



Improving Enquiry Point and Notification Authority Operations

EAC Public-Private Sector Workshop
on the WTO TBT and SPS Agreements

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Topics

- Notification procedures
 - What to notify?
 - When to notify?
 - How to notify?
- Notification case studies
- Strategies for improving Enquiry Point and Notification Authority operations
- Discussion

What to Notify?

- If a relevant international standard does not exist

OR

- If the technical content of a proposed technical regulation (TBT) / sanitary or phytosanitary regulation (SPS) is not in accordance with international standards

AND

- If the measure may have significant effect on international trade

TBT Article 2.9 / SPS Annex B, Article 5

TBT Agreement - What to Notify?

4 types of TBT notifications:

1. Statement of the implementation and administration of the TBT Agreement (Article 15.2) – one time
2. **Technical regulations and conformity assessment procedures**
 - Proposed (Articles 2.9.2 and 5.6.2)
 - Urgent adopted (Articles 2.10.1 and 5.7.1)
 - Sub-national (Articles 3.2 and 7.2)
3. Bilateral and multilateral agreements (Article 10.7)
4. Adherence to, or withdrawal from, the Code of Good Practice and the existence of work programs (Annex 3)

SPS Agreement - What to Notify?

SPS measures - defined as any measure applied to:

protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs

protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests

protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms

prevent or limit other damage from the entry, establishment or spread of pests

Sanitary or phytosanitary measures include:

- Laws, decrees, regulations, requirements and procedures including end product criteria
- Processes and production methods
- Testing, inspection, certification and approval procedures
- Quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport
- Provisions on relevant statistical methods, sampling procedures and methods of risk assessment
- Packaging and labelling requirements directly related to food safety

- SPS Agreement, Annex A

TBT Agreement

– What is an International Standard?

- Not defined in the TBT Agreement
- TBT Committee *Decision on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement* (G/TBT/9, Annex 4)
 - 6 principles for development of international standards
 - transparency
 - openness
 - impartiality and consensus
 - effectiveness and relevance
 - coherence
 - development dimension

SPS Agreement

– What is an International Standard?

- For food safety
 - Codex Alimentarius Commission
- For animal health and zoonoses
 - Office International des Epizooties (OIE)
- For plant health
 - International Plant Protection Convention (IPPC)

- SPS Agreement, Annex A

Significant Effect on Trade?

- Determine whether the proposed regulation is "trade significant" taking into consideration
 - value of imports
 - potential growth of imports
 - difficulty for exporters in other countries to comply with the proposed requirements
- Includes both import-enhancing and import-reducing effects
- If it is not known whether a proposed measure will affect international trade
 - notification is recommended in the spirit of transparency

TBT and SPS?

“When a regulation contains both SPS and TBT measures, it should be notified according to both the SPS and TBT Agreements, preferably with an indication of which parts of the regulation fall under the SPS Agreement (a food safety measure) and which parts fall under the TBT Agreement (e.g., quality or compositional requirements).”



- G/SPS 7/Rev/3, 20 June 2008, *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) as of 1 December 2008*

When to Notify?

“... notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account”

TBT Article 2.9.2 / SPS Annex B, Article 5(b)

Urgent Notification

TBT Article 2.10

- Concerns notification of the adoption of technical regulations in urgent cases related to
 - safety
 - health
 - environmental protection
 - national security

SPS Annex B, Article 6

- Concerns notification of the adoption of technical regulations in urgent cases related to
 - health protection

Conformity Assessment

TBT Article 5.6

- Concerns the notification of proposed conformity assessment procedures
- Includes
 - testing
 - inspection
 - certification

SPS Annex C

- Concerns control, inspection, and approval procedures
- Includes
 - sampling
 - testing
 - certification

Conformity Assessment

– Urgent Cases

TBT Article 5.7.1

- Concerns notification of the adoption of conformity assessment procedures in urgent cases related to
 - safety
 - health
 - environmental protection
 - national security

SPS Annex B, Article 6

- Includes notification of conformity assessment procedures related to urgent problems of health protection

Summary

– What and When to Notify?

- If a relevant international standard does not exist

OR

- If the technical content is not in accordance with international standards

AND

- If the measure may have significant effect on international trade

- At an early stage
 - when a draft of the full text is available
 - when comments can be taken into account
 - when amendments can still be made
- In urgent cases
 - as soon as possible

How to Notify?

- Review appropriate legislative publication(s)
- Determine if proposed or adopted regulations or conformity assessment requirements should be notified
- Submit notification to WTO Secretariat using one of the following methods:
 - online through the TBT Notification Submission System (TBT NSS) or SPS Notification Submission System (SPS NSS)
 - by email to the WTO using the appropriate form

Notification Formats

- TBT

- Forms

- www.wto.org/english/tratop_e/tbt_e/tbt_notifications_e.htm

- G/TBT/W/153, *Notification Procedures*, 29 January 2001

- G/TBT/35, *Coherent Use of Notification Formats*, 24 June 2014

- SPS

- Transparency toolkit

- www.wto.org/english/tratop_e/sps_e/transparency_toolkit_e.htm

How to Notify?

- Information should be as complete as possible
- No section should be left blank
 - indicate "not known" or "not stated" if necessary
- Recommend including supporting document
- Notify in at least one of the WTO official languages (English, French, or Spanish)
- Keep copies of everything!

Submitting Notifications Online

- Only the Notification Authority may submit notifications using the online WTO notification submission systems
 - access may be given to regulatory authorities to fill out the notifications
- Request access by sending an email to:
 - tbtnss@wto.org / spscommittee@wto.org

Supplementary Notifications

- **Addendum** provides additional information or changes to an original notification
 - good to indicate on the addendum if the final regulation has been substantially modified from the notified proposal
- **Corrigendum** corrects an error in an original notification
- **Revision** replaces an existing notification
- Addendum or corrigendum should be read in conjunction with the original notification
- Addenda, corrigenda, and revisions to notifications carry the same document symbol and number as the original, followed by Add., Corr., or Rev.

Notifications

How to measure the
success of the WTO
TBT and SPS
notification process?



Notifications

23,404

=

the number of WTO TBT notifications
issued in the first 20 years

Example - Requirements Changed

- G/TBT/N/BRA/339
 - Brazil notification concerning conformity assessment procedures for toys
 - imported toys would be subject to 2 sets of tests, while domestic toys would only be tested 1 time
 - China, EU, Thailand, and USA raised concerns
 - Brazil amended the requirements to allow 1 test for imported toys

Example - Proposed Measure Withdrawn

- G/TBT/N/COL/120
 - Colombia notification of a draft regulation on alcoholic beverages
 - labelling requirements that were too strict and would have entailed significant costs for exporters
 - concerns from the EU and USA
 - Colombia withdrew the proposal (G/TBT/N/COL/120/Add.1)

Improving EP and NA Operations

- Challenges we heard yesterday
 - need for official mandate to implement transparency provisions of TBT/SPS Agreements
 - little involvement by private sector in responding to notifications / making comments
 - need for translations of notified proposed measures
 - funding

Strategies for Improving EP and NA Operations

- Notifications
 - issuing notifications
 - distributing notifications from WTO members
- Handling comments
 - related to notifications from WTO members
 - related to your country's notifications
- Coordination between the EP(s) and NA(s)

Strategies for Improving EP and NA Operations (cont'd)

- Staff
- Reference materials for EP and NA
- Record-keeping
- Reporting
- Promotion
 - website maintenance
 - social media
 - traditional tools
- Communication with stakeholders
 - National TBT / SPS Committee
- Capacity building
 - staff
 - Stakeholders
- Written procedures

Discussion

- Improving Enquiry Point and Notification Authority operations