

Committee on Sanitary and Phytosanitary Measures

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

Note by the Secretariat¹

INTRODUCTION

1. The Secretariat of the World Trade Organization is organizing a special workshop on the transparency provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), to be held in Geneva, Switzerland, on Monday, 15 October 2007 and in the morning on Tuesday, 16 October 2007.² The workshop will be followed by informal and formal meetings of the SPS Committee, lasting until Friday, 19 October. This background Note is intended to assist Members in their deliberations on questions related to transparency during these upcoming meetings.

2. The Note 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). The overview only covers areas which the Secretariat is in a position to track (such as notifications) but does not include those where the Secretariat is not directly involved (such as provision of comments on specific notifications).

3. In preparing this Note, the Secretariat has taken advantage of its new SPS Information Management System, the public version of which will be launched and presented on 15 October during the transparency workshop. While some historical data dating back to 1995 has been retrieved from various internal resources, some of the more detailed analysis has only been possible for the months of June, July and August 2007.³

DESIGNATION OF NOTIFICATION AUTHORITIES AND ENQUIRY POINTS

4. 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. Among the 151 WTO Members, 131 Members have designated a "notification authority". Those which have not include 12 least developed countries (LDCs) and 7 developing countries.⁴

5. Annex B, paragraph 3 requires that each Member establish an Enquiry Point responsible for the provision of answers to all reasonable questions and of relevant documents. Of the 151 WTO

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 The programme for the workshop can be found in G/SPS/GEN/794/Rev.1.

³ In general, the analysis covers the period up until 31 August 2007.

⁴ See G/SPS/NNA/12 for the latest list of notification authorities as notified to the WTO.

Members, 139 have provided the WTO with the contact information of their Enquiry Point. Those which have not include 11 LDCs and 1 developing country.⁵

SUBMISSION OF NOTIFICATIONS

6. Under the SPS Agreement, notifications are used to notify other Members about new or changed regulations that may significantly affect trade. Annex B, paragraphs 5-8, as well as the Recommended 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

7. 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.⁶ As of 31 August 2007, Members had submitted:

- 5,621 regular notifications; 1,401 addenda/corrigenda to regular notifications; and
- 986 emergency notifications; 193 addenda/corrigenda to emergency notifications.

8. Moreover, the Committee has 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 translations of notified measures into one of the official languages of the WTO. These are submitted in the form of supplements. As of 31 August, one equivalence and 12 supplement notifications had been circulated.

9. Considering all types of notifications together, a total of 8,217 notification have been submitted to the WTO until 31 August 2007. As can be seen in Figure 1, there has been an upward trend in the number of notifications – with the total number of notifications reaching 1,157 for the year 2006.

10. 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.

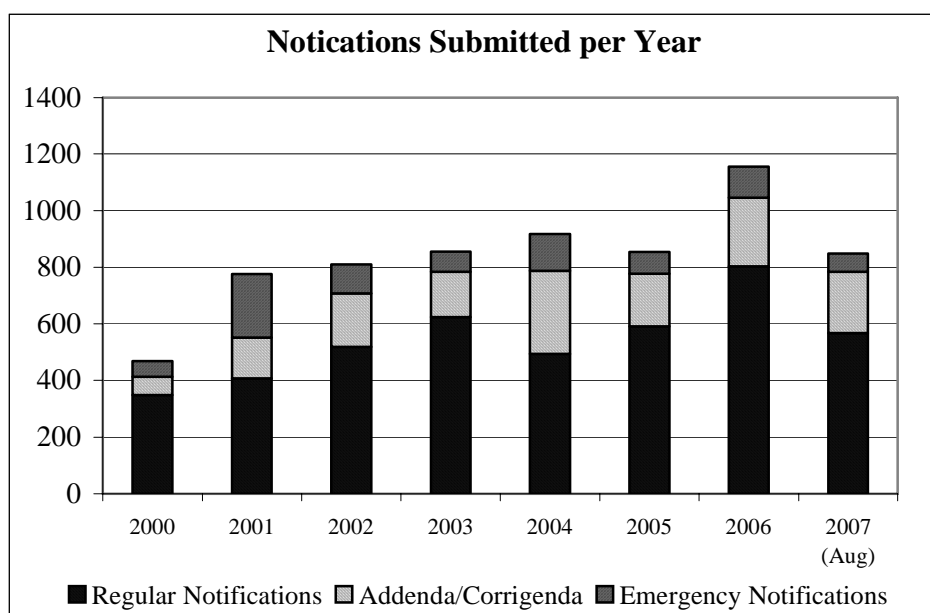
11. Managing the flow of notifications has also become a challenge for all Members, particularly for those with limited resources. As the replies to the Questionnaire on the Operation of Enquiry Points and National Notification Authorities indicate, this is one of the areas where Members are looking for technical assistance and guidance from best-practices.⁷

⁵ See G/SPS/ENQ/22 for the latest list of Enquiry Points as notified to the WTO.

⁶ See the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.2) for further elaboration on the different types of notifications.

⁷ 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.

Figure 1



Notifying Members

12. Out of the 151 WTO Members, 94 (62%) have to date submitted at least one notification to the WTO.

13. As can be seen in Figure 2, the share of notifications submitted by developed countries reaches 57% while the share of those by developing countries is 42%.⁸ A very small share comes from LDCs. Still, as can be seen in Figure 3, there has been a steady increase in notifications from developing country Members over the years.

⁸ The categories of level of development rely on WTO working definitions as identified in the Integrated Database (IDB) for analytical purposes.

Figure 2

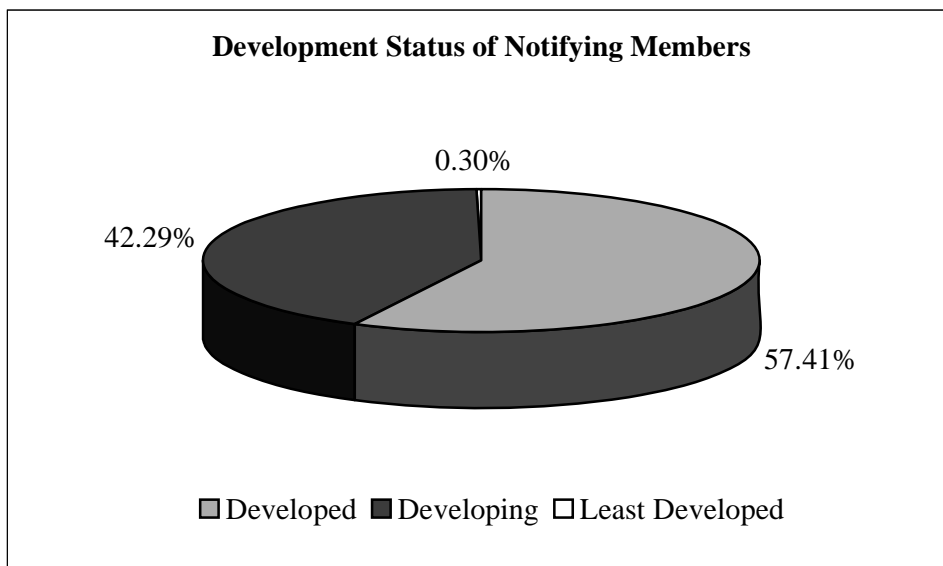
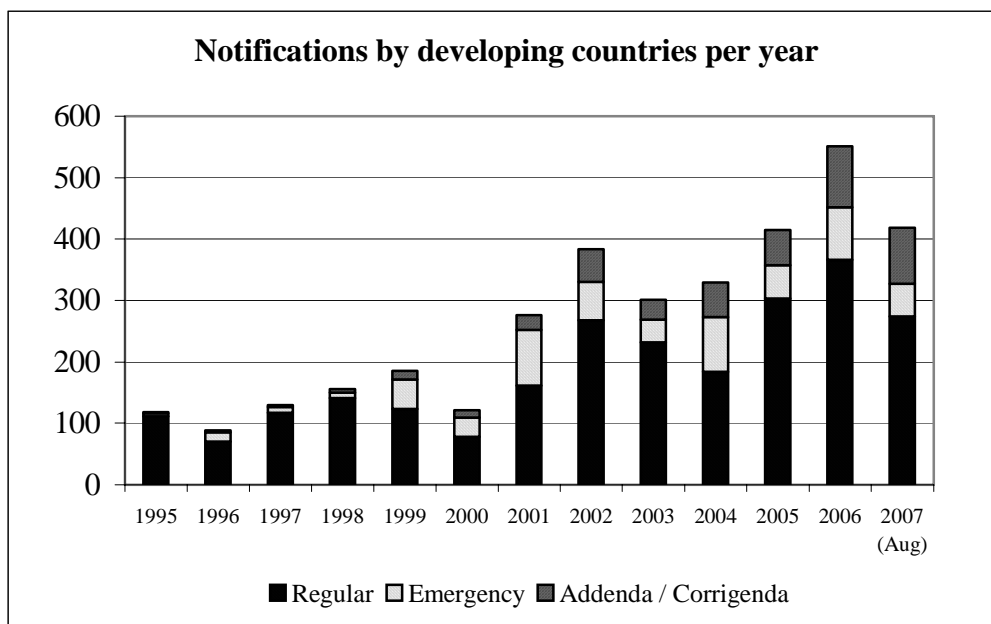


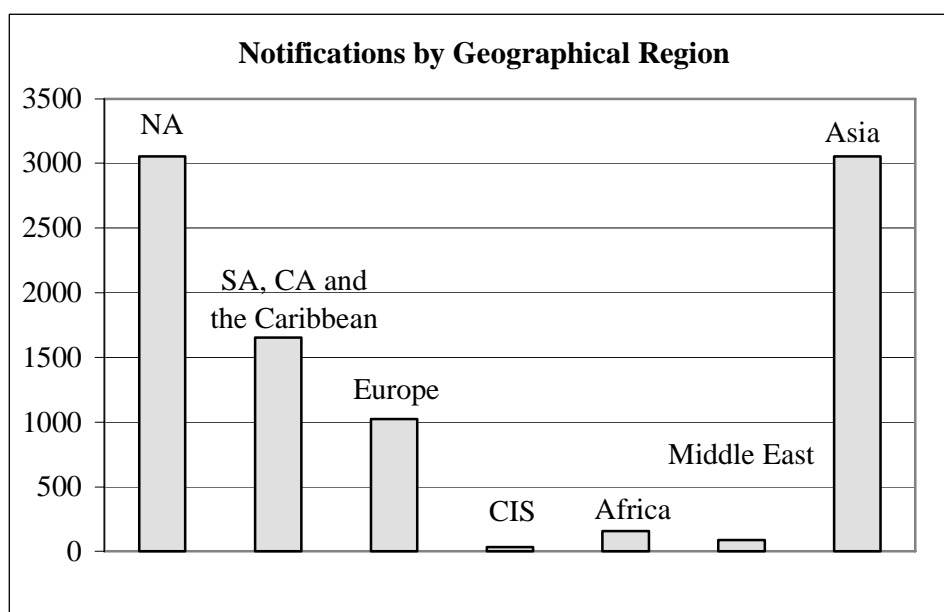
Figure 3



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.⁹

⁹ 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.

Figure 4



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

Table 1 – Members with greatest number of notifications

Member	No. of Notifications	Share of Total
United States	2,367	28.8%
European Communities	517	6.3%
New Zealand	464	5.6%
Canada	449	5.5%
Brazil	446	5.4%
Korea, Republic of	298	3.6%
Chile	292	3.6%
China	261	3.2%
Australia	249	3.0%
Mexico	236	2.9%

Products covered

16. In accordance with paragraphs 5-6 of Annex B and the Recommended Procedures, Members are required to identify the products to be covered by a new or changed SPS measure and 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.¹⁰

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.¹¹ While being only indicative, an assessment at the two-digit level shows that the products covered most often fall under the following categories: meat and edible meat offal (02), dairy produce, birds and eggs, etc. (04), edible vegetables and certain roots and tubers (07), edible fruit and nuts; peel of citrus fruit or melons (08), and miscellaneous chemical products (in particular pesticides) (38).

Regions/countries affected

18. The Recommended Procedures also ask Members to identify the regions or countries which are most likely to be affected by the measure being notified. An assessment of the notifications submitted during the months of June, July and August 2007 indicate that only 16% of notifications have made identified a specific group of countries or a region, while others contain general references such as "all trading partners", "all countries", etc. On the one hand, the work of other Members would be facilitated immensely 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/regions for fear of not accurately assessing who might be affected.

Objective and Rationale

19. In accordance with paragraphs 5-6 of Annex B and the Recommended Procedures, Members are also required to state the objective and rationale of proposed regulations. Looking at the notifications submitted during the months of June, July and August 2007 shows that about a third have referred to food safety and about a quarter to plant protection as one of the objectives (see Table 2)

Table 2 - "Objectives" of notified SPS measures (June-August 2007)

	Total (June, July, August)	Share over 3-month period
Food Safety	222	33.2%
Animal Health	82	12.3%
Plant Protection	170	25.4%
Protect humans from animal / plant pest or disease	153	22.9%
Protect territory from other damage from pests	41	6.1%

International Standards, Guidelines or Recommendations

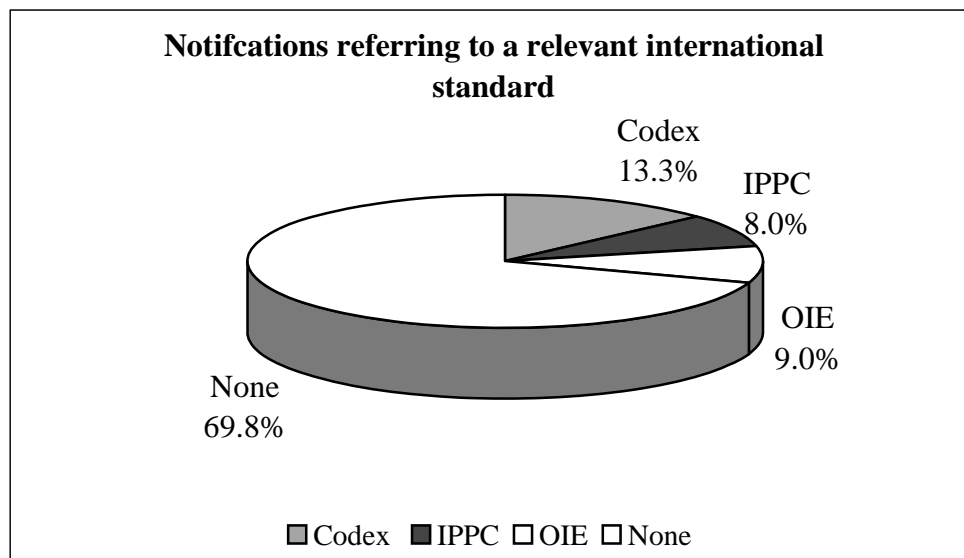
20. The Recommended Procedures ask Members to indicate whether a relevant international standard exists and if so, to describe how the notified measure deviates from that standard. However, the SPS Agreement does not require Members to notify a measure if its content is substantially the same as that of an international standard. Still, a number of Members have proposed to modify the

¹⁰ 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.

¹¹ This information is now available in the SPS Information Management System (SPS IMS).

Recommended Procedures such that all new or changed SPS measures be notified to the WTO.¹² Figure 5 indicates that currently most notifications relate to measures which are not covered directly by international standards. Still, there have been exceptions. For example, more than 80 notifications relating to ISPM 15 have been circulated.¹³

Figure 5



Final date for comments

21. Annex B, paragraph 5, provides that notifications should take place at an early stage, when amendments can still be introduced and comments taken into account. The Recommended Procedures state that a 60-day comment period should be provided with respect to regular notifications. An analysis of the notifications issued during the months of June, July and August 2007 shows, in Table 3, that a significant number of notifications do not provide a comment period. For those that do provide comment periods, these average 40 days when calculated as the difference between the deadline for final date for comments and the date of circulation of the notification. A number of Members have called for more regular compliance with the 60-day comment period and have suggested a clarification that the comment period commences as of the date of circulation of a notification by the WTO Secretariat.¹⁴

¹² See The 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, para. 7) for proposals to modify the Recommended Procedures with respect to this issue.

¹³ ISPM 15 the IPPC's International Standard for Phytosanitary Measures No. 15 on Guidelines for Regulating Wood Packaging Material in International Trade

¹⁴ See The 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, para. 10) for proposals to clarify the Recommended Procedures with respect to the comment period.

Table 3 - Comment Period in Notifications (June-August 2007)

Comment Period specified in Notifications	No.	Share
Comment Period Not Indicated / Not Available	58	22%
Comment Period Ends before Distribution Date	13	5%
Comment Period Available	189	73%
Average Comment Period provided		40 days

Issue keywords

22. With the launch of the SPS IMS; the Secretariat is also in a position to track notifications according to a list of predefined keywords, which describe issues appearing frequently in notifications. Since 2003 these keywords (around 60) are being assigned by the CRN. It is expected that access to these keywords will assist those searching for notifications in certain areas. The keywords which have been most frequently assigned by CRN to notifications (apart from "objectives" such as food safety) include pesticides, animal diseases, zoonoses, pests, food additives, avian influenza and BSE.

OTHER ASPECTS RELATING TO TRANSPARENCY

23. As indicated above, 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 their regulations at an early stage (Annex B, paragraph 5(a))?
- To what extent are Members providing comments on notifications, and to what extent are these taken into account?
- To what extent are translations of proposed regulations available?
- How quickly do Members respond to requests for documents or other information?

24. These are areas where Members have occasionally shared their experiences with the SPS Committee. But beyond these implementation issues, the challenge for many Members has been to actually benefit from the transparency provisions, the purpose of which is to enhance predictability and ultimately to improve and maintain market access for traders.
