

REPORT OF THE ANALYSIS ON SPS NOTIFICATIONS IN 2003

Submission by China

The following submission, dated 17 June 2004, is being circulated at the request of the Delegation of China.

Background

1. Transparency is one of the fundamental principles of the World Trade Organization (WTO). According to the provisions in the Agreement on Sanitary and Phytosanitary Measures and in the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.2), as well as the relevant resolutions made at the Fourth WTO Ministerial Meeting, in order to solicit comments, Members must notify their trading partners, through the WTO Secretariat, of proposed SPS measures which could affect international trade significantly and which are either not based on, or deviate from, existing international standards. The comment period should not be less than 60 days. Members issuing the measures should take into consideration comments submitted by other Members and results of bilateral consultations. The period from the date of publication to the date of implementation should not be less than six months.
2. Based on the Report of the Analysis on SPS Notifications in 2002 (G/SPS/GEN/378) made by China after collecting and analyzing all SPS notifications throughout the year of 2002, China submitted the Proposal for Amending the Recommended Transparency Procedures Relating to the Comment Period of SPS Notifications (G/SPS/W/131 and Corr.1).
3. In order to encourage WTO Members to fulfil their obligations of transparency, China is willing to support the SPS Committee to conduct continuous careful discussion on this matter. For this purpose, China prepared the report herein, after collecting and analyzing SPS notifications of WTO members in 2003.

General Introduction

4. There were 146 Members of the WTO up to 31 December 2003. In 2003, 46 Members (31.5 per cent) submitted a total of 856 SPS notifications, among which, there were 621 routine notifications (72.55 per cent), 67 notifications of emergency measures (7.8 per cent), 130 addenda (15.2 per cent), 9 revisions (1.1 per cent), and 29 corrigenda (3.4 per cent) (See Figure 1).

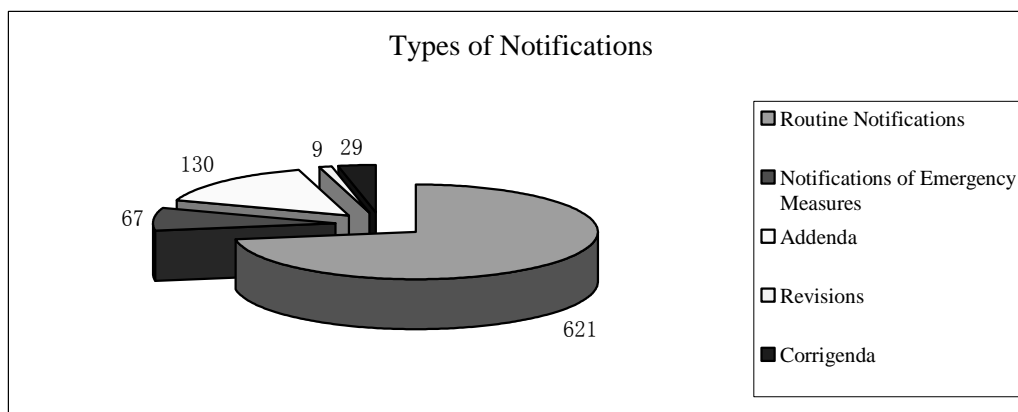


Figure 1

5. The numbers and shares of the SPS routine and emergency notifications submitted by WTO Members are described in Table 1.

Table 1- NOTIFICATIONS IN GENERAL

Member	Total	Share in Total	Routine		Emergency	
			Num.	Share	Num.	Share
United States	190	22.20%	183	96.32%	7	3.68%
New Zealand	76	8.88%	64	84.21%	12	15.79%
European Communities	49	5.72%	46	93.88%	3	6.12%
Chile	47	5.49%	42	89.36%	5	10.64%
Canada	37	4.32%	34	91.89%	3	8.11%
China	28	3.27%	26	92.86%	2	7.14%
Korea	27	3.15%	25	92.59%	2	7.41%
Peru	22	2.57%	16	72.73%	6	27.27%
Japan	19	2.22%	18	94.74%	1	5.26%
Nicaragua	18	2.10%	18	100.00%	0	0.00%
Brazil	17	1.99%	15	88.24%	2	11.76%
Thailand	16	1.87%	15	93.75%	1	6.25%
Mexico	14	1.64%	10	71.43%	4	28.57%
Australia	13	1.52%	13	100.00%	0	0.00%
Bulgaria	12	1.40%	12	100.00%	0	0.00%
Guatemala	11	1.29%	11	100.00%	0	0.00%

Member	Total	Share in Total	Routine		Emergency	
			Num.	Share	Num.	Share
Chinese Taipei	11	1.29%	11	100.00%	0	0.00%
Venezuela	11	1.29%	11	100.00%	0	0.00%
El Salvador	9	1.05%	9	100.00%	0	0.00%
Georgia	5	0.58%	5	100.00%	0	0.00%
Colombia	4	0.47%	3	75.00%	1	25.00%
Hungary	4	0.47%	3	75.00%	1	25.00%
Norway	4	0.47%	4	100.00%	0	0.00%
Philippines	4	0.47%	1	25.00%	3	75.00%
Slovenia	4	0.47%	4	100.00%	0	0.00%
Germany	3	0.35%	3	100.00%	0	0.00%
France	3	0.35%	2	66.67%	1	33.33%
Malaysia	3	0.35%	0	0.00%	3	100.00%
Singapore	3	0.35%	3	100.00%	0	0.00%
Trinidad and Tobago	3	0.35%	0	0.00%	3	100.00%
South Africa	3	0.35%	3	100.00%	0	0.00%
Jordan	2	0.23%	1	50.00%	1	50.00%
Mauritius	2	0.23%	1	50.00%	1	50.00%
Netherlands	2	0.23%	2	100.00%	0	0.00%
Argentina	1	0.12%	1	100.00%	0	0.00%
Belgium	1	0.12%	1	100.00%	0	0.00%
Switzerland	1	0.12%	1	100.00%	0	0.00%
Czech Republic	1	0.12%	0	0.00%	1	100.00%
Spain	1	0.12%	0	0.00%	1	100.00%
Hong Kong, China	1	0.12%	0	0.00%	1	100.00%
Croatia	1	0.12%	1	100.00%	0	0.00%
India	1	0.12%	1	100.00%	0	0.00%
Jamaica	1	0.12%	0	0.00%	1	100.00%
Kenya	1	0.12%	0	0.00%	1	100.00%

Member	Total	Share in Total	Routine		Emergency	
			Num.	Share	Num.	Share
Panama	1	0.12%	1	100.00%	0	0.00%
Romania	1	0.12%	1	100.00%	0	0.00%
Total	688	80.37%	621	72.55%	67	7.83%

6. Table 1 shows that the top ten Members in terms of the number of notifications submitted were: United States (190), New Zealand (76), European Communities (49), Chile (47), Canada (37), China (28), Korea (27), Peru (22), Japan (19) and Nicaragua (18). The top ten Members submitted a total of 513 notifications (59.93 per cent of the total).

7. Analysis of the items "Products covered" (Item 3) and "Description of content" (Item 6) in the notification format showed that the most popular issues covered by routine and emergency notifications during 2003 included:

Maximum Residu Levels for pesticide, bactericide and chemical/pharmaceutical preparations used in veterinary medicine, accounting for 234 notifications (34 per cent);

Procedures and requirements for import inspection and quarantine, accounting for 102 notifications (14.8 per cent);

Maximum Levels for Heavy Metal, accounting for 32 notifications (4.7 per cent);

GMOs, accounting for 15 notifications (2.2 per cent);

Risk Assessment, accounting for 11 notifications (1.6 per cent);

BSE, accounting for 11 notifications (1.6 per cent);

Plant propagating material, accounting for 10 notifications (1.5 per cent);

Measures facilitating trade, accounting for 9 notifications (1.3 per cent);

Materials contacted with food, accounting for 7 notifications (1 per cent);

Wood packaging material, accounting for 5 notifications (0.7 per cent);

8. Analysis of the item "Objective and rationale" (Item 7) in routine notifications indicated that, of all the notifications in 2003, the area of food safety, with 392 notifications (63.12 per cent), ranked first and protection of human health from animal- or plant-carried diseases took second place with 185 notifications (29.79 per cent). Plant protection was third with 168 notifications (27.05 per cent); and animal health fourth with 116 notifications (18.68 per cent). There were 36 notifications (5.80 per cent) dealing with the protection of a country against other damages resulting from pests. (These numbers are based on multi-selection. See Figure 2.)

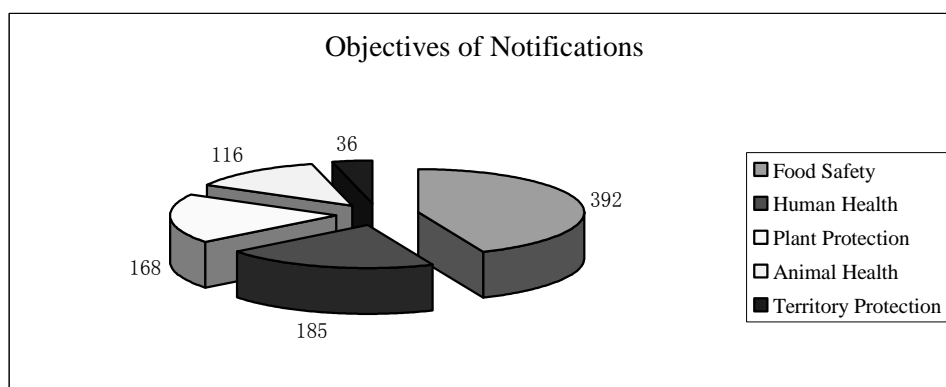


Figure 2

9. According to the provisions in Annex B of the SPS Agreement and the Recommended Transparency Procedures (G/SPS/7/Rev.2), choosing any international organization in Item 8 means that a relevant international standard exists and the SPS measure notified is inconsistent with it. The analysis of Item 8 on "Existence of international standard, guideline or recommendation" indicated that: out of 267 notified measures based on corresponding international standards, there were 61 notifications based on relevant standards established by the Codex, 92 notifications based on relevant standards established by OIE and 114 notifications based on relevant standards established by IPPC. In addition, there were 329 notifications without any reference to relevant international standards. Some of the main problems can be summarized as:

- (i) Most of the notifications did not reflect the difference between the notified measure and the international standard even if a relevant international standard did exist.
- (ii) Some standards established by other international and regional organizations (i.e. the European Communities) besides the "Three Sisters Organizations" are introduced when identifying deviations between notified measures and relevant international standards.
- (iii) This item was left blank.

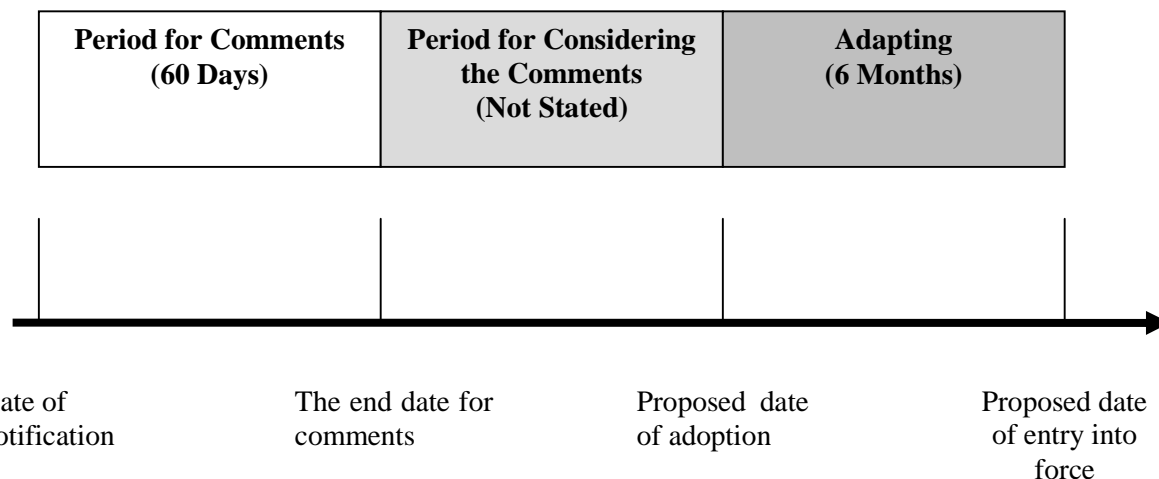
Comment Period and Adapting Period

10. The following definitions will make the analysis easier to comprehend (See Chart 1):

- ***Date of notification:*** the date that WTO distributes the notification, i.e., the date at the top right corner of the notification format.
- ***Final date for comments:*** the deadline before which the notifying Member accepts comments submitted by other Members, see Item 12 of the notification format.
- ***Proposed date of adoption:*** the proposed date on which the notifying Member adopts the notified SPS measure, see Item 10 of the notification format.
- ***Proposed date of entry into force:*** the proposed date on which the notified SPS measure will take effect, see Item 11 of the notification format.
- ***Comment Period:*** an interval from the date of issuance of the notification to the final date for comments. According to the Recommended Transparency Procedures, the comment period should be normally at least 60 days.

- **Comment-consideration period:** an interval from the final date for comments to the proposed date of adoption.
- **Adapting period:** an interval from the date of publication of the notified SPS measure to the date of entry into force, which normally should be not less than six months according to the Doha Ministerial Decision (WT/MIN (01)/17, para. 3.2).

Chart 1 Four Time Points and Three Intervals



11. The statistics showed that only 142 out of 621 routine notifications (i.e. 22.9 per cent) allowed at least 60 days for comments, and 297 notifications (47.8 per cent) allowed a comment period of less than 60 days. The final dates for comments for 72 notifications (11.6 per cent) were at or earlier than the corresponding date of notification. Under these circumstances, other Members could not enjoy their right to comment on notifications. Furthermore, 110 notifications did not identify any final date for comments.

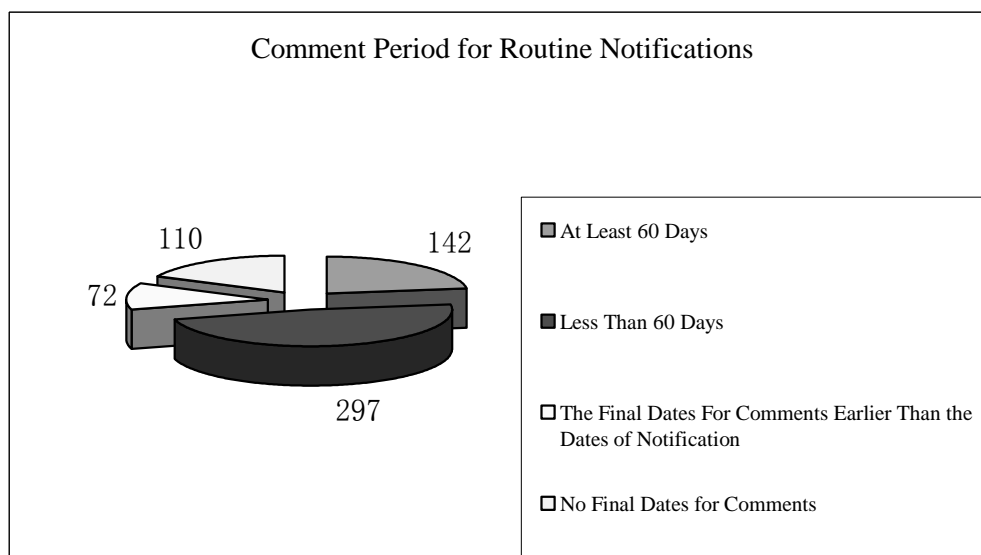


Figure 3

12. According to Paragraph 2 of Annex B of the SPS Agreement: "Except in urgent circumstance, Members shall allow a reasonable interval between the publication of a SPS regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing

country Members, to adapt their products and methods of production to the requirements of the importing Member".

13. Article 3.2 of the Doha Ministerial Decision further clarified: "*Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase "reasonable interval" shall be understood to mean normally a period of not less than six months*".

14. However, the notification format provides boxes only for the proposed date of adoption (Item 10) and proposed date of entry into force (Item 11); no box for the date of publication is available. Generally speaking, the date of publication should not be earlier than the date of adoption. For the sake of our analysis, we assumed that all Members published their SPS measures on the same day as the measures were adopted. In other words, the date of adoption was regarded as the start of the adapting period when we conducted the analysis on the implementation of this six-month period by notifying Members.

15. The statistics showed that only 57 notifications (9.2 per cent of routine notifications) provided at least six months for adapting, 257 notifications (41.4 per cent) provided an adapting period of less than six months and 307 notifications (49.4 per cent) did not state the date of adoption and/or the date of entry into force (See Figure 4).

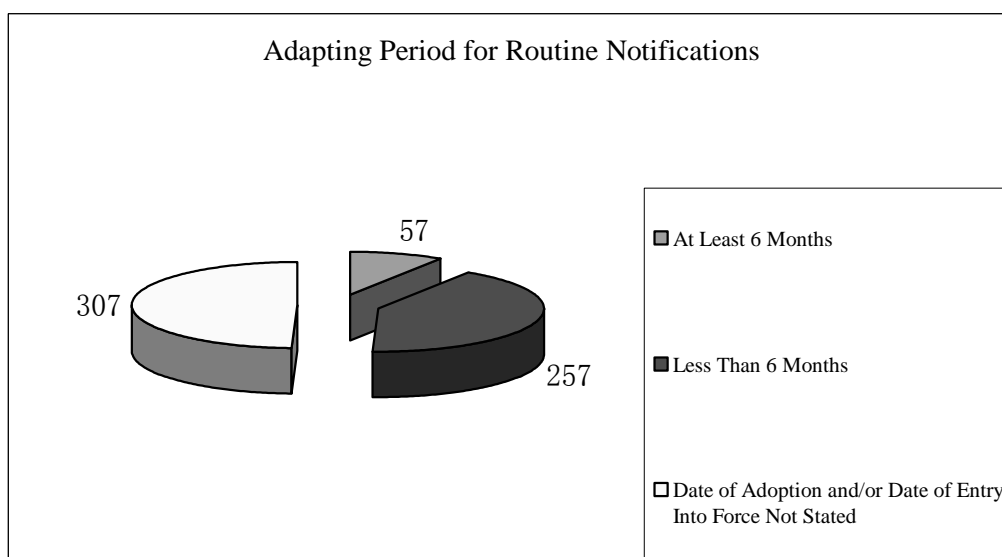


Figure 4

16. Annex B of the SPS Agreement stipulates that comments from other Members should be considered seriously. Referring to the statistics, only 100 routine notifications (16.1 per cent) provided at least one day between the final date for comments and the date of adoption for considering comments from other Members. 444 notifications either did not provide any interval for the consideration of comments or indicated that the final date for comments and/or the proposed date of adoption was not available. In 77 notifications, the date of adoption was earlier than the final date for comments (See Figure 5).

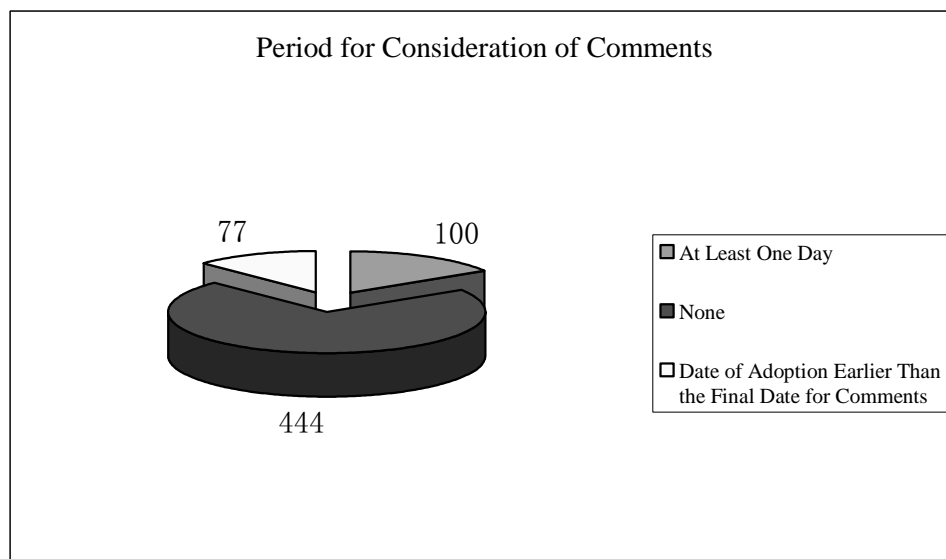


Figure 5

17. The report showed that the notifications from developing country members are comparatively few, possibly due to the absence of relevant resources, basic establishments and necessary staff training, as well as absence of relevant laws and regulations. Therefore, it is important for the developed country Members and this Committee to assist the developing country Members, especially the least-developed country Members to build up their capacity, including, but not limited to, the capacity for notifications, to help them fulfil their transparency obligations.