



**Asia-Pacific
Economic Cooperation**

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**Terms of Reference – Self-Funded Initiative on
Promoting Transparency of Technical Barriers to
Trade WTO Notifications: Improving Completeness
and Clearness of Information
(Endorsed Intersessionally on 1 April 2021)**

Purpose: Information
Submitted by: Peru



**Second Committee on Trade and
Investment Meeting
25-27 May 2021**

Terms of Reference

Self-funded Initiative on Promoting Transparency of TBT WTO Notifications: Improving Completeness and Clearness of Information (2020/CTI2/IS06)

Proposed by Peru

Co-sponsors: Australia, Canada, Philippines, and United States

I. Background

There is a proliferation of Non-Tariff Measures (NTMs) in the Asia-Pacific region and they are becoming more complex. In APEC, Sanitary and Phytosanitary Measures (SPS), and Technical Barriers to Trade (TBT) are by far the most employed NTMs, according to the World Trade Organization Integrated Trade Intelligence Portal (I-TIP)¹. While a range of these are legitimate under the terms of the TBT Agreement many notifications may not be properly filled.

This incompleteness of information and lack of transparency generates concerns to businesses across the APEC region, especially to micro, small, and medium enterprises (MSMEs), since they are more exposed to NTMs that could turn into non-tariff barriers (NTBs). In this regard, the APEC study *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region*² (2016), states that, from the business perspective, SPS and TBT impose overly strict and complicated requirements, and several procedural obstacles. In addition, MSMEs find especially troublesome the lack of transparency and poor dissemination of information about the requirements and how to comply.

Moreover, according to the APEC Business Advisory Council's (ABAC) study, *Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions*³ (2016), TBT measures are

¹ World Trade Organization Integrated Trade Intelligence Portal (I-TIP). (2020). Retrieved from <http://i-tip.wto.org/goods/Default.aspx>

² Asia – Pacific Economic Cooperation (APEC). (2016). *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region*. Retrieved from <https://apec.org/Publications/2016/06/Non-Tariff-Measures-Affecting-Small-and-Medium-Enterprises-in-the-Asia-Pacific-Region>

³ APEC Business Advisory Council (ABAC). (2016). *Non-tariff Barriers in Agriculture and Food Trade in APEC*. California: Marshall School of Business. Retrieved from <http://info.marshall.usc.edu/academic/gpp/abac/Documents/Full%20Report%20-%20ABAC%20USC%20Marshall%20-%20Non-Tariff%20Barriers%20in%20Agriculture%20and%20Food%20Trade.pdf>

the most burdensomeness in comparison with other NTMs since they have the greatest negative impact in terms of time and cost. Inconsistency, lack of transparency, and sudden changes were the biggest problems highlighted by businesses, mostly regarding labelling, testing protocols and product classification. Since information on regulations affecting trade should be accessible to facilitate trade, those factors do not only increase transaction costs, but also make it difficult for MSMEs to make efficient business decisions in order to export their products.

WTO Members are required to notify technical regulations and conformity assessment procedures in accordance the WTO Agreement on Technical Barriers to Trade. In this regard, the number of TBT notifications has been constantly increasing every year since 2015. For instance, in 2019, 2074 new measures were notified to the TBT Committee. This is a growth of 8.91% in comparison to the previous year⁴.

Furthermore, there is an increasing number of Specific Trade Concerns (STC) regarding TBT measures as well. As *WTO TBT Enquiry Point Guide*⁵ (2018) states, there is a correlation of 44% between TBT notifications and TBT STCs. Moreover, according to the TBT Information Management System, the main types of concerns among Members that raised STCs in the Committee are related to the need of further information or clarification of a TBT measure (17.52%), unnecessary barrier to trade (15.83%) and transparency (14.74%).

These percentages show that, even though WTO Members are complying with notifying technical regulations and conformity assessment procedures, the completeness and transparency of the information furnished in current TBT notifications do not seem to satisfy business' needs, and APEC economies are not strangers to this situation.

In the *Decisions and Recommendations Adopted by the Committee on Technical Barriers to Trade* (G/TBT/1/Rev.14), WTO's TBT Committee provided some guidelines in order to improve the transparency in every aspect of TBT Notifications. And it reminded Members that transparency is a key issue for the correct application of the TBT Agreement and for good regulatory practices as well.

⁴ **Technical Barriers to Trade Information Management System.** (2021) (<http://tbtime.wto.org/>).

⁵ **World Trade Organization (WTO).** (2018). *WTO TBT Enquiry Point Guide: making transparency work*. Retrieved from: https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf

II. Objectives of the study

The objective of the study is to evaluate the completeness and clearness of the information provided by APEC Members, in accordance to WTO's TBT Guidelines.

It seeks to raise awareness and increase understanding of:

- TBT notifications' compliance in accordance to the *Coherent Use of Notifications Formats* (G/TBT/1/Rev.14).
- Key items from TBT notifications that should be clearly written to improve the completeness and clearness of the information.
- Private sector perceptions of TBT notifications and main challenges related to completeness and clearness of the information.
- Best practices and capacity building opportunities to assist APEC Members in improving the completeness and clearness of their WTO TBT notifications, within the scope of the current TBT Agreement.

III. Methodology

Scope of the study

The study will consider regular and emergency notifications, and their respective addenda and corrigenda, furnished by APEC economies between 2015 and 2019. The results will be shown in an aggregate matter.

All notifications that will be used in the sample have been published in the WTO TBT Information Management System.

First part of the analysis – WTO TBT Notifications

TBT regular notifications: Considering that the number of WTO TBT regular notifications between 2015-2019 have been 4 507, a total of 355 notifications will be randomly selected for the study. The technical details of the determination of the sample are detailed in Annex 1. This a representative sample which provides 95% confidence level. The sample will be randomly selected and distributed proportionally based on the percentage of notifications from each APEC economy during the aforementioned period. It should be noted that regular notifications also include both (i) “*technical regulations*”, and (ii) “*conformity assessment procedures*” under urgent circumstances notified according to Articles 2.10.1 and 5.7.1, respectively.

Regular TBT notifications will be evaluated according to the questionnaire developed in Annex 2.

The purpose of this tool is to evaluate if the information provided by economies in each item of the TBT notification is consigned in accordance with the WTO's *Coherent Use of Notifications Formats* (G/TBT/1/Rev.14). Considering that any addendum or corrigendum should be read in conjunction with the original notification, the addendum or corrigendum derived from the selected notifications will be evaluated using the questionnaires developed in Annexes 3 and 4 respectively. If any regular notification has a revision, and considering that a revision replaces an existing notification, that document would also be evaluated using the questionnaire in Annex 2.

Second part of the analysis – Private sector experiences

To complement the analysis, private sector experiences on TBT notifications will be evaluated using the questionnaire developed in Annex 5. There will not be a limit to the number of responses per economy.

IV. Project Management/Administration

The evaluation and analysis of the study will be conducted and managed by the Ministry of Foreign Trade and Tourism of Peru in collaboration with Peru's APEC Study Center (ASC) and ABAC Peru.

V. Tentative Timeline

1. **February-March 2021**, Peru to develop and present the proposed methodologies to evaluate (1) a representative sample of WTO's TBT notifications from APEC economies and (2) private sector experiences in using these notifications. Endorsement of the Terms of Reference by mid-March 2021.
2. **April – July 2021**, Peru will conduct the study.
3. **By CTI3 2021**, Peru will circulate the draft study among CTI, MAG, SCSC and SMEWG members for intersessional comments.
4. **By CSOM**, CTI members to endorse the study.

VI. Annexes

Annex 1. Determination of Sample Size

The study will consider regular notifications and their respective addenda and corrigenda, by APEC economies between 2015 and 2019. The sample size is based on the number of TBT regular notifications.

Confidence level	95%
Confidence interval	5%
Total number of notifications	4 507
Sample size	355

Annex 2. Evaluation Tool for TBT Regular Notifications

Number	Question	Alternatives
Code of document (G/TBT/N/...)		
Date of distribution (dd/mm/yyyy)		
1	Member notifying	APEC Economy
1.1	Is a local government involved?	0: No, 1: Yes
2.1	Is the agency responsible for elaborating the notification mentioned?	0: No, 1: Yes
2.2	Is there specific information of contact point for handling comments?	Checkboxes 0: None 1: Name and surname of an officer 2: Department/ Directorate/ Office 3: Ministry/ Government Body 4: E-mail 5: Phone 6: PO Address 7: Website
3.1	Is there a relevant provision of the Agreement checked?	0: No (continue with question 4.1), 1: Yes (continue with question 3.1.1)
3.1.1	Which provision of the Agreement is it checked?	Checkboxes 0: Article 2.9.2 1: Article 2.10.1 2: Article 5.6.2 3: Article 5.7.1 4: other:
4.1	Is the tariff item number(s) (HS) mentioned?	0: No, 1: Yes
4.2	Is the CCCN mentioned?	0: No, 1: Yes
4.3	Is the heading of the International Classification of Standards (ICS) mentioned?	0: No, 1: Yes
4.4	Is there any description of the products?	0: No (continue with question 5.1), 1: Yes (continue with question 4.4.1)
4.4.1	Is the description clear?	0: No, 1: Yes
4.4.2	Does it contain abbreviations?	0: No, 1: Yes
5.1	Is the title of the regulation mentioned?	0: No, 1: Yes
5.2	Are the page numbers of the notified document specified?	0: No, 1: Yes
5.3	Is/Are the language(s) of the regulation specified?	Checkboxes 1: English 2: Spanish 3: French 4: Other
5.4	Does it indicate if there is an available translation of the notified document?	0: No (redirect to question 6.1) 1: Yes (continue with question 5.4.1)
5.4.1	What language(s) is the document translated into?	Checkboxes

		1: English 2: Spanish 3: French 4: Other
6.1	Does it contain any description or abstract of the proposed regulation?	0: No, 1: Yes
6.2	Is the description clear?	0: No, 1: Yes
6.3	Does it contain abbreviations?	0: No, 1: Yes
7.1	Is the legitimate objective of the regulation indicated?	0: No (redirect to question 7.2) 1: Yes (continue with question 7.1.1)
7.1.1	What is the legitimate objective of the proposed regulation?	Checkboxes 1: Prevention of deceptive practices and consumer protection 2: Protection of human health or safety 3: Quality requirements 4: Protection of the environment 5: Consumer information, labelling 6: Reducing trade barriers and facilitating trade 7: Harmonization 8: Protection of animal or plant life or health 9: Cost saving and productivity enhancement 10: National security requirements 11: Other
7.2	In general, does the description facilitate the understanding of the proposed regulation?	0: No, 1: Yes
8.1	Does it contain information about the publication where notice appears?	0: No, 1: Yes
8.1.1	Is the date specified?	0: No, 1: Yes
8.1.2	Is the reference number specified?	0: No, 1: Yes
8.2	Does it contain information about the proposal and basic document (with specific reference number or other identification) to which the proposal refers?	0: No, 1: Yes
8.3	Does it contain information about the publication where the proposal will appear once adopted?	0: No, 1: Yes
8.4	Does it contain a reference to relevant international standards?	0: No, 1: Yes
8.4.1	Does the notification identify if the proposed regulation conforms to the relevant international standard?	0: No (continue with question 8.4.1.1) 1: Yes (redirect to question 8.5)
8.4.1.1	Is there any additional information regarding how and why the proposed regulation deviates from the international standard?	0: No (redirect to question 9.1) 1: Yes (continue with question 8.4.1.1.1)

8.4.1.1.1	Is the information on clear to understand the deviation from international standards clear to understand?	0: No 1: Yes
8.5	Does it provide access to assessment such as regulatory impact assessment (RIA)?	0: No 1: Yes
9.1	Does it indicate the date when the regulation is expected to be adopted?	0: No (redirect to question 9.2) 1: Yes (continue with question 9.1.1) 2: Inaccurate date (redirect to question 9.2)
9.1.1.	Specify the date	(dd/mm/yyyy)
9.2	Does it indicate the proposed date of entry into force?	0: No answer (redirect to question 10.1) 1: Already in force (redirect to question 10.1) 2: Less than six months from date of publication (continue with question 9.2.1) 3: Six months from date of publication (continue with question 9.2.1) 4: More than six months from date of publication (continue with question 9.2.1) 5: Inaccurate date (redirect to question 10.1)
9.2.1	Does it specify the date?	0: No 1: Yes (indicate the date: dd/mm/yyyy)
10.1	Does it mention the final date for comments?	0: No answer (redirect to question 11.1) 1: Less than sixty days from the date of circulation of the notification (continue with question 10.1.1) 2: Sixty days from the date of circulation of the notification (continue with question 10.1.1) 3: More than sixty days from the date of circulation of the notification (continue with question 10.1.1) 4: Inaccurate date (redirect to question 11.1)
10.1.1	Does it specify the date?	0: No 1: Yes (indicate the date dd/mm/yyyy)

11.1	Does the notification present information in the section “text available from”?	0: No (end of the survey) 1: Yes (continue with question 11.1.1)
11.1.1	Which of these items does box 11 include?	0: National enquiry point (redirect to question 11.1.1.2) 1: National enquiry point with specific information (continue with question 11.1.1.1) 2: Specific information (continue with question 11.1.1.1)
11.1.1.1	Does it include a web link?	0: No 1: Yes
11.1.1.2	Is this information a copy from another section of the notification?	0: No 1: Yes

Annex 3. Evaluation Tool for TBT Addendum

Number	Question	Alternatives
1	Member notifying	APEC Economy
2	Code of document	(G/TBT/N/...)
3	Number of addenda	Multiple choice question 1-9 and other
4	Date of distribution	(dd/mm/yyyy)
5	Does it include a title outlining the TBT measure or product to it refers?	0: No, 1: Yes
6	Does it briefly recap what was notified, when and what it was about?	0: No, 1: Yes
7	Does it specify what change has been made and why?	0: No, 1: Yes
8	Which is the circumstance to notify this addendum?	Multiple choice question 1: Modification of final date for comments, 2: Notification of adoption, publication, or entry into force of regulation, 3: Modification of content and/or scope of previously notified draft regulation, 4: Withdrawal of proposed regulation, 5: Modification of the link where text of final measure is available 6: Interpretive guidance issued 7: Other
9	Does it provide a comment period?	0: No (redirect to question 9.2) 1: Sixty days from the date of circulation of the addendum (redirect to question 9.2)

		2: Sixty days from the date of circulation of the addendum to the notification with a specific date (continue with question 9.1) 3: Only a specific date (continue with question 9.1)
9.1	Specify the date	(dd/mm/yyyy) (redirect to question 10)
9.2	Which agency or authority is designated to handle comments?	Checkboxes 1: National notification authority 2: National enquiry point 3: Other body 4: No answer
10	Is there specific information of contact point?	Checkboxes 0: None 1: Name and surname of an officer 2: Department/ Directorate/ Office 3: Ministry/ Government Body 4: E-mail 5: Phone 6: PO Address 7: Website
11	Is the information provided in the item "text available from" is the same as the agency or authority designated to handle comments?	0: No (continue with question 11.1) 1: Yes (end of the survey)
11.1	Which agency or authority is designated to provide text?	Checkboxes 1: National notification authority 2: National enquiry point 3: Other body 4: No answer
11.1.1	Is there specific information of contact point?	Checkboxes 0: None 1: Name and surname of an officer 2: Department/ Directorate/ Office 3: Ministry/ Government Body 4: E-mail 5: Phone 6: PO Address 7: Website (end of the survey)

Annex 4. Evaluation Tool for TBT Corrigendum

Number	Question	Alternatives
1	Member notifying	APEC Economy
2	Code of document	(G/TBT/N/...)
3	Number of corrigendum	Multiple choice question 1-9 and other
4	Date of distribution	(dd/mm/yyyy)
5	Does it include a title outlining the TBT measure or product to it refers?	0: No, 1: Yes
6	Does it include information related to the correction of error(s) from the original notification?	0: No, 1: Yes
7	Is it clear which the error(s) to is/are to be corrected?	0: No, 1: Yes
8	Which item(s) is (are) corrected?	Checkboxes 1: Notifying Member 2: Agency responsible 3: Notified under 4: Products covered 5: Title, translations 6: Description of content 7: Objective and rationale 8: Relevant documents 9: Proposed dates of adoption and entry into force 10: Final date for comments 11: Texts available from the national enquiry point
9	Does it specify the agency or authority where the text is available?	Checkboxes 1: National notification authority 2: National enquiry point 3: Other body 4: No answer
10	Is there specific information of contact point?	Checkboxes 0: None 1: Name and surname of an officer 2: Department/ Directorate/ Office 3: Ministry/ Government Body 4: E-mail 5: Phone 6: PO Address 7: Website

Annex 5. Private Sector Evaluation Tool for TBT Notifications

Number	Question	Alternatives
1	Economy	APEC economy
2	Commercial condition	0: Importer, 1: Exporter, 2: Importer/Exporter
3	Do you know that there is a TBT notification system from the World Trade Organization (WTO)?	0: No (redirect to question 3.3) 1: Yes (continue with question 3.1)
3.1	How often do you check TBT notifications from sources provided by WTO?	1: Daily, 2: Weekly, 3: Monthly, 4: Other (please explain)
3.2	How do you obtain the TBT notifications?	Checkboxes 1: Check by myself in the WTO website, 2: Government sends the information, 3: The information is provided by chambers of commerce / exporters associations / other similar organizations, 4: ePing notification alert system, 5: E-mail notifications 6: Other (please explain)
3.2.1	In your opinion, which are the 3 most important items from TBT notifications?	Checkboxes 1: Notifying Member 2: Agency responsible 3: Notified under 4: Products covered 5: Title, translations 6: Description of content 7: Objective and rationale 8: Relevant documents 9: Proposed dates of adoption and entry into force 10: Final date for comments 11: Texts available from the national enquiry point
3.2.1.1	Please explain the reason for your selections in 3.2.1	Multiple choice question 1: It allows to contact the agency/authority in charge of the emitting the notification. 2: It provides the documentation necessary to understand the notification. 3: It indicates the dates to

		present observations, publication and adoption. 4: Others (please explain)
3.2.2	Which are your major challenges when you analyze TBT notifications?	Checkboxes 1: Lack of information of the draft measure, 2: It is difficult to determine which products are involved, 3: Different languages used in the linked documents, 4: International standard is not provided, 5: There is not enough time to comment 6: Others (please explain)
3.2.3	Please evaluate the transparency and effectiveness of information of the TBT notifications provided by APEC economies that are most important in your case	Multiple choice grid Rows: 21 APEC Economy Columns: 0: Does not apply, 1: Not transparent at all, 2: Somehow transparent, 3: Transparent, 4: Very transparent
3.3	How do you get the information regarding changes on TBT measures?	Checkboxes 1: Commercial partners 2: Government sends the information, 3: The information is provided by chambers of commerce / exporters associations / other similar organizations, 4: Specialized websites 5: Specialized enterprises 6: Other (please explain)