

11

International trade transparency: the issue in the World Trade Organization

*João Magalhães**

Introduction

I was asked to participate in the discussion on international trade transparency with relation to food safety. Transparency provides essential information to consumers, producers and businesses. It also allows government authorities and private-sector economic actors to identify and deal with potential market-access problems.

In the World Trade Organization (WTO), food safety is especially addressed by the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). One of the key goals of the SPS Agreement is to increase the transparency of sanitary and phytosanitary measures. Governments are required to notify other countries of any new or changed SPS measure, which has a “significant effect on trade”. They have to set up “Enquiry Points” to respond to requests for more information on new or existing measures. Finally, governments also have to designate a central government authority (the National Notification Authority) as responsible for the implementation of the transparency requirements of the Agreement. Such increased transparency protects the interests of consumers, as well as trading partners, from hidden protectionism through unnecessary technical requirements.

The transparency obligations of the Agreement are contained in Article 5.8, Article 7 and Annex B. In addition, the SPS Committee has elaborated, and indeed recently reviewed, recommended procedures for implementing the transparency obligations of the SPS Agreement. These procedures clarify some of the Agreement’s language and give guidance on how to notify (including how to fill in the notification formats), how to handle comments on notifications, and how to provide documents related to a notification. It also gives some guidance on the operation of National Notification Authorities and Enquiry Points, and on publication of regulations.

To help Members, in particular the developing and least-developed countries, to implement the transparency obligations, the Secretariat has put together a handbook titled: “How to Apply the Transparency Provisions of the SPS Agreement”. It includes detailed descriptions of how to set up and operate Enquiry Points and National Notification Authorities, how to notify, models for letters of response, etc. The handbook has been revised in the light of the recent review of the recommended procedures.

The following paragraphs give a brief overview of the obligations contained in the Agreement. The handbook is available from the WTO web site and gives more detailed hands-on instructions and explanations on how to apply them.

* *World Trade Organisation, 154 Rue de la Lausanne, CH-1211 Geneve 21, Switzerland*

Publication of measures

All SPS measures that have been adopted have to be published promptly so that interested Members can become acquainted with them. Except in urgent situations, Members have to allow a reasonable period of time between the publication of a measure and its entry into force. This is to allow exporters, particularly developing countries, to adapt their products and methods of production to the new requirements.

Notification of measures

Members have the obligation to make SPS measures known if they:

- are new or changed; and
- are not based on an existing international standard, or a relevant international standard does not exist; and
- have a significant effect on trade.

This requirement covers measures that restrict trade as well as trade-facilitating measures. A notification should be made as soon as a complete draft of a proposed regulation is available, and when changes can still be made to take into account any comments received. For the sake of increased transparency, many Members even make measures known that are based on an international standard, or measures where it is not clear if they will have an impact on trade. Normally, regulations should be made known well before they enter into force. However, in urgent situations this may not be possible. Measures taken in urgent situations should nonetheless be made known immediately. In Figures 1, 2 and 3 the number of notifications per year and per country is given.

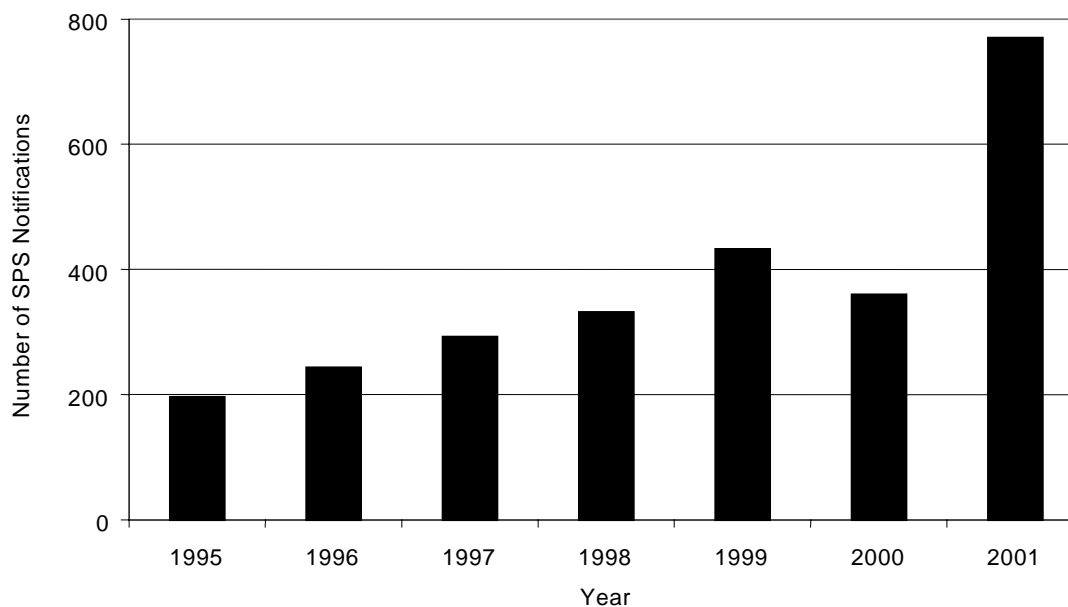


Figure 1. Number of SPS Notifications 1995-2001

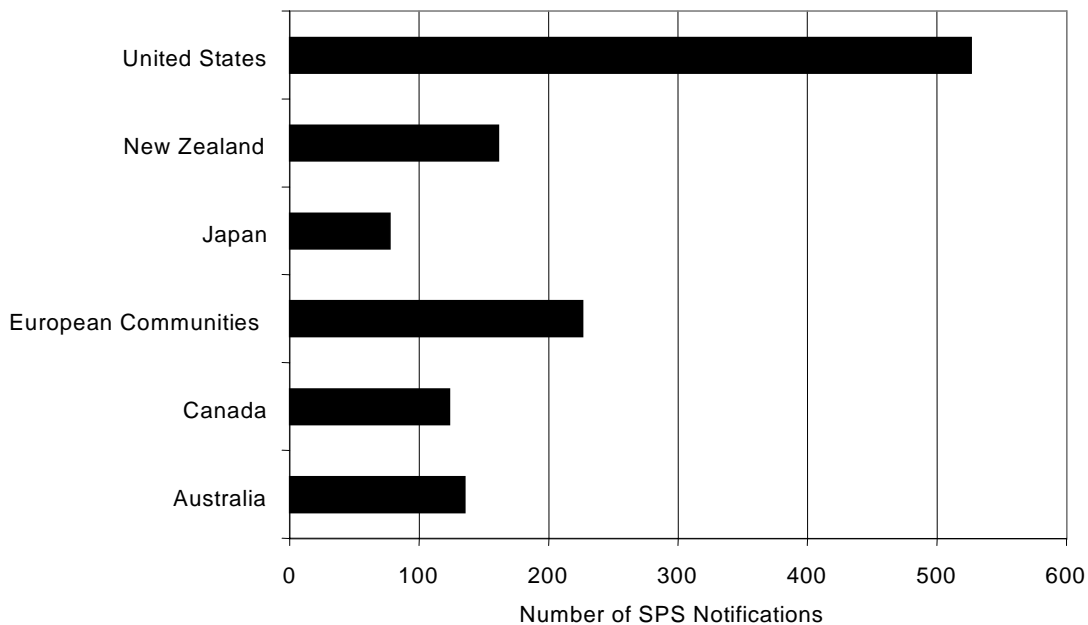


Figure 2. Number of SPS Notifications per selected developed country 1995-2001. The large number of recent US (pesticide-related) notifications is a result of EPA's implementation of changes in US pesticide laws enacted in 1996 and the development of new, lower-risk pesticides.

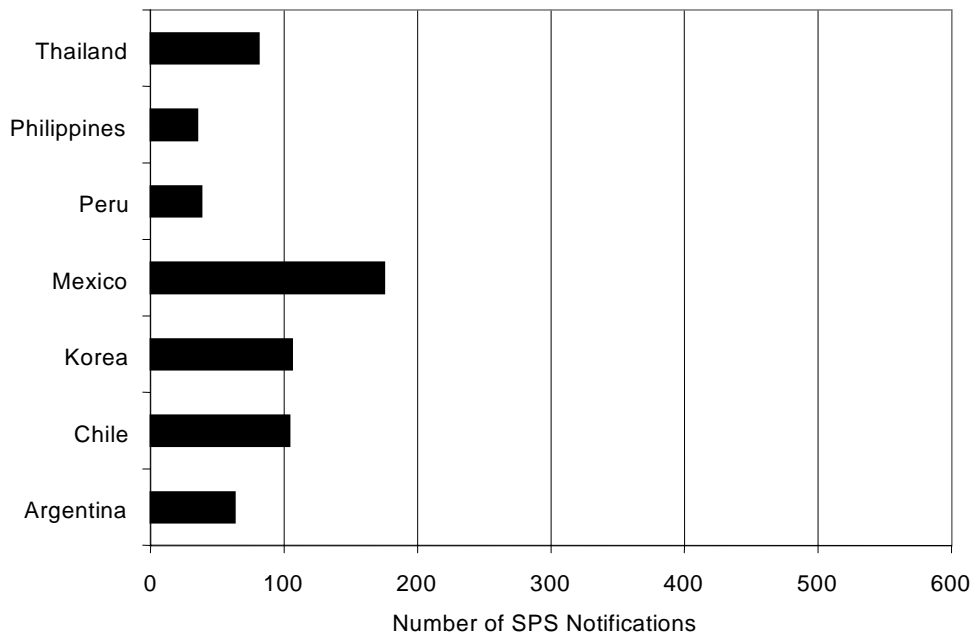


Figure 3. Number of SPS Notifications per selected developing country 1995-2001

Compliance with the notification obligations

As of January 2002, 85 percent of the Members had established an Enquiry Point, and 80 percent had established National Notification Authorities. The WTO Secretariat regularly updates the list of National Notification Authorities and Enquiry Points. These are publicly available documents. The most recent lists can be requested from the Secretariat, or downloaded from the WTO home page. More than 2800 SPS notifications have been circulated as of April 2002. More than half of all Members had notified SPS measures.

Explanation of measures

When a Member is concerned that an SPS measure adopted by another Member is not based on an international standard and might constrain its exports, it may ask the Member adopting the measure for an explanation. This must be provided, although no time limit or format is prescribed by the agreement.

National notification authorities

Members have to designate a single central-government authority responsible for the implementation of the notification obligations. This includes making draft measures known, providing copies of the proposed regulations, and receiving comments, discussing them upon request, and taking the comments and the results of discussions into account. A full identification of the designated Notification Authority must be provided to the WTO Secretariat. Any changes in this information must also promptly be brought to the attention of the WTO Secretariat. In the appendix a list of countries that have an official National Notification Authority is given.

Enquiry points

Each Member has to ensure that an Enquiry Point exists which is responsible for the provision of answers to all reasonable questions from Members. The Enquiry Point also provides the relevant documents regarding:

- all existing and proposed SPS measures,
- control and inspection procedures, production and quarantine treatment, pesticide tolerance and food-additive approval procedures,
- risk-assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of protection,
- membership and participation in international and regional sanitary and phytosanitary organizations, as well as in bilateral and multilateral agreements and arrangements (including on equivalence), and the texts of such agreements and arrangements.

Full identification of the Enquiry Point must be provided to the WTO Secretariat.

The SPS Committee

The simple existence of transparency obligations under the Agreement does not exhaust the theme. In practice, the governing body of the Agreement, the SPS Committee, functions as a privileged forum for the discussion of health-related trade

concerns where WTO Members exchange information on all aspects related to the implementation of the SPS Agreement. The Committee reviews compliance with the agreement and discusses specific trade concerns and all matters related to notification and transparency in general.

Specific trade concerns brought to the attention of the SPS

Committee

The Committee normally meets three times a year and all the 144 WTO Members, 22 acceding countries and observers, have the right to attend its meetings. Discussions of trade concerns, especially market-access issues, brought to the attention of the Committee by Members, are central to its work. Since the entry into force of the Agreement on 1 January 1995, more than 115 health-related trade concerns were raised (human or animal health or plant protection). After a slow take-off, the number of concerns raised has risen steadily in recent years and in 2002. Members raised 29 new trade concerns. Importantly, a growing number of trade concerns are raised by developing countries, which is an encouraging sign that the involvement of these countries in the work of the Committee is improving. Additionally, a standing agenda item allows for the discussion of specific notifications. All that WTO Members need to do is to inform in advance the Secretariat and the concerned Member of their intention to raise an issue at the Committee meeting.

This simple and low-cost mechanism not only improves transparency (most often a trade concern is shared by more than one country) but has also proven its efficiency. Several countries have reported breakthroughs in consultations or complete solutions of trade problems as a result of discussions before, during, or after the Committee meetings. Of course, to raise trade concerns at SPS Committee meetings is a useful practice but does not solve all problems. The WTO system provides for a range of alternative approaches to help Members to preserve their rights and obligations. These include consultations and voluntary good offices, conciliation or mediation. However, Members have the right, under the WTO Dispute Settlement Procedures, to request the establishment of a panel at any moment to resolve their trade disputes. Additionally, parties to a dispute have the right to appeal by bringing the panel findings to the WTO Appellate Body.

Appendix.**WTO Members having established an Enquiry Point and/or a National Notification Authority (February 2003)**

| WTO Member | Has established SPS: | | Has Notified SPS Measures |
|---------------------------------------|----------------------|----------------------------------|---------------------------|
| | Enquiry Point | National Notification Authority* | |
| Albania | X | X | X |
| Angola ¹ | | | |
| Antigua and Barbuda | X | X | |
| Argentina | X | X | X |
| Armenia | | | |
| Australia | X | X | X |
| Austria | X | EC | X |
| Bahrain | X | X | X |
| Bangladesh ¹ | X | | |
| Barbados | X | X | X |
| Belarus ² | X | X | |
| Belgium | X | EC | X |
| Belize | X | X | |
| Benin ¹ | X | X | X |
| Bolivia | X | X | X |
| Botswana | X | X | X |
| Brazil | X | X | X |
| Brunei Darussalam | X | X | X |
| Bulgaria | X | X | X |
| Burkina Faso ¹ | X | | |
| Burundi ¹ | | | |
| Cameroon | X | X | |
| Canada | X | X | X |
| Central African (Rep.) ¹ | | | |
| Chad ¹ | | | |
| Chile | X | X | X |
| China | X | X | X |
| Colombia | X | X | X |
| Congo, Republic of | | | |
| Costa Rica | X | X | X |
| Côte d'Ivoire | X | | |
| Croatia | X | X | |
| Cuba | X | X | |
| Cyprus | X | X | X |
| Czech Republic | X | X | X |
| Democratic Rep. of Congo ¹ | | | |
| Denmark | X | EC | X |
| Djibouti ¹ | X | X | |
| Dominica | X | X | |
| Dominican Republic | X | X | X |
| Ecuador | X | X | |
| Egypt | X | X | |
| El Salvador | X | X | X |
| Estonia | X | X | |
| European Communities | X | X | X |
| Fiji | X | X | X |
| Finland | X | EC | X |
| France | X | EC | X |
| Gabon | X | | |
| Gambia ¹ | X | X | |
| Georgia | X | X | X |

| WTO Member | Has established SPS: | | Has Notified SPS Measures |
|------------------------------|----------------------|----------------------------------|---------------------------|
| | Enquiry Point | National Notification Authority* | |
| Germany | X | EC | X |
| Ghana | X | | |
| Greece | X | EC | |
| Grenada | X | X | |
| Guatemala | X | X | X |
| Guinea Bissau ¹ | | | |
| Guinea, Rep. of ¹ | | | |
| Guyana | X | X | |
| Haiti ¹ | | X | |
| Honduras | X | X | X |
| Hong Kong, China | X | X | X |
| Hungary | X | X | X |
| Iceland | X | X | X |
| India | X | X | X |
| Indonesia | X | X | X |
| Ireland | X | EC | |
| Israel | X | X | X |
| Italy | X | EC | X |
| Jamaica | X | X | X |
| Japan | X | X | X |
| Jordan | X | X | X |
| Kenya | X | X | X |
| Korea | X | X | X |
| Kuwait | X | | |
| Kyrgyz Republic | X | X | |
| Latvia | X | X | X |
| Lesotho ¹ | | | |
| Liechtenstein | X | X | |
| Lithuania | X | X | |
| Luxembourg | X | EC | |
| Macao, China | X | X | X |
| Macedonia ² | X | | |
| Madagascar ¹ | X | X | |
| Malawi ¹ | X | X | X |
| Malaysia | X | X | X |
| Maldives ¹ | X | | |
| Mali ¹ | X | X | |
| Malta | X | X | |
| Mauritania ¹ | X | X | |
| Mauritius | X | X | X |
| Mexico | X | X | X |
| Moldova | | | |
| Mongolia | X | X | X |
| Morocco | X | X | X |
| Mozambique ¹ | | | |
| Myanmar ¹ | X | X | |
| Namibia | X | X | |
| Netherlands | X | EC | X |
| New Zealand | X | X | X |
| Nicaragua | X | X | |
| Niger ¹ | X | | |
| Nigeria | X | X | |
| Norway | X | X | X |
| Oman | X | X | |
| Pakistan | X | X | X |
| Panama | X | X | X |
| Papua New Guinea | X | X | |

| WTO Member | Has established SPS: | | Has Notified SPS Measures |
|------------------------------|----------------------|----------------------------------|---------------------------|
| | Enquiry Point | National Notification Authority* | |
| Paraguay | X | X | X |
| Peru | X | X | X |
| Philippines | X | X | X |
| Poland | X | X | X |
| Portugal | X | EC | |
| Qatar | X | X | |
| Romania | X | X | X |
| Rwanda ¹ | | | |
| Saint Kitts and Nevis | | | |
| Saint Lucia | X | X | |
| Saint Vincent & Grenadines | | | |
| Senegal ¹ | X | X | X |
| Sierra Leone ¹ | | | |
| Singapore | X | X | X |
| Slovak Republic | X | X | X |
| Slovenia | X | X | X |
| Solomon Islands ¹ | X | X | |
| South Africa | X | X | X |
| Spain | X | EC | |
| Sri Lanka | X | X | X |
| Suriname | | | |
| Swaziland | X | X | |
| Sweden | X | EC | |
| Switzerland | X | X | X |
| Chinese Taipei | X | X | |
| Tanzania ¹ | X | X | X |
| Thailand | X | X | X |
| Togo ¹ | | | |
| Trinidad and Tobago | X | X | X |
| Tunisia | X | X | |
| Turkey | X | X | X |
| Uganda ¹ | X | X | X |
| United Arab Emirates | X | | |
| United Kingdom | X | EC | X |
| United States | X | X | X |
| Uruguay | X | X | X |
| Venezuela | X | X | |
| Zambia ¹ | X | X | X |
| Zimbabwe | X | X | |
| TOTAL MEMBERS = 145 | 126 | 118 | 90 |
| of which LLDCs: 31 | 9 | 4 | 5 |

* Notifications for member States of the European Communities are made by the EC Commission ("EC")

¹ Least-developed countries: obligations under the SPS Agreement apply as of 1 January 2000.

² Observer status