



# Audit Procedures For Notification Of Sanitary And Phytosanitary Measures\*

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# 1 INTRODUCTION

**Transparency** is one of the main obligations assumed by Member countries in the context of the World Trade Organization (WTO). The aim is to achieve a greater degree of clarity, predictability and information about the trade policies, rules and regulations of Members. Under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Members have a number of obligations relating to transparency in relation to sanitary and phytosanitary (SPS) measures, including the requirement to provide prior notification of proposed SPS measures following certain rules and procedures. In this respect it is worth noting that every obligation simultaneously generates a right; these two concepts are inextricably linked and can only exist together. Thus, the obligation to provide prior notification “coexists” with the right of other Members to submit observations or comments on notified SPS proposals, something that should be taken into account by the Member issuing the notification (notifying Member) before adopting the final version of an SPS measure.

According to annual statistics compiled by the WTO Secretariat, the developing country Members of the Americas have made significant improvements in fulfilling their notification obligations. In fact, nine of the 20 Members with the largest number of notifications are countries in

the Americas: the United States, Brazil, Chile, Peru, Mexico, Colombia, Argentina, El Salvador and Costa Rica. Moreover, South America, Central America and the Caribbean together account for nearly 2,500 notifications issued since the creation of the World Trade Organization (WTO), nearly 30% of the total notifications made<sup>1</sup>.

With respect to Member countries' effective application and exercise of their rights as regards notification, the WTO Secretariat has few statistics, since such contacts are exclusively bilateral and are rarely addressed on a multilateral basis through concerns raised within the SPS Committee. However, one interesting indicator—even though it may not be considered directly applicable—is the annual summary of specific trade concerns raised in the SPS Committee prepared by the WTO Secretariat. Although most of these concerns refer to SPS regulations already in force, they may reflect the preparation and technical capacity of a Member that raises a concern to make a claim against an SPS measure that it considers unjustified or that affects its trade interests. Of a total of 277 trade concerns raised as of December 2008, nearly 60% were from countries in the Americas (166 concerns). However, it is important to note that the majority of these trade concerns were raised by the United States and Canada (a total of 89) while the remaining 77 were raised by other countries of the continent (mainly Brazil, Argentina and Chile)<sup>2</sup>.

Despite progress in both spheres of action (i.e. in the fulfillment of obligations and the exercise of rights), much work still remains to be done to strengthen and improve the performance of countries in the Americas, though in many cases such efforts have been under way for a number of years. Indeed, during the negotiations that concluded with the adoption of the Recommended Procedures for Implementing

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1. G/SPS/GEN/804/Rev.2

2. G/SPS/204/Rev.9

Transparency Obligations of the SPS Agreement<sup>3</sup>, many developing country Members—including those in the Americas—acknowledged their difficulties both in fulfilling their obligations and in benefiting from the rights conferred under the Agreement. The reasons cited on that occasion were varied: lack of resources (human, technical and economic), lack of detailed knowledge of the WTO disciplines, absence of institutional mechanisms for implementing WTO commitments, lack of accompaniment by the private sector, etc. Thus, although the countries of the region have achieved significant progress in recent years, there is still much room for improvement if they are to benefit fully from the notification provisions of the SPS Agreement.

For a country to comprehensively benefit from the Agreement, it is essential to assess its strengths and weaknesses in the area of SPS notification, as a necessary first step to planning specific tasks and actions to achieve the objectives. Normally, each country's own institutions—public and private—will be in the best position to make this assessment and may even be able to make specific recommendations to overcome any difficulties encountered. Nevertheless, it may be useful to provide a standardized tool to help countries “audit” their performance with regard to SPS notification, and, more specifically, determine the underlying reasons for the strengths and weaknesses identified.

The purpose of this document is precisely that: to serve as a tool that will help countries to assess their performance on notification procedures and, based on this, plan the necessary actions to improve on the relevant aspects.







# TRANSPARENCY IN THE INTERNATIONAL REGULATORY FRAMEWORK

## 2.1 Transparency as a WTO principle

In the context of the World Trade Organization “transparency” refers to one of the fundamental principles of the Multilateral Trade System: the aim is to achieve a greater degree of clarity, predictability and information about the trade policies, rules and regulations of Member countries. The principle of transparency is embodied in various legal instruments within the WTO regulatory framework, including:

- **General Agreements:** The General Agreement on Tariffs and Trade (GATT); the General Agreement on Trade in Services (GATS); and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Under GATT, Members are required to publish all laws, regulations, judicial decisions and administrative rulings of general application in the trade in goods, prior to their application<sup>4</sup>. GATS requires

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4. Art. X.

Member countries to publish promptly all relevant measures of general application that relate to or affect the trade in services and to inform the Council for Trade in Services of the introduction of any new laws, regulations or administrative guidelines that significantly affect the trade in services. Members are also required to respond promptly to all requests by other Members for specific information regarding any of their measures<sup>5</sup>. Finally, TRIPS provides that all laws, regulations, final judicial decisions and administrative rulings of general application, made effective by a Member and pertaining to the subject matter of this Agreement shall be published, or, where such publication is not practicable, made publicly available<sup>6</sup>.

- **Multilateral Agreements on Trade in Goods:** Agreement on Agriculture (AoA); the Agreement on the Application of Sanitary and Phytosanitary Measures (ASPS); the Agreement on Textiles and Clothing (ATC); the Agreement on Technical Barriers to Trade (TBT); the Agreement on Trade-Related Investment Measures (TRIMs); the Agreement on Anti-Dumping (AD); the Agreement on Customs Valuation (ACV); the Agreement on Pre-Shipment Inspection (PSI); the Agreement on Import Licensing Procedures (ILP); the Agreement on Rules of Origin (ARO); the Agreement on Subsidies and Countervailing Measures (ASCM); and the Agreement on Safeguards (AS).
  
- **Ministerial Decision on Notification Procedures of the Uruguay Round:** in this decision Members affirmed their commitment to fulfill their obligations under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, regarding publication and notification, and agreed to be guided by the annexed Indicative List of Notifiable Measures. Furthermore, Members

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5. Art. III.

6. Art. 63.

agreed to the establishment of a Central Registry of Notifications (CRN) under the responsibility of the WTO Secretariat.

- **Trade Policy Review Mechanism:** in which Members recognize the inherent value of domestic transparency in government decision making on trade policy matters, for both Members' economies and for the multilateral trading system, and agree to encourage and promote greater transparency within their own systems, acknowledging that the implementation of national transparency must be on a voluntary basis and must take account of each Member's legal and political systems.

Most of these legal instruments establish the Members' obligation to notify other WTO Members —generally via the WTO Secretariat— of their trade policies and regulations, to ensure the necessary predictability and security to facilitate trade flows and prevent unfair or anti-competitive practices that undermine the normal conduct of any trade operation.

## 2.2 Transparency in the WTO agreement on the application of sanitary and phytosanitary measures

### A. Regulatory framework

In the area of sanitary and phytosanitary measures, transparency is regulated by three legal sources: (i) the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), (ii) the Doha Decision on Implementation-related issues and concerns<sup>7</sup> (hereinafter

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7. WT/MIN(01)/17

“the Doha Decision”), and (iii) the Recommended Procedures for the application of transparency obligations under the SPS Agreement (hereinafter “Recommended Procedure”). Of these three sources, only the SPS Agreement and the Doha Decision are binding for Members, not so the Recommended Procedures<sup>8</sup>.

The **SPS Agreement** has followed the rationale of the other Multilateral Agreements on Trade in Goods, adopting and (adapting) the general transparency provisions contained in GATT to the specific field of sanitary and phytosanitary measures.

In general terms, the principle of transparency in the SPS Agreement may be summarized as follows:

- **Publication:** Members shall publish all sanitary and phytosanitary regulations adopted to enable interested countries to become acquainted with their content (Annex B, paragraphs 1 and 2).
- **Information:** Members shall designate a national agency (Enquiry Point) to answer all reasonable information requests submitted by interested Members and to provide relevant documents (Annex B, paragraph 3).
- **Notification:** in certain cases, Members shall notify the WTO Secretariat of their proposed sanitary and phytosanitary measures, in order to give other Member countries an opportunity to submit observations or comments (Annex B, paragraph 5).

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8. Paragraph 3 of the Guidelines mentions that these procedures are not intended to provide any legal interpretation of the SPS Agreement and are without prejudice to the rights and obligations of Members under the WTO Agreements. Moreover, according to Article IX.2 of the Marrakesh Agreement, the Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements (including the SPS Agreement).

The **Doha Decision** interprets the scope of the obligation to allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force (Paragraph 2 of Annex B of the SPS Agreement).

The **Recommended Procedures** are guidelines that have been developed to assist Members in fulfilling their obligations under Article 7 and Annex B of the SPS Agreement regarding: (i) notification of sanitary and phytosanitary regulations, (ii) answering information requests through the National Enquiry Point system, and (iii) publishing regulations. However, these procedures are not intended to provide any legal interpretation of the SPS Agreement, which is the source of these guidelines, and are without prejudice to the rights and obligations of Members under the WTO Agreements.

**Annex I** contains an ordered text of all WTO transparency provisions related to SPS in the multilateral regulatory framework, that is, those included in the SPS Agreement, the Doha Decision and the Recommended Procedures.

In this regard, two general comments must be made. In the first place, the multilateral regulatory framework on the transparency of sanitary and phytosanitary measures implies obligations, and consequently, rights for all Members. Just as the regulatory framework requires Members to notify a proposed measure at an early stage, in which amendments can still be introduced, it also establishes the right of other Members to submit comments on that proposal. In other words, for every transparency obligation established in the multilateral framework there is also a corresponding right that is accorded to the rest of the WTO Member countries, which benefit from the advantages afforded by the principle of transparency. Therefore, it is said that there are two aspects to notification: an “offensive” aspect or task: submitting comments to notifications received, and a “defensive” aspect: receiving comments to notifications issued and duly taking these into account. Both aspects are equally important and should be strictly observed by all Members.

Secondly, it is important to note that the multilateral regulatory framework only covers some aspects of the notification process, namely: (i) timing of notifications, (ii) requesting and providing information on proposed regulations, (iii) handling comments. In other words, progress has been made only on the aspects linking the notifying Member with the rest of the Members. In acknowledgement of the principle of non-interference in Members' domestic affairs, the existing provisions do not regulate internal procedures (for example, which body will be designated as the National Notification Authority – NNA, or at what point in the standard-setting process notification will take place, how contacts are made between the NNA and the regulatory body that is considering adopting an SPS measure, how comments are to be prepared in response to the notifications received, etc.). All these aspects have been left to the discretion of Member countries, provided that they fulfill their obligations to the other Members.

## B. Notification process

**Enquiry Points:** Each Member is required to designate a National Notification Authority (NNA) and a National Enquiry Point (information service) responsible for implementing the SPS transparency obligations and rights in that Member country. These bodies are responsible for notifying proposed measures—and handling the comments received—as well as analyzing notifications received from other Members and submitting comments, and, where applicable, coordinating actions with all sectors concerned with SPS issues.

It is worth noting that both the NNA and the National Enquiry Point (NEP), often known as Contact Points, are simply that: liaisons between countries. In general, these bodies are not the ones that adopt measures and are seldom the ones that are best qualified to analyze comments made to notifications. They are generally small units or departments that coordinate their actions with other bodies or institutions, the

private sector, etc., with the capability and competence to carry out these technical tasks.

**When is notification required?** Not all proposed sanitary and phytosanitary regulations must be notified. Notification is required when: (i) 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 that of an international standard, guideline or recommendation, and (ii) if the proposed regulation may have a significant effect on the trade of other Members. Nevertheless, the Recommended 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 the former are likely to have a significant effect on trade of other Members.

**Timing:** The SPS Agreement calls for notification to be made at an “early stage” and the Recommended Procedure states that it should be made “when a draft with the complete text of a proposed regulation is available and when amendments can still be introduced and comments taken into account.”

Although WTO Members have a single NNA, each country tends to have several regulatory bodies authorized to adopt SPS measures (e.g. Ministry of Health, Ministry of Agriculture and the Animal/Plant Health Services attached to those Ministries). Therefore, any standard-setting body that intends to adopt an SPS measure must inform the NNA of this fact before adopting the measure. From these contacts it is necessary to: (i) ascertain whether or not notification of a proposal is required, in the light of obligations under the SPS Agreement, and (ii) if notification is required (or a decision is made to notify even when this is not required), the format attached in **Annex II** should be completed (available directly from the WTO web site: [http://www.wto.org/english/tratop\\_e/sps\\_e/routine\\_notif\\_e.doc](http://www.wto.org/english/tratop_e/sps_e/routine_notif_e.doc)).

**Comment period:** Paragraph 5 d) of Annex B of the SPS Agreement requires Members to allow a reasonable interval for other Members to submit, examine and discuss comments. Normally Members should allow at least 60 calendar days for submitting comments, except for proposed measures that facilitate trade or if their content is substantially the same as an international standard, guideline or recommendation.

**Form:** Members have agreed that information must be submitted on a form, and they have reserved to themselves the right to appoint the authority responsible for completing the form. As noted previously, although the officials working at the NNA may have the necessary capacity and training for this task, in most cases they will need to work closely with the technical staff of a national standard-setting body that are able to provide specific information required to complete the form.

Any Member having difficulties in completing the form may:

- Request assistance through the WTO's Tutorial System, which will designate a Member to help with this task. <http://docsonline.wto.org/DDFDocuments/t/G/SPS/W217.doc>
- Use the Procedural Step-by-Step Manual for NNA and National Enquiry Points, available at the WTO web site. [http://www.wto.org/english/res\\_e/booksp\\_e/sps\\_procedure\\_manual\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/sps_procedure_manual_e.pdf)

**Sending the notification:** Once the form has been completed, the NNA should send it to the WTO's Central Registry of Notifications at the following e-mail address: [crn@wto.org](mailto:crn@wto.org). Members have two options: (i) send the notification form only or (ii) together with the form, send the text of the proposed regulation in PDF format.

**Exchanges subsequent to notification:** Often, following a notification other Members may express interest in acquiring the full text of the proposal. In this case, the interested Member should send a note to the



notifying Member requesting the document. To facilitate this process it is essential to ensure that the notification form has been correctly filled in, particularly Box N.º 13, with contact details of the agency of the notifying Member, in order to obtain the full text of the notified proposal and/or submit comments, as the case may be.

Requested documents should normally be provided within five working days. If this is not possible, the request for documentation or information should be acknowledged within that same period and an estimate given of the time required to provide the requested documentation.

**Handling comments on notifications:** A Member receiving comments through the designated body should, without further request: (i) acknowledge receipt of the comments; (ii) explain within a reasonable period of time, and at the earliest possible date before the adoption of the measure, to any Member from which it has received comments, how it will take these comments into account, and, where appropriate, provide additional relevant information on the proposed sanitary or phytosanitary regulations concerned; and (iii) provide to any Member from which it has received comments a copy of the corresponding sanitary or phytosanitary regulations adopted, or else, information that no corresponding sanitary or phytosanitary regulations will be adopted for the time being.

### **C. Handling notifications from other members**

On this matter the multilateral regulatory framework has established few provisions. This is reasonable, considering that WTO Members have only regulated interactions between and among Members and not domestic procedures or mechanisms. That is to say, the regulatory framework contains provisions for submitting observations or comments to notifications, but leaves it entirely up to each Member to decide on the means, mechanisms and procedures applied internally to define the national position regarding those comments.

As noted previously, the regulatory framework only requires:

- (i) comments to be submitted by an official authority of the interested Member (preferably the NNA or NEP to give the system greater reliability and to reassure the Member receiving the comments that these are valid and official).
- (ii) comments to be sent to the agency or body specified by the notifying Member in Box N.° 13 of the form.
- (iii) comments to be submitted within the period allowed for comments.

As noted previously, the Contact Points–CP (NNA and NEP) are government bodies that act as liaison between a country and the rest of the WTO Members. A Contact Point generally has a very small staff of 1–3 people, depending on the country, and its task is clearly administrative. However, these bodies (i) tend not to be the ones that adopt SPS measures and (ii) they do not always have the technical capacity to analyze notifications received from other Members. It is important to emphasize, then, that Contact Points fulfill the role of external liaison with their counterparts in other Member countries, but also within their own country with all official and private stakeholders concerned with sanitary and phytosanitary measures.

Members generally develop their own internal coordination mechanisms for drafting observations or comments, with varying degrees of efficacy and using different types of institutional frameworks. Recently, there has been an extremely positive trend toward the creation of National SPS Committees comprising various stakeholder groups—official and private—with authority on SPS matters, to discuss and define a national position not only with respect to a particular notification, but also more generally, with a view to establishing national positions that official representatives can take to meetings of the WTO–SPS Committee.

These efforts to develop an SPS institutional framework clearly represent major progress in terms of defining national positions, and also serve to make the decision-making process more transparent, democratize the procedures, provide greater stability over time and help maximize available resources. In synthesis, organizing the available resources through institutions such as a National SPS Committee enables countries to: (i) save working time, (ii) improve the allocation of available resources, (iii) optimize results, (iv) ensure that outcomes are the result of a comprehensive and transparent debate involving all actors concerned with SPS issues, (v) create work methodologies and positive synergies among different stakeholders, and (vi) strengthen the predictability and sustainability of policies over time.

In addition to having limited resources, the countries of the Region face a wide range of SPS issues whose specificity and technical complexity requires those responsible to have a high level of specialization. Therefore, if the goal is to establish coherent, sustainable, transparent and serious SPS policies, it is essential to improve the internal organization of this work.

#### **D. Implications stemming from non-compliance with transparency provisions**

**Multilateral Dispute Settlement System:** In the context of the WTO, Members have not only agreed on certain rights and obligations, but have also established jurisdictional mechanisms to guarantee the observance of international commitments. The Dispute Settlement Understanding (DSU) establishes standards and procedures that govern the settlement of disputes. It is a horizontal instrument that creates a flexible and predictable mechanism through which Members can assert their rights when they consider that one of their WTO partners is in breach of its obligations and thus generating a trade dispute.

The scope of the DSU is very broad, since it covers any conflict arising in relation to a measure applied by a Member under the provisions of: (i) the Marrakech Agreement which created the WTO; (ii) any of the Multilateral Trade Agreements (GATT, GATS, TRIPS, and DSU) and (iii) Plurilateral Trade Agreements.

The objectives of the DSU are to:

- Provide a satisfactory settlement to disputes. Preference should always be given to a solution that is mutually acceptable to the parties in dispute and is in conformity with the agreements covered.
- Provide security and predictability to the multilateral trading system.
- Preserve rights and obligations of Members.
- Clarify the existing provisions of those agreements in accordance with the customary rules of interpretation of public international law.

**Application to sanitary and phytosanitary measures:** the DSU is applicable to any dispute arising in the event that a Member should file a claim against another for alleged non-compliance with the provisions of the SPS Agreement, including of course, the transparency obligations.

For example, if a Member country does not notify a measure as provided under the SPS Agreement, it could face international legal action for failure to fulfill its obligations, which could result in the application of trade sanctions (retaliations).

To date, a Panel and/or the Appellate Body have intervened on five occasions to determine whether or not a certain measure was consistent with the SPS Agreement:

- European Communities – Measures affecting meat and meat products (WT/DS36)

- Australia – Measures affecting the importation of salmon (WT/DS18)
- Japan – Measures affecting agricultural products (WT/DS76)
- Japan – Measures affecting the importation of apples (WT/DS245)
- European Communities – Measures affecting the approval and marketing of biotech products (WT/DS291; 292 and 293)

However, only in one case –Japan: Measures affecting agricultural products – were interpretations issued regarding the scope of the transparency obligations. The most relevant points are mentioned below:

*“Therefore, in our view, for a measure to be subject to the publication requirement in Annex B, three conditions apply: (1) the measure «[has] been adopted» (2) the measure is a «phytosanitary regulation», namely a phytosanitary measure such as a law, decree or ordinance, which is (3) «applicable generally.»*

*The fact that the varietal testing requirement challenged by the United States «[has] been adopted» and is «applicable generally» is not in dispute. We only need to examine whether this requirement is a «phytosanitary regulation» in the sense of paragraph 1 of Annex B.*

*Even though the varietal testing requirement is not mandatory –in that exporting countries can demonstrate quarantine efficiency by other means– in our view, it does constitute a «phytosanitary regulation» subject to the publication requirement in Annex B. The footnote to paragraph 1 of Annex B refers in general terms to «phytosanitary measures such as laws, decrees or ordinances». Nowhere does the wording of this paragraph require such measures to be mandatory or legally enforceable. Moreover, Paragraph 1 of Annex A to the SPS Agreement makes clear that «phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures».*

*It does not, in turn, require that such measures be mandatory or legally enforceable. Nor does this provision require that such measures be mandatory or legally enforceable.”*

*For these reasons, we conclude that Japan, by not having not published the varietal testing requirements, acts inconsistently with its obligations under paragraph 1 of Annex B of the SPS Agreement and, for that reason, with the obligations contained in Article 7 of that Agreement<sup>9</sup>.*

*“We consider that the list of instruments contained in the footnote to paragraph 1 of Annex B is, as is indicated by the words «such as», not exhaustive. The scope of application of the publication requirement is not limited to «laws, decrees or ordinances», but also includes, in our opinion, other instruments which are applicable generally and are similar in character to the instruments explicitly referred to in the illustrative list of the footnote to paragraph 1 of Annex B.*

*The object and purpose of paragraph 1 of Annex B is «to enable interested Members to become acquainted with» the sanitary and phytosanitary regulations adopted or maintained by other Members and thus to enhance transparency regarding these measures. In our opinion, the scope of application of the publication requirement of paragraph 1 of Annex B should be interpreted in the light of the object and purpose of this provision.*

*We note that it is undisputed that the varietal testing requirement is applicable generally. Furthermore, we consider in the light of the actual impact of the varietal testing requirement on exporting countries, as discussed by the Panel in paragraphs 8.112 and 8.113 of the Panel Report, that this instrument is of a character similar to laws, decrees and ordinances, the instruments explicitly referred to in the footnote to paragraph 1 of Annex B.*

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**9. Report of the Panel, paragraphs 8.109-8.116**

*For these reasons, we agree with the Panel that the varietal testing requirement, as set out in the Experimental Guide, is a phytosanitary regulation within the meaning of paragraph 1 of Annex B and, therefore, uphold the Panel's finding that Japan has acted inconsistently with this provision with Article 7 of the SPS Agreement<sup>10</sup>.*

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10. Report of the Appellate Body, paragraphs 105-108.







## AUDIT MECHANISMS OR PROCEDURES

As noted in the previous section, the multilateral regulatory framework establishes Members' rights and obligations on matters of transparency, particularly as regards notification. However, the level of observance of these obligations and the exercise of rights contemplated multilaterally is fairly uneven among the Members, as shown below:

- Regarding the fulfillment of obligations, while Members such as the United States have presented more than 1,200 notifications, others have not even notified their Contact Points (NNAs and NEPs) to the WTO or, if they have done so, have issued practically no notifications. Nevertheless, according to annual statistics compiled by the WTO Secretariat, developing country Members in the Americas have made significant improvements in fulfilling their notification obligations. In fact, nine of the 20 Members that have issued the largest number of notifications are countries in the Americas: the United States, Brazil, Chile, Peru, Mexico, Colombia, Argentina, El Salvador and Costa Rica. Furthermore, South America, Central America and the Caribbean together have

issued nearly 2,500 notifications since the creation of the WTO (nearly 30% of the total notifications presented)<sup>11</sup>.

- Regarding the exercise of rights, multilateral monitoring is considerably more complicated, since the process of submitting observations or comments is basically bilateral —handled between the notifying Member and the receiving/observer Member— and are rarely addressed on a multilateral basis in the plenary of the SPS Committee. However, one interesting indicator (even though it may not be directly applicable) is the annual summary of specific trade concerns raised in the SPS Committee, prepared by the WTO Secretariat. Although most of these concerns refer to SPS regulations already in force, they may reflect the preparation and technical capacity of a Member that raises a concern to make a claim against an SPS measure that it considers unjustified or that affects its trade interests. Of a total of 277 trade concerns raised as of December 2008, nearly 60% were from countries in the Americas (166 concerns). However, it is important to note that the majority of these trade concerns were raised by the United States and Canada (a total of 89) while the remaining 77 were raised by other countries of the Continent (mainly Brazil, Argentina and Chile)<sup>12</sup>.

In summary, although the countries of the Americas have made substantial progress in recent years, both in terms of fulfilling their obligations and in the exercise of their rights, there is still room for further improvement if they are to take full advantage of the SPS transparency provisions, particularly those relating to notification.

The following section identifies some variables —by way of a questionnaire— that Members could consider in making an internal assessment of their existing notification procedures, and subsequently determining the necessary corrective measures. This questionnaire should

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12. G/SPS/204/Rev.9

be answered in the most comprehensive, transparent and responsible manner possible, so that the results truly reflect the views of the individuals or institutions that are really competent to form an opinion on this process.






The questionnaire consists of three parts: the first contains some general questions on notification issues; the second includes specific questions about the presentation of notifications (fulfillment of obligations); and the third refers to the sending of comments to the notifications of other Members (exercise of rights).

### 3.1. General aspects






#### A. National Notification Authority – Structure and resources

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|    | <p>A National Notification Authority (NNA) has been designated and notified to the WTO Secretariat. This NNA has the necessary human, technical and financial resources to exercise leadership on SPS issues, both in issuing notifications and in evaluating notifications received.</p> |
|   | <p>The NNA has been designated and notified to the WTO. This body does not have all the necessary resources and therefore it does not operate as efficiently as desired.</p>  |
|  | <p>The NNA has been designated and notified to the WTO. However, its work has been somewhat unsatisfactory, mainly due to a lack of resources.</p>  |
|  | <p>The NNA has been designated, but has not yet been notified to the WTO.</p>   |
|  | <p>The NNA has not yet been designated and therefore has not been notified to the WTO.</p>  |






## B. National SPS Committee – Constitution and operation

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|  | A National Committee has been formally created through a legal provision and fulfills its duties effectively (including the duty to ensure application of obligations and rights on SPS notification).  |
|  | A National Committee has been formally created through a legal provision, but for various reasons does not operate satisfactorily (lack of clear operating regulations, lack of leadership on SPS issues, lack of interest, lack of political support, etc.). |
|  | No National Committee exists; however, there are ad hoc coordination mechanisms (moderately efficient) involving different stakeholders (public and private) with competence on SPS transparency issues.  |
|  | A National Committee has been formally created through a legal provision, but this does not hold meetings, or if it does so, it is not effective in defining a country position on SPS issues.  |
|  | No National Committee exists and there are no mechanisms for defining a country position on SPS issues.   |






## C. Technical Authorities – Knowledge of the benefits and costs of SPS Transparency Provisions

|   |   |
|---|---|
|   | The technical authorities are familiar with the multilateral regulatory framework and the consequences (benefits and costs) of complying with its provisions; based on that knowledge, appropriate decisions have been taken on this issue. |
|  | The technical authorities are familiar with the multilateral regulatory framework, but despite this knowledge only a few concrete actions or proposed actions have been taken.  |
|  | The technical authorities have only partial knowledge of the multilateral regulatory framework, and consequently, have taken few actions; the need for, effectiveness or usefulness of this framework is not well understood.               |
|  | The technical authorities have very limited knowledge of the regulatory framework and consequently, have taken no action or proposed action.  |
|  | The technical authorities have no knowledge of the multilateral regulatory framework.   |






#### D. Political Authorities – Knowledge of the benefits and costs of SPS Transparency Provisions

|   |   |
|---|---|
|  | The political authorities are familiar with the multilateral regulatory framework and the consequences (benefits and costs) of complying with its provisions; based on that knowledge, appropriate decisions have been taken on this issue. |
|  | The political authorities are familiar with the multilateral regulatory framework, but despite this knowledge only a few concrete actions or proposed actions have been taken.  |
|  | The political authorities have only partial knowledge of the multilateral regulatory framework, and consequently, have taken few actions; the need for, effectiveness or usefulness of this framework is not well understood.               |
|  | The political authorities have very limited knowledge of the regulatory framework and consequently, have taken no action or proposed action.  |
|  | The political authorities have no knowledge of the multilateral regulatory framework.   |






#### E. Private Sector – Knowledge of the benefits and costs of SPS Transparency Provisions

|   |   |
|---|---|
|   | The private sector is familiar with the multilateral regulatory framework and the consequences (benefits and costs) of complying with its provisions; based on that knowledge, appropriate decisions have been taken on this issue. |
|  | The private sector is familiar with the multilateral regulatory framework, but despite this knowledge only a few concrete actions or proposed actions have been taken.  |
|  | The private sector has only partial knowledge of the multilateral regulatory framework, and consequently, has taken few actions; the need for, effectiveness or usefulness of this framework is not well understood.                |
|  | The private sector has very limited knowledge of the regulatory framework and consequently, has taken no action or proposed action.   |
|  | The private sector has no knowledge of the multilateral regulatory framework.   |






## F. Political Authorities – Support for Transparency

|   |  |
|---|--|
|  | The political authorities not only understand the costs and benefits, but have also applied these and prioritize –with concrete actions– compliance with the transparency provisions (rights and obligations). |
|  | Although the political authorities understand their rights and obligations, this issue is not always prioritized on the political agenda, which hinders compliance with the transparency provisions.           |
|  | The political authorities have little or no knowledge of the rights and obligations, which limits support for compliance with the transparency provisions.   |
|  | Political support is limited or non-existent and the issue does not form part of the agenda of the political authorities.  |
|  | There is no contact between the NNA and the political authorities.   |






## G. Mission in Geneva – Intervention in the Notification Procedure

|   |   |
|---|---|
|   | The Mission plays an important role in the notification process, coordinating actions with the capital, the Missions of other Members and the WTO Secretariat.                |
|  | The Mission only intervenes occasionally in the procedure, but when it does so, its work is satisfactory.   |
|  | Although the Mission intervenes in the process, there are some weaknesses in its operation / coordination with the capital and/or with the WTO Secretariat and other Members. |
|  | The Mission intervenes sporadically and generally does not have the capacity to resolve problems and implement the necessary actions..  |
|  | The Mission does not intervene in the procedure and has no contact with the capital.  |

## H. Technical Assistance – Knowledge and application






|   |   |
|---|---|
|  | The authorities are familiar with all technical assistance tools provided by the WTO Secretariat, international cooperation agencies and other Members, to strengthen the application of transparency provisions, and have made effective use of these. |
|  | The authorities have only partial knowledge of these tools, but have made positive use of those that are known.   |
|  | The authorities know about these tools, but have not used them.   |
|  | The authorities know little about these tools, and therefore have not taken advantage of their benefits.  |
|  | The authorities do not know about these tools and consequently have not used them.  |

## I. Multilateral Negotiations – Degree of participation






|   |   |
|---|---|
|    | The country has participated actively in the negotiation process that concluded with the adoption of the Recommended Procedures for implementation of the transparency provisions under the SPS Agreement (G/SPS/7/Rev.3) and was able to incorporate its main concerns and needs in this document. |
|  | The country participated actively in the negotiations and, although its concerns are not fully reflected in the document, it considers that the procedure (G/SPS/7/Rev.3) is effective in guaranteeing the efficiency of the notification process.  |
|  | The country participated partially in the negotiation process and considers that the recommended procedure (G/SPS/7/Rev.3) could be improved or enhanced.   |
|  | The country did not participate in the negotiation process, but considers that the procedures adopted are effective.  |
|  | The country did not participate in the negotiation process and does not agree with the content of the Recommended Procedures.   |

## 3.2. Fulfillment of obligations

### A. Rules of procedure






|   |  |
|---|--|
|  | Rules of procedure exist to regulate mechanisms for the adoption of SPS; these include the requirement to notify proposed measures in accordance with WTO obligations. |
|  | Only some SPS regulatory bodies have rules of procedure that include the requirement to notify the WTO.  |
|  | Rules of procedure exist, but it is left to the discretion of the regulatory authority whether or not to notify the WTO.   |
|  | Rules of procedure exist, but these do not include notification to the WTO.  |
|  | There are no rules of procedure.   |

### B. NNA – Intervention and evaluation






|   |   |
|---|---|
|    | Prior to adopting any SPS measure, the NNA intervenes and assesses the need to notify the proposed SPS to the WTO.  |
|  | Prior to the adoption of any SPS measure, the NNA intervenes but does not always have the necessary information or resources to determine whether or not it is necessary to notify the WTO. |
|  | The NNA intervenes only in some cases to determine whether or not it is necessary to notify a proposed measure to the WTO.  |
|  | The NNA intervenes only in some cases, but does not always have the necessary information or resources to determine whether or not it is necessary to notify a proposed measure to the WTO. |
|  | The NNA only finds out that an SPS measure has been adopted through its publication in the country's Official Gazette.  |








### C. NNA – Contact with SPS regulatory bodies

|   |  |
|---|--|
|  | There is a fluid exchange of information between the NNA and the national regulatory bodies that adopt SPS regulations.        |
|  | Contacts exist but are not systematic.   |
|  | Contacts are sporadic and transparency issues are not necessarily included in the work agenda.                                 |
|  | No contacts exist, or if they do, there is some reticence by the SPS regulatory bodies to adapt to WTO transparency standards. |
|  | No contacts exist between the NNA and SPS regulatory bodies.   |






### D. Forms – Capacity to complete forms

|   |   |
|---|---|
|    | The NNA permanently interacts with SPS regulatory bodies in the task of completing forms and both have the necessary information and resources to correctly fill in the forms.  |
|    | The NNA interacts with SPS regulatory bodies in the task of completing forms and both have the necessary information and resources to correctly fill in the forms. However, this interaction is neither permanent nor systematic. |
|  | Despite interaction between the NNA and SPS regulatory bodies, both have difficulty in completing the form.   |
|  | Despite some degree of interaction between the NNA and SPS regulatory bodies, this is not sufficient for the correct completion of the forms.   |
|  | There is no interaction between SPS regulatory bodies and the NNA, and the latter does not have the necessary information or resources to complete the forms correctly.   |






## E. Monitoring SPS – Corrective measures

|   |  |
|---|--|
|  | The NNA systematically monitors the Official Gazette to detect any SPS measure adopted without the corresponding notification and implements corrective measures to prevent this from happening again. |
|  | The NNA carries out monitoring only in some cases, but when it detects any anomaly it always implements corrective measures.   |
|  | The NNA does not carry out monitoring, but if it detects any anomaly, it implements corrective measures.   |
|  | The NNA does not carry out monitoring, but if it detects any anomaly, it sometimes implements corrective measures.   |
|  | The NNA does not monitor the Official Gazette and does not have the capacity to adopt corrective measures.   |






## F. Deviation from International Standards – Information

|   |   |
|---|---|
|    | All draft measures mention in their recitals if they deviate from international standards and explain the reasons. This information is always included in the notification forms.                                   |
|   | In some cases the draft measure mentions that it deviates from international standards. Even when this fact is not stated in the proposal, the deviation from international standards is notified in the form.      |
|  | The proposals never mention if they deviate from international standards. However, in the event that the proposal does deviate from international standards, this fact is always reported in the notification form. |
|  | The proposals never mention if they deviate from international standards. However, in some cases, a deviation from international standards is reported in the notification form.                                    |
|  | The proposals never mention deviation and forms are never completed.  |






## G. Notification – Degree of effectiveness

|   |  |
|---|--|
|  | Internal mechanisms exist to verify that all SPS measures adopted during the year have been duly notified. Implementation of this mechanism showed that all SPS regulations adopted last year were notified in accordance with WTO standards.                          |
|  | Internal mechanisms exist to verify that all SPS measures adopted during the year have been duly notified. Implementation of this mechanism showed that most SPS regulations adopted last year were notified in accordance with WTO standards.                         |
|  | Internal mechanisms exist to verify that all SPS measures adopted during the year have been duly notified. Implementation of this mechanism showed that only some SPS regulations adopted last year were notified in accordance with WTO standards.                    |
|  | Internal mechanisms exist to verify that all SPS measures adopted during the year have been duly notified. Implementation of this mechanism showed that none, or almost none, of the SPS regulations adopted last year were notified in accordance with WTO standards. |
|  | No internal mechanisms exist to verify correct notification.   |






## H. Political decision-makers – Degree of interference in the notification process

|   |  |
|---|--|
|  | <p>The political authorities allow technical bodies full freedom to notify any proposed SPS regulation according to multilateral rules; consultation is not required prior to notification.</p>  |
|  | <p>The political authorities allow technical bodies full freedom to notify any proposed SPS regulation according to multilateral rules. However, the political authorities must be consulted or informed prior to notification.</p>                                      |
|  | <p>The technical bodies may not notify proposals without previously consulting the political authorities. However, these controls are more of a formality, and there is no interference in technical tasks.</p>  |
|  | <p>The technical bodies may not notify proposals without previously consulting the political authorities. In general, the political authorities tend not to notify SPS proposals that may be called into question by other Members.</p>                                  |
|  | <p>The technical bodies may not notify proposals without prior consultation with the political authorities. In general, the political authorities raise objections to proposed notifications and tend to block or discourage the presentation of notification forms.</p> |

## I. Annual Programming of regulations






|   |   |
|---|---|
|  | The SPS authorities prepare annual plans identifying the areas or issues that will be the subject of regulation during the year and these plans are strictly implemented.     |
|  | The SPS authorities prepare annual plans identifying the areas or issues that will be the subject of regulation during the year and, in general, these plans are implemented. |
|  | The SPS authorities prepare annual plans identifying the areas or issues that will be the subject of regulation during the year, but in practice, these are not implemented.  |
|  | Although there are no formal plans, the SPS authorities give prior consideration to the issues to be addressed.   |
|  | There are no formal plans and the regulatory tasks do not follow any defined logic.   |

## J. Comments received






|   |  |
|---|--|
|    | Mechanisms exist for examining comments received. Comments are duly taken into account and, if discarded, the reasons are given to the Member that submitted these.            |
|  | Although there are no institutionalized mechanisms, comments received are duly taken into account and, if discarded, the reasons are given to the Member that submitted these. |
|  | Institutionalized mechanisms exist for examining comments, but in general these are not taken into account.  |
|  | No institutionalized mechanisms exist for examining comments and, in general, these are not taken into account.  |
|  | There are no institutionalized mechanisms for examining comments and a decision has been taken (generally tacit) not to take these into account.                               |

### 3.3. Exercise of rights






#### A. NNA – Leadership on SPS issues

|   |  |
|---|--|
|  | The NNA has the necessary human, technical and financial resources to evaluate the notifications received, determine whether these may affect the interests of the country's exporters, and make comments. |
|  | The NNA has the necessary resources to facilitate the evaluation of notifications received, both in terms of identifying sensitive notifications, and participating in the drafting of comments.           |
|  | The NNA only has sufficient resources to assist in the process of identifying and analyzing sensitive proposals.   |
|  | The NNA only serves as a link, and all evaluation tasks are carried out by other public and private SPS bodies.  |
|  | The NNA only takes note of comments submitted by other actors, and does not participate in the process of drafting these.  |






#### B. Political decision-makers – Interference in the submission of comments

|   |   |
|---|---|
|   | Political decision makers have given the technical specialists complete freedom to submit all comments considered pertinent, regardless of the Member that will receive these. In other words, in practice, they do not participate in the process. |
|  | Political decision makers have given the technical specialists complete freedom to submit all comments considered pertinent, but have issued instructions not to submit comments to certain countries for political reasons.                        |
|  | Political decision makers undertake a technical supervision of comments made (case by case) prior to remitting these to the Notifying Member.   |
|  | Political decision makers exercise a political control of the comments made (case by case) prior to remitting these to the Notifying Member.  |
|  | Political decision makers have issued clear instructions to avoid confrontation and, therefore, not to raise objections to the proposed measures of other countries.  |

### C. Animal/plant health services and the private sector – Resources available






|  |  |
|--|--|
|   | <p>The sanitary and phytosanitary services and the private sector have sufficient resources to identify notifications of interest and draft technically sound documents expressing their comments. Resources are usually allocated (though not exclusively) to this task.</p>                                  |
|   | <p>The sanitary and phytosanitary services and the private sector have sufficient resources to identify notifications of interest and prepare technically sound documents expressing their comments. However, these resources are not always allocated to this task and there tend to be other priorities.</p> |
|   | <p>Only some sanitary and phytosanitary services and the private sector have sufficient resources to identify notifications of interest and prepare technically sound documents expressing their comments.</p>   |
|   | <p>Only some sanitary and phytosanitary services and the private sector have resources and in general, these are not sufficient to identify notifications of interest and prepare technically sound documents expressing their comments.</p>   |
|  | <p>There is a clear lack of resources and this issue is not a priority on the agenda of the sanitary and phytosanitary services and the private sector.</p>  |

## D. Comments submitted – Soundness of the issues raised






|   |  |
|---|--|
|    | The country has capacity to formulate technically sound arguments and has taken the decision to raise issues only when there is evidence to suggest that the concern is justified.   |
|    | Although the country generally has capacity to formulate technically sound arguments, on those occasions when a proposed SPS measure was likely to affect its exports but no sound arguments were formulated to question it, the country at least expressed its concern to the notifying Member and entered into contact to try to prevent the measure from affecting its exports. |
|    | The country has difficulties in formulating technically sound arguments but that has not deterred it from continuing to submit comments or, at least, state its concerns regarding a proposed measure and enter into contact to try to press its claims or comments.   |
|    | The country does not have capacity to formulate technically sound arguments but on some occasions has identified proposals that affect its exports and has raised its concerns.  |
|  | The country does not have capacity to formulate technically sound arguments, and does not raise concerns regarding notifications that could affect it.   |



## E. Success in raising concerns

|   |   |
|---|---|
|    | Whenever the Member has raised a concern or issue, this has been duly taken into account by the notifying Member. Thanks to the soundness of the arguments made, the Notifying Member has modified the original proposal and therefore, the Member's exports have not been obstructed or hindered.      |
|    | Usually when the country has raised a concern or issue, this has been duly taken into account by the notifying Member. Thanks to the soundness of the arguments made, the Notifying Member has modified the original proposal and therefore, the Member's exports have not been obstructed or hindered. |
|    | Sometimes the concerns raised by the Member have been duly taken into account by the notifying Member. Thanks to the soundness of the arguments made, the Notifying Member has modified the original proposal and therefore, the Member's exports have not been obstructed or hindered.                 |
|    | The issues or concerns raised have seldom been taken into account by the notifying Member; this is mainly due to the lack of sound arguments in the claims made. As a result, the country faces major difficulties in market access.  |
|  | The comments or concerns have never been taken into account by the notifying Member given their complete lack of sound arguments. As a result, the country faces severe restrictions in market access.  |

## F. Exchanging information with other Members

|   |   |
|---|---|
|  | Solid institutional mechanisms of coordination and exchange of information exist between the country and other Members. This helps optimize resources in the evaluation of notifications and has produced very good results in terms of the success of the issues raised. |
|  | Informal mechanisms exist for the exchange of information; these are efficient and consistent and have produced positive results in terms of the success of the issues raised.  |
|  | Informal mechanisms exist for the exchange of information; these operate with a certain degree of stability and, in some cases, have produced positive results.   |
|  | Mechanisms exist for the exchange of information but these are sporadic and have seldom produced positive results.  |
|  | No mechanism exists for coordination/exchange of information; only those notifications that the national authorities have identified and analyzed critically are examined.  |



## CONCLUSIONS AND RECOMMENDATIONS

From the analysis carried out in the preceding sections we can draw some important conclusions:

- In the context of the WTO, Member countries have assumed rights and obligations. Throughout the negotiation process, Members tend to make a balance of what is “acceptable” for them, carefully weighing up those rights and obligations to determine whether the “package” of rules—even though it may not be ideal for them—is something that they can “live with.” In general, countries seek to strike a balance in these processes between what is won and what is lost.
- The obligations assumed must be fulfilled, not only out of respect for international commitments, but mainly because non-compliance could be the subject of legal action under the WTO’s dispute settlement procedure.
- Therefore, it is important that Members fully exercise their rights, which they have earned through the fulfillment of a number of obligations.
- Among Members, the degree of compliance with obligations and the exercise of rights are fairly uneven. In general terms, this fact

is strongly influenced by two elements: (i) the country's level of development and/or resources available and (ii) the importance given to SPS issues on the domestic agenda.

- Based on that premise (i.e. that there are aspects to correct or improve), it is important to define actions that will lead to increased and improved observance of the multilateral transparency provisions, avoiding the negative consequences and maximizing the benefits.

We understand that beyond the specific interpretations that each country might make, in general terms, these ideas are widely accepted in the international context, especially among those responsible for SPS negotiations at the WTO. The countries of the Americas—either on their own initiative or through cooperation efforts that focus on institutional strengthening— have made major strides in their application of SPS transparency provisions. However, there is still a long way to go, and ultimately it will be up to each country to define and adopt better policy options to achieve the proposed goals.

The first point to emphasize, based on the experience accumulated, is that “there is no single recipe for success”. Several countries have obtained extremely encouraging results by implementing various strategies, while other countries which have undertaken similar actions have not had the same results. This leads us to conclude that there are no abstract models to follow and that any action undertaken must be appropriate to the circumstances of the country in question. Notwithstanding this assertion, in this section we will try to offer some suggestions or recommendations that could be useful to countries interested in improving their application of the WTO rules on SPS notification. We emphasize that the usefulness of these recommendations will depend in great measure on the results of the audit carried out previously, and on the specificities of the country in question.

- **Institucionalization.** One of the main weaknesses identified in most countries of the region is linked to two critical aspects: (i) a

lack of coordination among the different actors with competence in SPS issues and (ii) the constant rotation of qualified staff responsible for SPS tasks. An interesting option to overcome the negative effects generated by both factors would be the creation of a National SPS Committee.

The idea is not to generate inefficient bureaucratic structures, but rather to facilitate a space for open dialogue with all the stakeholders concerned, trying to maximize all available resources (human, financial, technical) and minimizing the risks implied by the rotation of SPS personnel, which creates major gaps in terms of participation, follow-up and monitoring of the SPS negotiations. The National SPS Committee, as a mechanism for dialogue, provides an appropriate framework, particularly for the identification of notifications that could affect the interests of the country's exporters and also for articulating information required for drafting any relevant comments or claims.

- **Training.** The WTO disciplines on transparency are not a widely known subject, even to those with responsibilities in that area. Therefore, proper training is essential prior to designing any strategy for strengthening this aspect. A detailed knowledge of the WTO rules —and their implications— is the only way to make real progress in their implementation at the national level. In this regard, several training courses are available in the market, and it would be in the interest of those responsible for SPS issues to contact cooperation specialists (generally in the Ministries of Foreign Relations or Trade) to identify potential training options.
  
- **Knowledge sharing.** Another problem often encountered is the lack of willingness among some individuals or institutions to share information and knowledge. For this reason it is essential to ensure that those who receive training in multilateral disciplines have the obligation of replicating the training received in their respective countries/institutions. Basically, the idea is to train “trainers” who would play a leadership role in sharing knowledge.

- **Raising awareness.** SPS issues at the international level are seldom given priority in the agendas of policymakers. Generally, short-term issues end up dominating and governments do not always allocate sufficient resources to enable technical staff to perform their tasks properly, which seriously affects the effective implementation of the notification provisions (rights and obligations). In this regard, coordinated efforts are required to make authorities aware of the importance of notification, while emphasizing the negative implications of not complying with their obligations or not exercising their rights. In many cases, immediately after such “awareness-raising” efforts take place, the necessary resources become available to comply with multilateral rules.
  
- **Designation of contact points.** Each country has broad powers to designate whichever body or agency it considers most appropriate as its SPS Contact Point. For example, it could be a particular unit or department in one of the ministries responsible for external negotiations (Foreign Relations or Trade) or within the “technical” ministries (Agriculture, Livestock, Health, etc.). Although each one of these options has advantages and disadvantages, we recommend that contact points be operated by departments involved in international negotiations, but that are structurally dependent on “technical” ministries. This will facilitate closer and more fluid contacts with: (i) the standard-setting bodies that adopt SPS measures and (ii) thematic specialists—in food safety, animal and plant health—who will play a key role in analyzing the notifications received.
  
- **Interdisciplinary work.** One of the most important elements of the current international agenda is interdisciplinary work. The issues under consideration are increasingly complex and usually require coordinated efforts by people with different professional profiles (human/animal/plant health specialists, economists, diplomats, lawyers, etc.). It is, therefore, essential that the personnel responsible for these tasks have a clear professional background for

this type of work, coupled with a great willingness to dialogue and to take account of aspects and elements that may be beyond the scope of their daily work. It is also important to define roles clearly (“each contributes his own”) and to promote open, frank and fluid dialogue so that everyone can understand each other.

- **Coordinating actions with other Members.** As mentioned previously, comments to notifications are usually dealt with on a bilateral context, with only the notifying Member and the observer Member participating in the process. One interesting option might be to coordinate actions in this regard, sharing the available information with other Members. This could strengthen the process of raising a concern or issue, creating a larger critical mass and more solidly positioning the claims. It is not the same for a Member to raise an issue or concern in isolation, as for an issue to be raised by a larger group of countries. En este apartado se presenta un “texto ordenado” acerca de las disposiciones en materia de transparencia de medidas sanitarias y fitosanitarias identificando, para cada artículo previsto en el Acuerdo MSF, las disposiciones previstas, destinadas a facilitar su implementación en el procedimiento recomendado.







## ANNEX 1

# ORDERED TEXT OF SPS TRANSPARENCY PROVISIONS

This section contains an “ordered text” of the transparency provisions related to sanitary and phytosanitary measures and identifies, for each article of the SPS Agreement, the provisions aimed at facilitating their implementation in the Recommended Procedures.

## Publication of regulations

1. **Members shall ensure that all sanitary and phytosanitary<sup>13</sup> regulations which have been adopted are published promptly, in such a manner as to enable interested Members to become acquainted with them.**

### Recommended procedure

The publication of regulations is a fundamental component of transparency under the SPS Agreement. This is a general obligation of Members, and does not specifically relate to the work of either the National Notification Authority or the National Enquiry Point.

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13. **Sanitary and phytosanitary measures such as laws, decrees or ordinances of general application.**

According to paragraphs 1 and 2 of Annex B of the SPS Agreement, Members are required to:

- a) ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly, in such a manner as to enable interested countries to become acquainted with their content. Regulations to be published include laws, decrees or ordinances that are applicable generally;
- b) except in urgent circumstances, allow a reasonable interval between the publication of a sanitary or phytosanitary 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 production methods to the requirements of the importing Member.

Members are encouraged to publish their sanitary and phytosanitary regulations on the Internet, whenever possible. Publication on the Internet offers a number of advantages and benefits to Members compared with more traditional methods. It:

- allows for greater transparency;
- makes it easier for Members to obtain documents; and
- reduces the amount of work involved in processing and fulfilling document requests.

- 2. Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary 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.**

## Doha Decision

As agreed in the Doha Decision on questions and concerns relating to implementation (WT/MIN(01)/17, paragraph 3.2): subject to the conditions specified in paragraph 2 of Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase "reasonable interval" shall normally be understood to mean a period of not less than six months. It is understood that timeframes for specific measures must be considered in the context of the particular circumstances of that measure and the actions necessary

to apply it. The entry into force of measures that contribute to the liberalization of trade should not be unnecessarily delayed.

### Recommended procedure

Notifications shall be made well before the entry into force of the relevant measure, except when urgent problems of health protection arise or threaten to arise for the Member concerned. The aforesaid reasonable period should be allowed between the publication and entry into force of new regulations, even when these are based on, conform to, or are substantially the same as an international standard, guideline or recommendation.

## Enquiry Points

3. Each Member shall ensure that an Enquiry Point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:
  - a) any sanitary or phytosanitary regulations adopted or proposed within its territory;
  - b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;
  - c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;
  - d) the membership and participation of the Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement, and the texts of such agreements and arrangements.

## Recommended procedure

A single authority: Each Member is required to designate "a single central government authority" responsible for implementing, on a national level, the notification requirements of the SPS Agreement. Paragraph 3 of Annex B of this Agreement states that each Member shall "ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members, as well as for the provision of relevant documents."

Communication: When a Member's National Notification Authority or National Enquiry Point is established, or changed, the WTO Secretariat should be informed. The Secretariat regularly circulates a list of all Members' notification authorities and enquiry points, and this information is also available from the WTO Web site ([www.wto.org](http://www.wto.org)) and from the SPS information management system (<http://spsims.wto.org>). National Enquiry Points are listed in the G/SPS/ENQ/ document series of the WTO and the National Notification Authorities are listed in the G/SPS/NNA/ series. To be included in these lists, it is useful to provide the following information:

- Name of contact
- Name of institution
- Postal address/physical address
- Phone
- Fax
- E-mail
- Internet address

Guidelines for National Enquiry Points: the System of National Enquiry Points (NEP) established in paragraph 3 of Annex B of the SPS Agreement, is an effective means of obtaining information on the SPS regulations of other Members and their respective systems. The National Enquiry Point routinely handles the following:

- document and information requests;
- general enquiries; and
- delivery of documents and charging of fees for this service

The National Enquiry Points should also provide, upon request, information on participation in any bilateral or multilateral equivalence agreements and arrangements, in accordance with paragraph 3 d) of Annex B of the SPS Agreement.

While the mode of delivery is at the discretion of the Member concerned, it is recommended that documents be delivered by the fastest means possible. In the first instance, if the Member has such facilities, the documents should preferably be sent

by e-mail or by fax. Alternatively, a Member can send the documents by post or via a requesting Member's diplomatic mission in their territory.

Similarly, Members should refer to the transparency guidelines included in the manual How to Apply the Transparency Provisions of the SPS Agreement (November 2000) when notifying regulations and operating National Enquiry Points in accordance with Article 7 and Annex B of the SPS Agreement<sup>14</sup>.

- 4. Members shall ensure that where copies of documents are requested by interested Members, they are supplied at the same price (if any), apart from the cost of delivery, as to the nationals<sup>15</sup> of the Member concerned.**

#### Recommended procedure

A Member may only charge the same cost for the documents as it would charge for its own nationals, plus the cost of delivery, according to paragraph 4 of Annex B of the SPS Agreement.

## Notification procedures

- 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**

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14. A practical manual of procedures is being prepared on the operation of the National Information Services and the National Notification Authorities. Once completed, it will be published on the WTO web site so that all interested parties can consult it.

15. When "nationals" are referred to is used in this Agreement, the term shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

**recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:**

### Recommended procedure

Deviation with respect to an international standard: in accordance with Article 7 and paragraph 5 of Annex B of the SPS Agreement, Members are required to notify all regulations whose content "is not substantially the same as the content of an international standard, guideline or recommendation", and if the regulations are expected to have a significant effect on the trade of other Members. Furthermore, Members are encouraged to notify all regulations that are based on, conform to, or are substantially the same as an international standard, guideline or recommendation, if these are likely to have a significant effect on the trade of other Members<sup>16</sup>. Significant effect in the trade: For the purposes of Annex B, paragraphs 5 and 6, of the SPS Agreement, the concept of "significant effect on the trade of other Members" may refer to the effect on trade:

- of one sanitary or phytosanitary regulation only, or of various sanitary or phytosanitary regulations in combination;
- in a specific product, categories of products or products in general; and
- between two or more Members.

When assessing whether the sanitary or phytosanitary regulation may have a significant effect on trade, the Member concerned should take into consideration, using the relevant information available, the following: the value of imports or their importance for other reasons, for the importing or exporting Members concerned, whether from other Members individually or collectively; the potential development of such imports; and the difficulties faced by producers in other Members, especially developing country Members, to comply with the proposed sanitary or phytosanitary regulations. The concept of a significant effect on the trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, provided that such effects are significant.

**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;**

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16. The Secretariat should prepare an annual report on the extent of application of the transparency provisions of the SPS Agreement and of the Recommended Procedures described in this document, including, among other aspects, a summary of notifications related to Members' adoption of international standards, guidelines and recommendations.

## Recommended procedure

Early stage: paragraph 5 a) of Annex B of the SPS Agreement requires Members to 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. This allows other Members to better evaluate the proposed regulations and, if necessary, make comments on these. Members may also consider it timely to submit to the SPS Committee information on the modifications that they plan to introduce in their national regulatory systems.

- 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;**

## Recommended procedure

Notification at an early stage: paragraph 5 b) of Annex B of the SPS Agreement requires Members to present notifications at an early stage, when amendments can still be introduced and comments taken into account. This should be done when the draft of the full text of the proposed regulation is available.

Entry into force: notification must take place with sufficient time before the entry into force of the respective regulation, except where urgent problems of health protection arise or threaten to arise for a Member.

WTO Secretariat: the National Notification Authority should send notifications, preferably by e-mail, but otherwise by fax or air mail, to the WTO Central Registry of Notifications (CRN) at the following address:

Central Registry of Notifications  
E-mail: [crn@wto.org](mailto:crn@wto.org)  
World Trade Organization  
Rue de Lausanne 154  
1211 Geneva 21  
Switzerland  
Telefax: (+41 22) 739 5638

PDF Version: Members may submit electronic copies, in PDF format, of proposed regulations along with the corresponding notifications to the WTO Secretariat. These texts will be accessible in the format and language in which they were provided, through a hyperlink in the notification format.

- 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;**

## Recommended procedure

Requesting documents: Members requesting documents related to a notification should provide all the elements permitting the identification of the documents, and in particular the WTO SPS notification number to which the requests refer. When requesting an electronic transmission of documents from another Member, Members should indicate which electronic formats they are able to receive, including compatible versions.

Address of body or agency supplying the documents: Members should indicate under point 13 of the WTO notification form the full address of the body or agency responsible for supplying the relevant documents, if that body is not the National Notification Authority or the National Enquiry Point. Where the relevant documents are also available from a Website, the Internet address or a specific hyperlink to these documents should be provided.

Responding to requests: According to paragraph 5 c) of Annex B of the SPS Agreement, Members are required to provide other Members, upon request, with the text of a proposed regulation. Requested documents should normally be provided within five working days. If this is not possible, the request for documentation or information should be acknowledged within that period and an estimate given of the time required to provide the requested documentation. To ensure that comments on notifications are submitted on time, Members are urged to observe the five-day period.

Documents supplied in response to a request should be identified with the WTO–SPS notification number to which the request refers. Members should use fax and e-mail services, whenever possible, to respond to requests for documentation or information. Members are encouraged to publish their sanitary or phytosanitary measures on the Internet to facilitate access to documents, and to supply the addresses of the relevant Web sites. Members may also submit an electronic version of the text of the proposed regulation together with the notification format. These texts will be stored in a WTO server and may be accessed via a hyperlink in the notification format. Annex C of this Procedure includes information on the presentation, storage and language of the annexes to SPS notifications.



Acknowledging receipt of documents: Members requesting documents relating to a notification should acknowledge receipt of the documents provided.

- d) without discrimination, allow a reasonable interval 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.**

### Recommended procedure

Comment Period: paragraph 5 d) of Annex B of the SPS Agreement requires Members to allow a reasonable period for the submission, discussion and consideration of comments. Members should normally allow a period of at least 60 calendar days for comments, except for proposed measures that facilitate trade and those which are substantially the same as an international standard, guideline or recommendation. Where domestic regulatory mechanisms allow, the 60-day comment period should normally begin when the WTO Secretariat has circulated the notification. Where possible, Members are encouraged to grant a period of more than 60 days.

Body responsible for handling comments: Each Member should notify the WTO Secretariat of the authority or agency (e.g. its National Notification Authority) it has designated to be in charge of handling comments received, and of any change or modification of such authority or agency. Members submitting comments on a notified draft regulation should provide these without unnecessary delay to the authority responsible for handling comments, or to the National Notification Authority if no other designation is made.

Processing: A Member receiving comments through the designated body should, without further request:

- acknowledge receipt of the comments;
- explain within a reasonable period of time, and at the earliest possible date before the adoption of the measure, to any Member from which it has received comments, how these will be taken into account and, where appropriate, provide additional relevant information on the proposed sanitary or phytosanitary regulation concerned;
- provide to any Member from which it has received comments, a copy of the corresponding sanitary or phytosanitary regulations as adopted, or information that no corresponding sanitary or phytosanitary regulations will be adopted for the time being.

Dissemination of non-confidential information: A Member receiving comments through the designated body may consider making available to other Members, where possible, non-confidential comments or questions it has received and the answers it has provided, or summaries thereof, preferably via electronic means.

Extension of comments period: Members should grant requests for the extension of the comment period whenever practicable, in particular with regard to notifications relating to products of particular interest to developing country Members, or where there have been delays in receiving and translating the relevant documents, or where there is a need for further clarification of the measure notified. A 30-day extension of the time-limit for comments should normally be provided and notified to the WTO.

Special and Differential Treatment: Members are also encouraged to use the «Procedure to Enhance Transparency of Special and Differential Treatment in Favor of Developing Countries» (G/SPS/33).

**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);**

### Recommended procedure

Emergency notifications: in accordance with paragraph 6 a) of Annex B of the SPS Agreement, any regulation brought into force in urgent circumstances is required to be notified immediately and a rationale for the urgent measures should be provided. The late notification of a measure already in force does not of itself constitute sufficient reason for the use of the emergency format. When urgent problems of health protection are not involved, late notifications should be made using the regular format and consideration should still be given to all comments received, according to the provisions of paragraph 5 d) of Annex B of the SPS Agreement.

- 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.
7. Notifications sent to the Secretariat shall be in English, French or Spanish

#### Recommended procedure

See point 5.c and 8.

8. Developed country Members shall, if requested by other Members, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in English, French or Spanish.

#### Recommended procedure

When a translation of a relevant document exists or is planned, this fact should be indicated on the WTO notification, next to the title of the document. If only a translated summary is available, this should also be indicated.

If a translation of a document or summary exists in the language of the requesting Member, or, as the case may be, in the WTO working language used by the requesting Member, it should be automatically sent with the original of the document requested.

Where documents are not available in a WTO working language, developed country Members shall, upon request, supply a translation of the document, or in case of voluminous documents, a translation of a summary of the documents, in a WTO working language, in accordance with paragraph 8 of Annex B of the SPS Agreement.

When a Member seeks a copy of a document relating to a notification which does not exist in that Member's WTO working language, the notifying Member should advise

the requesting Member of other Members that have requested, as of that date, a copy of the document. The Member seeking a copy of a document relating to a notification may contact other Members in order to determine whether the latter are prepared to share any translation that they have or will be preparing.

Any Member possessing an unofficial translation of a document relating to a notification should inform the notifying Member of the existence of the unofficial translation and should submit to the Secretariat a supplement to the original notification submitted by a Member. The supplement should indicate the address for requesting a copy or the web site address where the unofficial translation can be accessed. The format of the supply can be found in Annex D of these Procedures. Neither the Secretariat nor the Member that provides the unofficial translation can be held responsible for the accuracy and quality of the translation<sup>17</sup>.

- 9. The Secretariat shall promptly circulate copies of the notification to all Members and interested international organizations and draw the attention of developing country Members to any notifications relating to products of particular interest to them.**

#### Procedimiento recomendado

Normalmente esto se realiza en 5 días.

- 10. Members shall designate a single central government authority as responsible for the implementation, at the national level, of the provisions concerning notification procedures according to paragraphs 5, 6, 7 and 8 of this Annex.**

#### Procedimiento recomendado

Ver punto 3

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**17. For more information on this mechanism, see document G/SPS/GEN/487.**

## General Reservations

### 11. Nothing in this Agreement shall be construed as requiring:

- a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the Member except as stated in paragraph 8 of this Annex; or
- b) Members to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

Recommended procedure (Provisions not directly related to Articles of the SPS Agreement)

#### **Additions, revisions and corrections**

In addition to their original notifications, Members can also provide supplementary information in three different forms.

- an addendum is used to provide additional information or make changes to an original notification. A Member may wish to indicate on the addendum if the final regulation has been substantially modified with respect to the notified proposal.
- a corrigendum is used to correct an error in an original notification, such as an incorrect address detail.
- a revision is used to replace an existing notification.

Any addendum or corrigendum should be read in conjunction with the original notification.

#### Addenda

Members must notify any changes occurring in the status of a notified SPS regulation. The publication of an addendum allows Members to track the status of an SPS regulation through its unique notification number. Addenda to SPS notifications should be made in the following cases:

- a) extension of the final date for comments;
- b) if the original notification does not indicate the dates when the proposed regulation is adopted, published or enters into force, or the dates have been modified. Members are strongly urged to follow this recommendation and notify other Members promptly. A Member may wish to indicate in the addendum if substantial changes have been introduced in the final regulation with respect to the notified proposal;
- c) modification of the contents and/or scope of a previously notified draft regulation, or of their application, either in terms of the Members affected or the products covered. For an addendum of this type, a new deadline for receipt of comments should be provided, normally of at least 60 calendar days, unless the notified modification facilitates trade or is insignificant. Where domestic regulatory mechanisms allow, the 60-day comment period should normally begin when the WTO Secretariat circulates the revised notification;
- d) withdrawal of a proposed regulation;
- e) in case of an urgent notification, an addendum shall also be presented if the application period of the existing notification period is extended.

An addendum should:

- briefly recap the details of the measure notified, the date and subject matter; this is a practical requirement that reduces the need for Members to have to go back to the original notification to check what it was about;
- specify what changes have been made and why: briefly explain why the information, dates, etc. have been changed; and
- restate the deadline for submitting comments, even if it has not been changed, as a reminder to Members that if they wish to comment, they must do so before that date.

#### Revisions

A revision replaces a previous notification. Revisions should be submitted, for example, when a notified draft regulation has been substantially modified or when a notification contains numerous errors. A Member should provide a further period for comments on the revised notification, normally 60 calendar days, unless the notified change is of a trade-facilitating nature or would have a negligible effect on trade. Where domestic regulatory mechanisms allow, the 60-day comment period should normally begin when the WTO Secretariat circulates the revised notification.

#### Corrections

Members must inform the Secretariat about any error that appears in its original notification. The Secretariat will publish a corrigendum, in consequence.

### **Regulations that contain both SPS and TBT measures**

When a regulation contains both SPS and TBT measures, it should be notified according to both the SPS and TBT Agreements, preferably indicating which parts of the regulation fall under the SPS Agreement (for example, a food safety measure) and which parts fall under the TBT Agreement (for example, quality or compositional requirements).

### **Notification of recognition of equivalence of sanitary and phytosanitary measures<sup>18</sup>**

In accordance with the Decision on Equivalence (G/SPS/19/Rev.2), a Member which has made a determination recognizing the equivalence of sanitary or phytosanitary measures of another Member or Members, shall notify other Members, through the Secretariat, of the measure(s) recognized as equivalent and of the products to which that recognition applies.

For the purposes of notification, equivalence is defined as the state wherein sanitary or phytosanitary measures applied by an exporting Member, though different from the measures applied by an importing Member, achieve, as demonstrated by the exporting Member and recognized by the importing Member, the importing Member's appropriate level of sanitary or phytosanitary protection. A determination of the recognition of equivalence may be applied with respect to a specific measure or measures related to a certain product or categories of products, or on a systems-wide basis.

Notification should also be made of significant changes to existing equivalence agreements, including their suspension or rescission.

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18. At its meeting on June 25-26, 2002, the Committee adopted the recommended format and procedure for the notification of the decision to accept the equivalence of sanitary and phytosanitary measures, contained in document G/SPS/7/Rev.2/Add.1. That document has been incorporated into this revision.





# ANNEX 2

## FORMAT FOR ROUTINE NOTIFICATIONS

|  |   |
|--|---|
| <b>WORLD TRADE ORGANIZATION</b>                  |   |
|  | <b>G/SPS/N/<br/>COUNTRY/<br/>Date of distribution</b> |
|  | (##-####)   |
|  |   |
| Committee on Sanitary and Phytosanitary Measures | Original:   |

### NOTIFICATION

|    |   |
|----|---|
| 1. | Notifying Member:<br>If applicable, name of local government involved:  |
| 2. | Agency responsible:   |
| 3. | Products covered (tariff item number(s) as specified in the national schedules deposited with the WTO; ICS numbers should be provided in addition, where applicable): |
| 4. | Regions or countries likely to be affected, to the extent relevant or practicable:<br>[ ] specific regions or countries or<br>[ ] all trading partners                |

|     |   |
|-----|---|
| 5.  | Title, language and number of pages of the notified document:   |
| 6.  | Description of content:   |
| 7.  | Objective and rationale:<br><input type="checkbox"/> food safety<br><input type="checkbox"/> animal health<br><input type="checkbox"/> plant protection<br><input type="checkbox"/> protect human health from animal/plant pest or disease<br><input type="checkbox"/> protect territory from other damage caused by pests  |
| 8.  | Is there a relevant international standard? If so, identify the standard:<br><input type="checkbox"/> Codex Alimentarius Commission<br>[(e.g. title or serial number of Codex standard or related text)]<br><input type="checkbox"/> World Organization for Animal Health (OIE)<br>[(e.g. Terrestrial or Aquatic Animal Health Code, chapter number)]<br><input type="checkbox"/> International Plant Protection Convention [(e.g. ISPM number)]<br><input type="checkbox"/> None<br><br>Does the proposed regulation conform to the relevant international standard?<br><input type="checkbox"/> Yes <input type="checkbox"/> No<br>In not, describe, where possible, how and why it deviates from the international standard: |
| 9.  | Other relevant documents and language(s) in which these are available:  |
| 10. | Proposed date of application (dd/mm/yy):<br>Proposed date of publication (dd/mm/yy):  |
| 11. | Proposed date of entry into force (dd/mm/yy): <input type="checkbox"/> Six months from the date of publication and/or [DATE: dd/mm/yy]<br><input type="checkbox"/> Trade facilitating measure   |
| 12. | Final date for submission of comments: <input type="checkbox"/> Sixty days from the distribution date of the notification ([DATE]) or [DATE: dd/mm/yy]<br>Agency or authority designated to process comments: <input type="checkbox"/> National notification authority, <input type="checkbox"/> National Enquiry Point, or address, fax number and e-mail address (if available) of other body:  |
| 13. | Texts available from: <input type="checkbox"/> National Notification Authority, <input type="checkbox"/> National Enquiry Point, or address, fax number and e-mail address (if available) of other body:  |

Impreso en la Imprenta del IICA  
Sede Central, San José, Costa Rica  
Tiraje: 750 ejemplares

