on transparency.

³ See also footnote 4 of G/SPS/7/Rev.3 requesting the Secretariat to provide an annual report on the level of implementation of the transparency provisions of the SPS Agreement and of the recommended transparency procedures.

October 2007 during the transparency workshop.⁴ While some historical data on notifications dating back to 1995 has been retrieved from various internal resources and incorporated into the SPS IMS, some of the more detailed analysis has only been possible for the period as of June 2007, when the internal version of the SPS IMS became operational.⁵ It is also worth noting that most of the analysis contained in this document can be undertaken and updated directly by Members or other interested parties as the underlying data is publicly available and searchable through the SPS IMS.

II. DESIGNATION OF NOTIFICATION AUTHORITIES AND ENQUIRY POINTS

5. Annex B, paragraph 9, of the SPS Agreement obliges Members to designate a single central government authority as responsible for the implementation of notification procedures. As of October 2008, among the 153 WTO Members, 133 Members had designated a "notification authority". Those which have not include 13 least developed countries (LDCs) and seven developing countries.⁶

6. Annex B, paragraph 3, of the SPS Agreement requires that each Member establish an Enquiry Point responsible for the provision of answers to all reasonable questions and of relevant documents. As of October 2008, of the 153 WTO Members, 142 had provided the WTO with the contact information of their Enquiry Point. Those which have not include ten LDCs and one developing country.⁷

III. SUBMISSION OF NOTIFICATIONS

7. Under the SPS Agreement, notifications are used to inform other Members about new or changed regulations that may significantly affect trade. Annex B, paragraphs 5 to 8, as well as the 2002 Transparency Procedures, elaborate on the notification procedures Members are to follow. For ease of reference, the specific sub-topics highlighted below follow the order of items that are contained in the regular and emergency notification formats.

Types of notifications

8. The two main types of notifications are regular notifications and emergency notifications. In addition, addenda, corrigenda or revisions can be issued subsequent to an original regular or emergency notification.⁸ As of 31 August 2008, Members had submitted:

- 6,416 regular notifications;
- 1,628 addenda/corrigenda to regular notifications;
- 1,042 emergency notifications; and
- 326 addenda/corrigenda to these.

⁴ <http://spsims.wto.org>

⁵ With a few exceptions, the analysis covers the period up until 31 August 2008.

⁶ See G/SPS/NNA/14 for the latest list of Notification Authorities circulated as an official document by the WTO Secretariat in October 2008. The most up-to-date information on Members' notification authorities can be accessed through the SPS IMS.

⁷ See G/SPS/ENQ/24 for the latest list of Enquiry Points circulated as an official document by the WTO Secretariat in October 2008. The most up-to-date information on Members' Enquiry Points can be accessed through the SPS IMS.

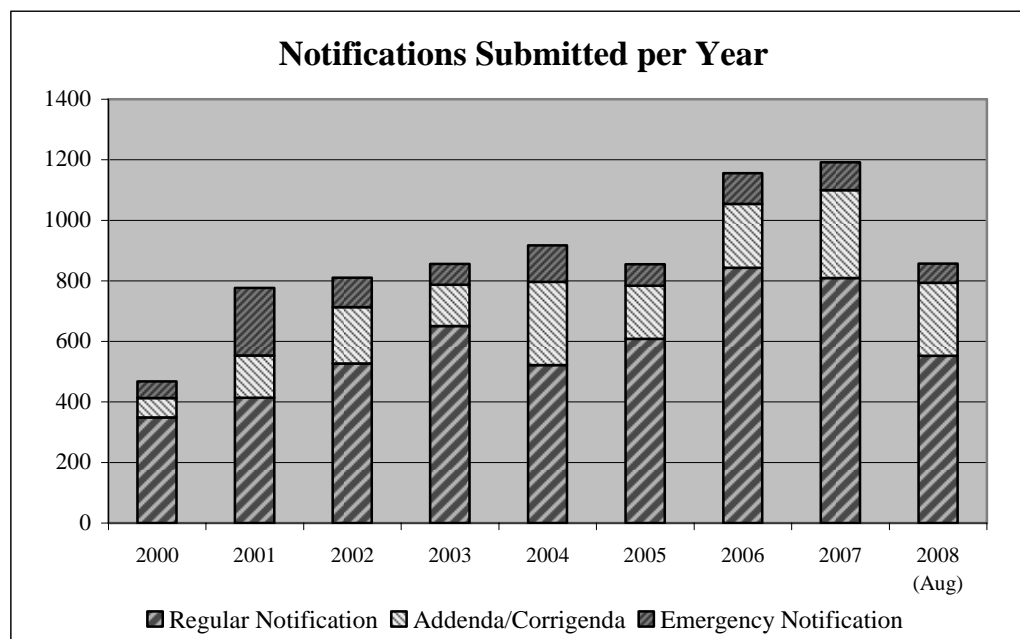
⁸ See the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.3) for further elaboration on the different types of notifications.

9. The Committee has also adopted a special format and recommended procedures for the notification of determination of the recognition of equivalence of sanitary or phytosanitary measures. Furthermore, the Secretariat has established a mechanism for Members to inform each other of the availability of unofficial translations of notified measures into one of the official languages of the WTO. These are submitted in the form of supplements to the original notification. As of 31 August, two equivalence and 12 supplement notifications had been circulated.

10. Considering all types of notifications together, a total of 9,426 notifications were submitted to the WTO as of 31 August 2008. As can be seen in Figure 1, there has been an upward trend in the number of notifications over the years, with the total number of notifications reaching 1,196 for the year 2007.

11. While the increase in notifications could be regarded as a sign of enhanced transparency, it should be kept in mind that these statistics on notifications do not necessarily provide an indication of the extent to which new or changed SPS measures are indeed being notified to the WTO. The specific trade concerns raised at meetings of the SPS Committee still regularly include failures to notify measures.

Figure 1



Notifying Members

12. Out of the 153 WTO Members, 98 (64 per cent) have to date submitted at least one notification to the WTO. Excluding all EC member States, those which have not include 46 developing countries of which 23 are LDCs.

13. As can be seen in Figure 2, the share of notifications submitted by developed country Members reaches 55 per cent while the share of those by developing country Members is 43 per cent.⁹

⁹ The categories of level of development rely on WTO working definitions as identified in the Integrated Database (IDB) for analytical purposes.

A very small share comes from LDCs. As can be seen in Figure 3, there has been a steady increase in notifications from developing country Members over the years.

Figure 2

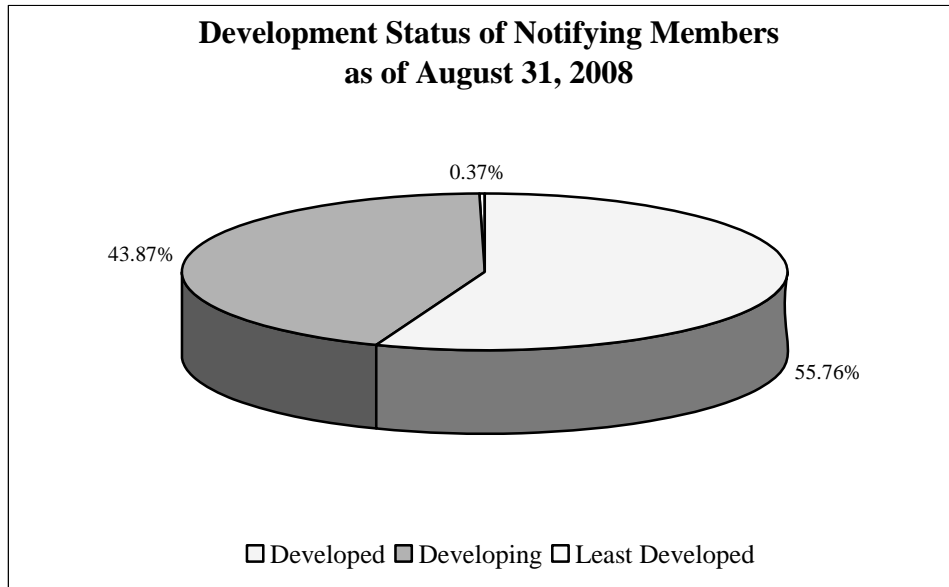
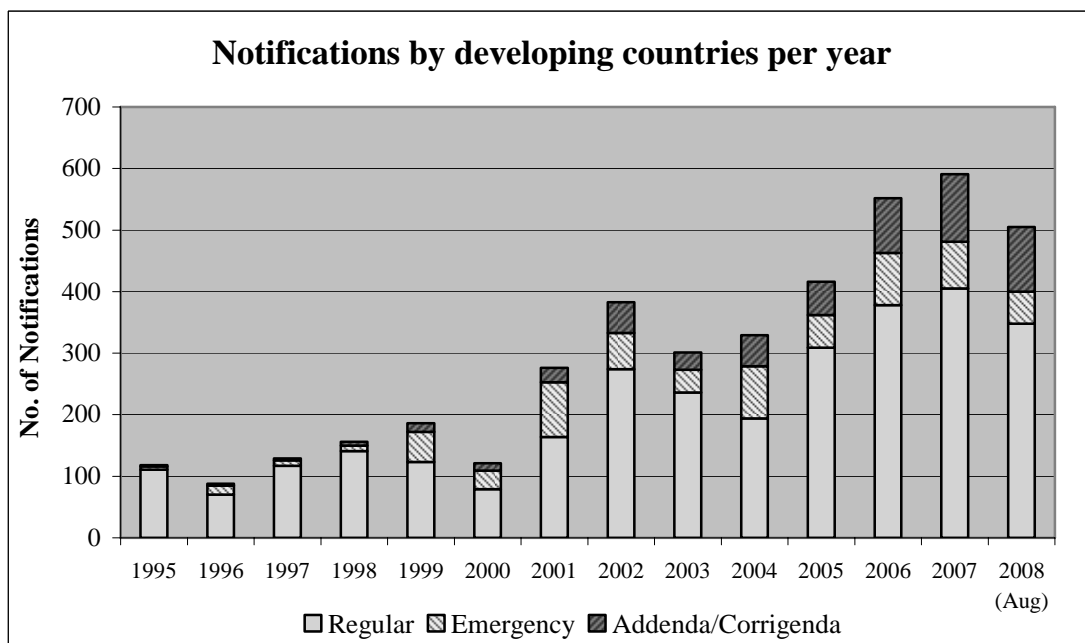
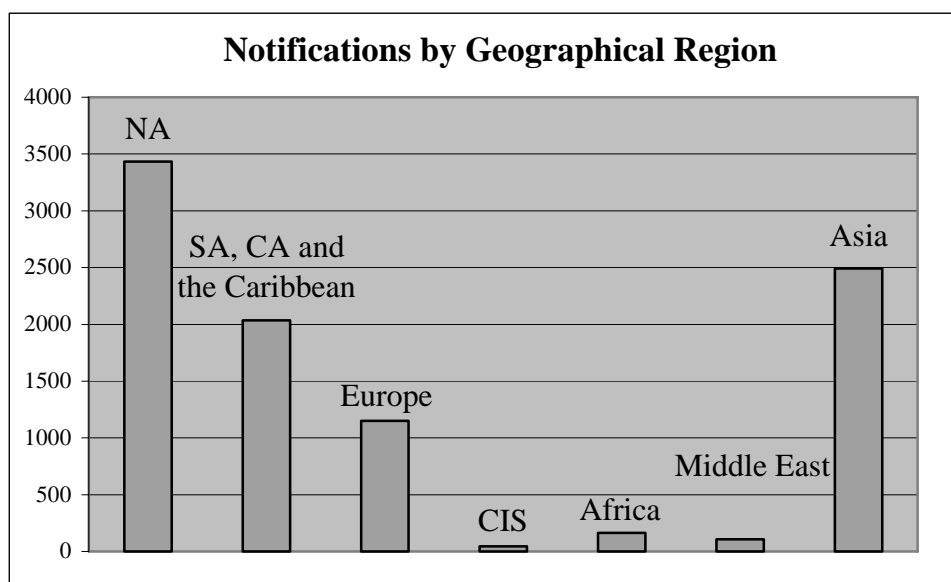


Figure 3



14. Looking at the geographic regions from which the notifications originate, Figure 4 shows that the majority of notifications come from the North America region, followed by Asia, and then South and Central America and the Caribbean.¹⁰

Figure 4



15. The Members which have submitted the greatest number of notifications as of 31 August 2008, including all formats, are the following:

Table 1. Members which have submitted the most notifications

Member	No. of Notifications	Share of Total
United States	2,669	28.3%
Brazil	607	6.4%
European Communities	567	6.0%
Canada	526	5.6%
New Zealand	508	5.4%
Korea	342	3.6%
Chile	315	3.3%
China	278	2.9%
Australia	263	2.8%
Mexico	237	2.5%

¹⁰ The geographical groupings used rely on WTO working definitions as identified in the Integrated Database (IDB) for analytical purposes. The same groupings are used in the WTO's Annual Reports.

Products covered

16. In accordance with paragraphs 5 and 6 of Annex B of the SPS Agreement and the 2002 Transparency Procedures, Members are required to identify the products to be covered by a new or changed SPS measure and should provide the relevant HS codes. While most notifications indicate the products to be covered, few provide the specific HS codes. It is interesting to note, however, that most Members indicated they would welcome the provision of these codes by their trading partners.¹¹

17. Nonetheless, since 1995 the WTO's Central Registry of Notifications (CRN) has been assigning, to the extent possible, the relevant HS codes for all notifications.¹² While being only indicative, an assessment at the two-digit level shows that the products covered by regular and emergency notifications most often fall under the following categories:

Table 2. HS Codes assigned to notifications

Regular		
HS Code	Description	Share of total
(38)	miscellaneous chemical products (in particular pesticides)	15%
(02)	meat and edible meat offal	13%
(08)	edible fruit and nuts; peel of citrus fruit or melons	9%
(07)	edible vegetables and certain roots and tubers	8%
Emergency		
HS Code	Description	Share of total
(02)	meat and edible meat offal	27%
(01)	live animals	24%
(04)	dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	11%
(05)	products of animal origin, not elsewhere specified or included	10%

Regions/countries affected

18. The 2002 Transparency Procedures also call on Members to identify the regions or countries which are most likely to be affected by the measure being notified. An assessment of the regular and emergency notifications submitted from June 2007 to August 2008 indicate that only 28 per cent have identified a specific group of countries or a region, while others contain general references such as "all trading partners", "all countries", etc. Some 13 per cent of all regular and emergency notifications have left this box blank.

19. The 2008 Transparency Procedures include a modified entry option for this item whereby Members are invited to either check a box ("all trading partners") if no specific region or country can be identified or otherwise provide more specific information. On the one hand, the work of other Members would be facilitated if more specificity was provided by notifying Members. On the other hand, when submitting notifications, Members may be hesitant to specifically identify potentially affected countries or regions for fear of not accurately assessing who might be affected.

¹¹ See the Analysis of Replies to the Questionnaire on the Operation of Enquiry Points and National Notification Authorities, (G/SPS/GEN/751/Rev.1, paras. 11 and 18) for further elaboration on this point.

¹² This information is now available in the SPS Information Management System (SPS IMS).

Objective and Rationale

20. In accordance with paragraphs 5 and 6 of Annex B of the SPS Agreement and the 2002 Transparency Procedures, Members are also required to state the objective and rationale of proposed regulations. Looking at the notifications submitted from June 2007 to August 2008 shows that roughly one third have referred to food safety and about one quarter to plant protection as one of the objectives. Animal health and zoonoses combined account for about one third of objectives. It must be noted, however, that many notifications identify more than one objective. Therefore, the table below specifies the total number of times the specific objective was assigned regardless of whether notifications had multiple entries or not.

Table 3. "Objectives" of notified SPS measures (June 2007-August 2008)

	Total for Jun 2007-Aug 2008	Share over 15 month period
Food Safety	670	35.2%
Animal Health	215	11.3%
Plant Protection	485	25.4%
Protect humans from animal (Zoonosis) / plant pest or disease	402	21.1%
Protect territory from other damage from pests	134	7.0%

International Standards, Guidelines or Recommendations

21. The SPS Agreement does not require Members to notify a measure if its content is substantially the same as that of an international standard. Nonetheless, the 2002 Transparency Procedures (G/SPS/7/Rev.2) ask Members to indicate whether a relevant international standard exists and if so, to describe how the notified measure deviates from that standard.

22. Figure 5 suggests that most regular notifications relate to measures which are not covered directly by international standards. Still, there have been exceptions. For example, more than 90 notifications relating to IPPC's ISPM 15 have been circulated.¹³

23. At the same time, Figure 6 shows that almost 68 per cent of emergency notifications during the 15-month period under analysis referred to the OIE as having a relevant international standard.

¹³ The IPPC International Standard for Phytosanitary Measures (ISPM) No.15 on Guidelines for Regulating Wood Packaging Material in International Trade.

Figure 5

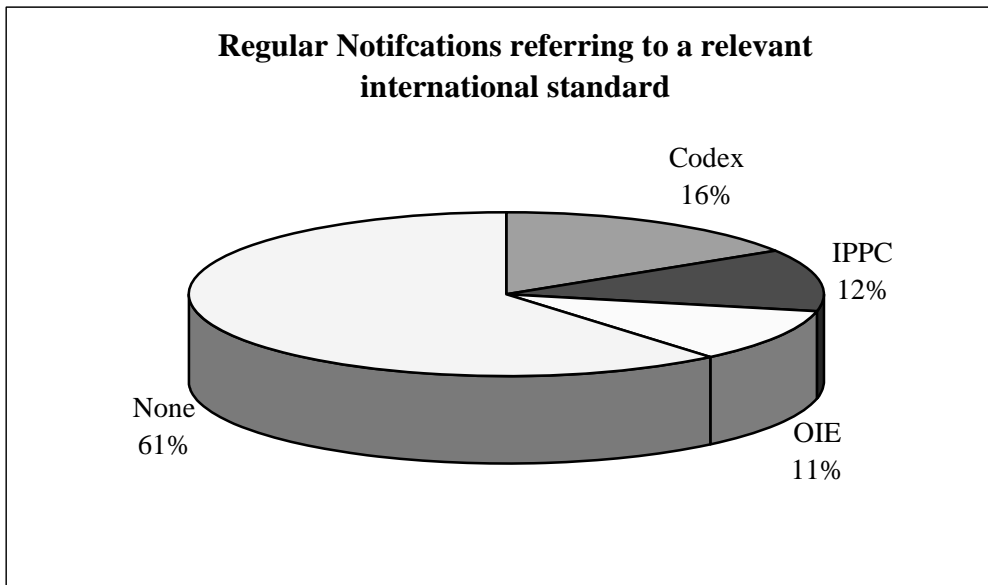
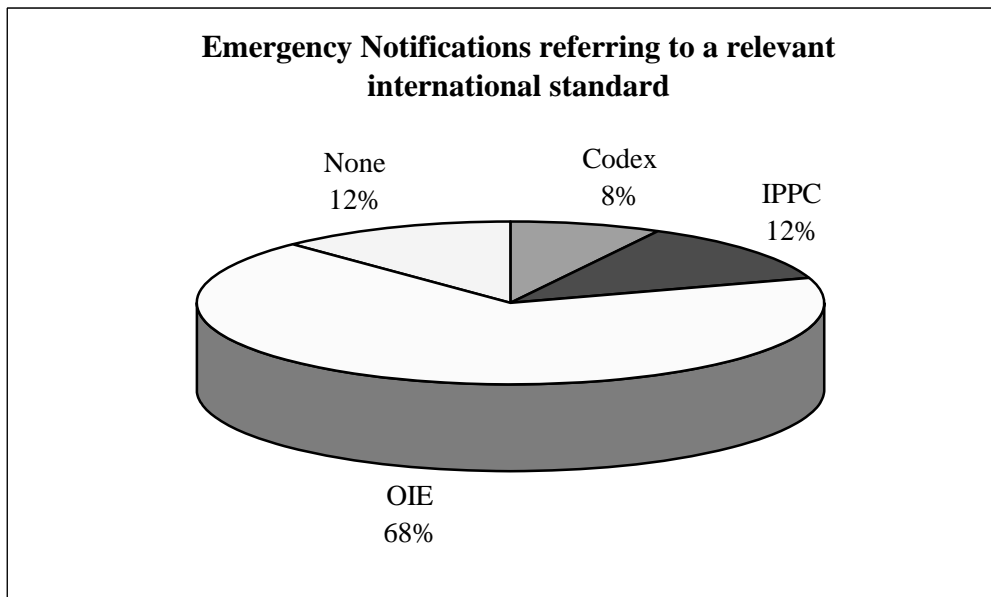


Figure 6



24. The 2008 Transparency Procedures encourage 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 of other Members. The revised formats also seek to get more precision from Members regarding relevant standards and the conformity of the notified measure with these. The Secretariat has been requested to include details on these aspects in its regular transparency overview documents.¹⁴

¹⁴ See G/SPS/7/Rev.3, para. 8.

Final date for comments

25. Annex B, paragraph 5 of the SPS Agreement provides that notifications should take place at an early stage, when amendments can still be introduced and comments taken into account. The 2002 Transparency Procedures state that a 60-day comment period should be provided with respect to regular notifications. An analysis of the notifications issued during the 15-month period of June 2007 to August 2008 shows, in Table 4, that 28 per cent of notifications have not provided a comment period. For those that do provide comment periods, these average 49 days when calculated as the difference between the deadline for final date for comments and the date of circulation of the notification. A more detailed analysis of the data shows that developing country Members provide a longer comment period on average than developed country Members (51 days compared to 46 days). However, it is important to note that as a percentage of their total regular notifications, developing country Members specify a comment period at a lower frequency than developed country Members.

26. It should be noted that no comment period need be provided in the case of trade liberating measures. In addition, as there is no obligation to notify measures based on the relevant international standards, no comment period is expected for this category of measures. The table below lists the number of notifications that didn't have a comment period but specified that the measure was trade facilitating or based on the relevant international standard.

27. The 2008 Transparency Procedures have further elaborated on the 60-day comment period. Where domestic regulatory mechanism allow, the 60-day comment period should normally begin with the circulation of the notification by the WTO Secretariat. The revised formats also offer a checkbox option for such a 60-day comment period to encourage Members to follow this recommendation.¹⁵ The next overview document will provide an update on this aspect.

Table 4. Comment Period Provided in Regular Notifications (June 2007 - August 2008)

All Members		
	No.	Share
No. of Regular Notifications	1012	-
Comment Period Not Indicated / Not Available	260	26%
Comment Period Ends before Distribution Date	19	2%
Comment Period Available	733	72%
Average Comment Period provided	48.6 days	
Developed country Members		
	No.	Share
No. of Regular Notifications	462	-
Comment Period Not Indicated / Not Available	52*	11%
Comment Period Ends before Distribution Date	16	3%
Comment Period Available	394	85%
Average Comment Period provided	46.4 days	

*Out of the 52 Not indicated / Not Available:
8 were trade facilitating measures

¹⁵ See G/SPS/7/Rev.3, para.13.

12 specified that comments could be submitted anytime

Developing country Members

	No.	Share
No. of Regular Notifications	550	-
Comment Period Not Indicated / Not Available	208**	38%
Comment Period Ends before Distribution Date	3	1%
Comment Period Available	339	62%
Average Comment Period provided		51.2 days

**Out of the 208 Not indicated / Not Available:

- 2 were trade facilitating measures
- 4 specified that measures were based on international standards
- 3 specified that bilateral consultations had already taken place

Text available from

28. While Members are obligated to notify other WTO Members of draft new or changed measures, they are not required to submit the text of the relevant regulations along with their notifications. However, Members have repeatedly raised concerns in the SPS Committee regarding the difficulties of accessing the actual text of notified regulations, which are described only in summarized form in notifications. Members have also pointed out that the process of receiving the texts of regulations reduces the period actually available for providing comments. In an effort to address these concerns and facilitate access to notified draft regulations, the Secretariat launched a new facility on 1 February 2008. Members may, on a voluntary basis, provide the Secretariat with an electronic version of the text of the notified regulation as an attachment to the notification format. The submitted text is then accessible to other Members through a hyperlink in the notification format.¹⁶ From February until October 2008, less than 10 per cent of notifications have provided the full text or a summary of their notified regulations using this facility.

Issue keywords

29. With the SPS IMS, notifications can also be categorized according to a list of approximately 60 predefined keywords, which describe issues appearing frequently in notifications. The CRN has assigned these keywords since 2003. These keywords assist searching for notifications in certain areas. The keywords which have been most frequently assigned by the CRN to regular notifications are, in descending order: pesticides, MRLs, pests, food additives, and veterinary drugs. For emergency notifications the most frequent keywords are: avian influenza, foot and mouth disease, BSE, regionalization, and pests.

IV. RECENT EFFORTS TO ENHANCE THE BENEFITS FROM A TRANSPARENT SYSTEM

30. In light of the steadily increasing volumes, managing the flow of notifications, coordinating at the national level, and benefiting from a transparent system has become a challenge for Members. The replies to a Questionnaire in 2007 on the Operation of Enquiry Points and National Notification

¹⁶ See G/SPS/7/Rev.3, para. 22 and Annex C.

Authorities indicates that this is one of the areas where Members are looking for technical assistance and guidance on best practices.¹⁷

31. There have been some recent efforts to address this issue. The public version of the SPS IMS was launched in October 2007. It allows access to most recent information on notifications as well as Enquiry Points and National Notification Authorities. It also includes information on specific trade concerns and other SPS documents. It facilitates the conduct of searches according to specific needs/interests and also the preparation of reports/summaries which can be shared with interested stakeholders. The WTO Secretariat has provided demonstration sessions on the SPS IMS during the SPS Committee meetings and during its technical assistance programmes. It has also responded to ad hoc requests from Members and other interested parties for assistance.

32. The Secretariat has also established a mentoring mechanism which aims to bring together those individuals who are fulfilling the functions of Enquiry Points and Notification Authorities in different countries.¹⁸ The objective of this voluntary procedure is to assist Members in not only implementing their obligations with respect to the transparency provisions but also in benefiting from their rights. So far 11 Members seeking mentoring assistance have been matched with 6 Members offering mentoring assistance.

33. In addition, New Zealand, with the assistance of Australia as well as the Secretariat, has been developing a practical Manual on the operation of Enquiry Points and Notification Authorities. This manual will be available at the latest by early 2009, both on-line and in hard copy.

V. OTHER ASPECTS RELATING TO TRANSPARENCY

34. As indicated in the introduction, there are a number of areas where the Secretariat is not in a position to provide an overview. These include questions such as the following:

- To what extent are Members publishing a notice at an early stage regarding proposals to introduce a particular regulation? (Annex B, paragraph 5(a))
- To what extent are translations into English, French or Spanish of proposed regulations available? (Annex B, paragraph 8)
- How quickly do Members respond to requests for documents or other information? (Annex B, paragraphs 3 and 5(c))
- To what extent are Members providing comments on notifications, and to what extent are these taken into account? (Annex B, paragraph 5(d))
- Are Members publishing their SPS regulations, which have been adopted, promptly? Are they providing a reasonable interval – of normally a period of not less than six months - between the publication of an SPS regulation and its entry into force? (Annex B, paragraph 2 of the SPS Agreement and paragraph 3.2 of the Doha Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17)).¹⁹

¹⁷ See the Analysis of Replies to the Questionnaire on the Operation of Enquiry Points and National Notification Authorities (G/SPS/GEN/751/Rev.1) for further elaboration on this issue.

¹⁸ See G/SPS/W/217.

¹⁹ The revised regular notification format contained in the 2008 Transparency Procedures includes a new field for entering the "proposed date of publication" while maintaining the existing field for the "proposed date of entry into force". In addition, it includes a default checkbox for a six-month interval between the

35. These are areas where Members have occasionally shared their experiences with the SPS Committee. However, as this information is not provided systematically, it has not possible to include further details on these questions. Members are encouraged to complement this overview document through submissions to the SPS Committee regarding their own experience in matters related to the transparency provisions of the SPS Agreement.

publication and entry into force of a new measure. These new features might assist the Secretariat in including some more information on this question in its next overview document.