



**SIXTH REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT  
ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES**

**TRANSPARENCY OF SANITARY AND PHYTOSANITARY REGULATIONS:  
NOTIFYING AT AN EARLY APPROPRIATE STAGE**

PROPOSAL FROM BRAZIL

The following proposal, received on 23 January 2024, is being circulated at the request of the delegation of [Brazil](#).

**1 BACKGROUND**

1.1. Over the past 28 years, world trade has changed significantly, bringing new challenges to the WTO on its mission to avoid unnecessary barriers to trade while pursuing legitimate objectives. The SPS Committee has also changed; from one-day meetings in 1995 to full SPS weeks today. The implementation of the SPS Agreement has brought several improvements to the Committee that vastly distinguishes it from the first years after its signature.

1.2. Members have submitted more than 33,000 SPS notifications since 1995, including more than 6,000 in 2023. In addition, 575 trade concerns related to the implementation of the SPS Agreement have been discussed since 1995, including 67 in 2023.

1.3. Certainly, the increasing awareness of its usefulness and the growth of Members' capacity to deal with trade issues are important factors. But technology also plays an important role. Systems such as ePing and eAgenda have made it easier and more accessible to make notifications and track specific trade issues. These gains in transparency open up opportunities to strengthen clauses directly related to them.

1.4. The SPS Agreement provides in its Annex B (Transparency of Sanitary and Phytosanitary Regulations), Articles 5 and 6 that:

5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:
  - (a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;
  - (b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;
  - (c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;
  - (d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.**

6. However, where urgent problems of health protection arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 5 of this Annex as it finds necessary, provided that the Member:
- (a) immediately notifies other Members, through the Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);
  - (b) provides, upon request, copies of the regulation to other Members;
  - (c) allows other Members to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.**

1.5. In this sense, it is clear that the early and adequate notification of proposed SPS regulations is a mandatory clause of the SPS Agreement. As there was a consensus on the obligation to notify SPS regulations at a stage where comments could still be taken into account, Brazil invites the Committee to share its experience in making or receiving comments and how they were taken into account.

1.6. In the case of Brazil, the comments to Brazilian notified measures are always considered and, if the proposed changes are consistent with the objectives of the SPS regulation and the scientific evidence, it is included in the new versions, irrespective of which Member suggested the changes.

1.7. Regarding measures from other Members, we compared a sample of notified drafts and the respective notified final versions, and we were happy to find that, in many cases, the final versions brought changes that reflected Brazilian or other publicly available comments. Nevertheless, in our research, we could identify Members that never took Brazilian comments into account in a positive way. While this is a possible outcome, it is still a frustrating one. If comments are never taken into account, one probable reason is that these Members are not notifying measures early enough, when it is still possible to participate in the formulation of the measure.

1.8. In the light of the above, Brazil would like to present a proposal to the Committee as follows.

1.9. The Committee could have a separate agenda item on notification where, if requested by a Member at least three weeks before the Committee meeting, the notifying Member could respond on how comments received from WTO Members were taken into account. This would facilitate the monitoring of the SPS Agreement, reinforce good regulatory practices and make new SPS regulations transparent, thereby avoiding unnecessary barriers to trade.

## **2 PROPOSAL**

2.1. The SPS Committee decides to define "Notifications - Consideration of comments" as a standing agenda item in order to open the dialog on sanitary and phytosanitary regulations.

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