Asia-Pacific
Economic Cooperation

2019/SOM3/CTI/WKSP1/002

The Transparency Framework Under the WTO Sanitary and Phytosanitary Agreement

Submitted by: WTO

APEC
CHILE 2019

Public-Private Dialogue on Promoting Transparency Through the Improvement of Information Submitted in the Sanitary and Phytosanitary Notifications
Puerto Varas, Chile
22-23 August 2019

The transparency framework under the WTO SPS Agreement

Serra Ayral, Counsellor, Trade and Environment Division, WTO

APEC CTI Public-Private Dialogue on Promoting Transparency through the Improvement of information submitted in SPS notifications
Puerto Varas, Chile – 22-23 August 2019

Outline

- The context: why transparency?
- SPS transparency provisions/procedures
- Level of implementation
- Recent work of the SPS/TBT Committees
- Sources of information

The context: why transparency?

Non-tariff measures

•SPS measures: the most frequent form of non-tariff measures affecting agri-food products with a global average ad valorem impact of 14.3 per cent

•Possible to reduce trade costs without compromising on policy objectives

Objective of the SPS Agreement

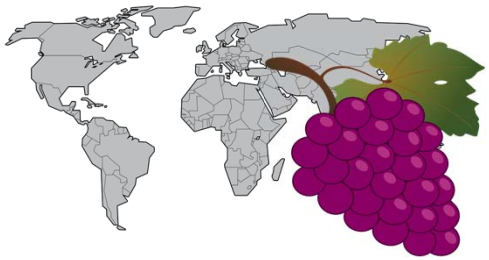
Recognizing right to regulate to protect human, animal, plant life/health

Avoiding discrimination and unnecessary obstacles to international trade

Transparency
Science/risk assessment
Use of international standards

WHAT IS THE CHALLENGE?

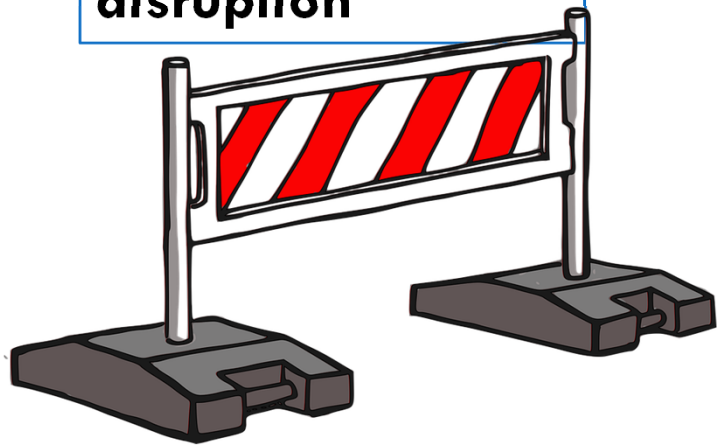
Stay informed about **product requirements** in export markets



1. Adjust production process

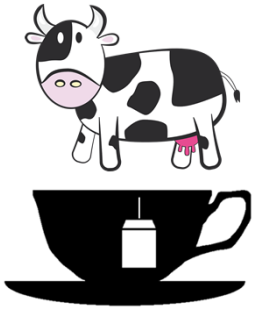
2. Address potential issues

To avoid **trade disruption**



PRODUCT REQUIREMENTS IN EXPORT MARKETS

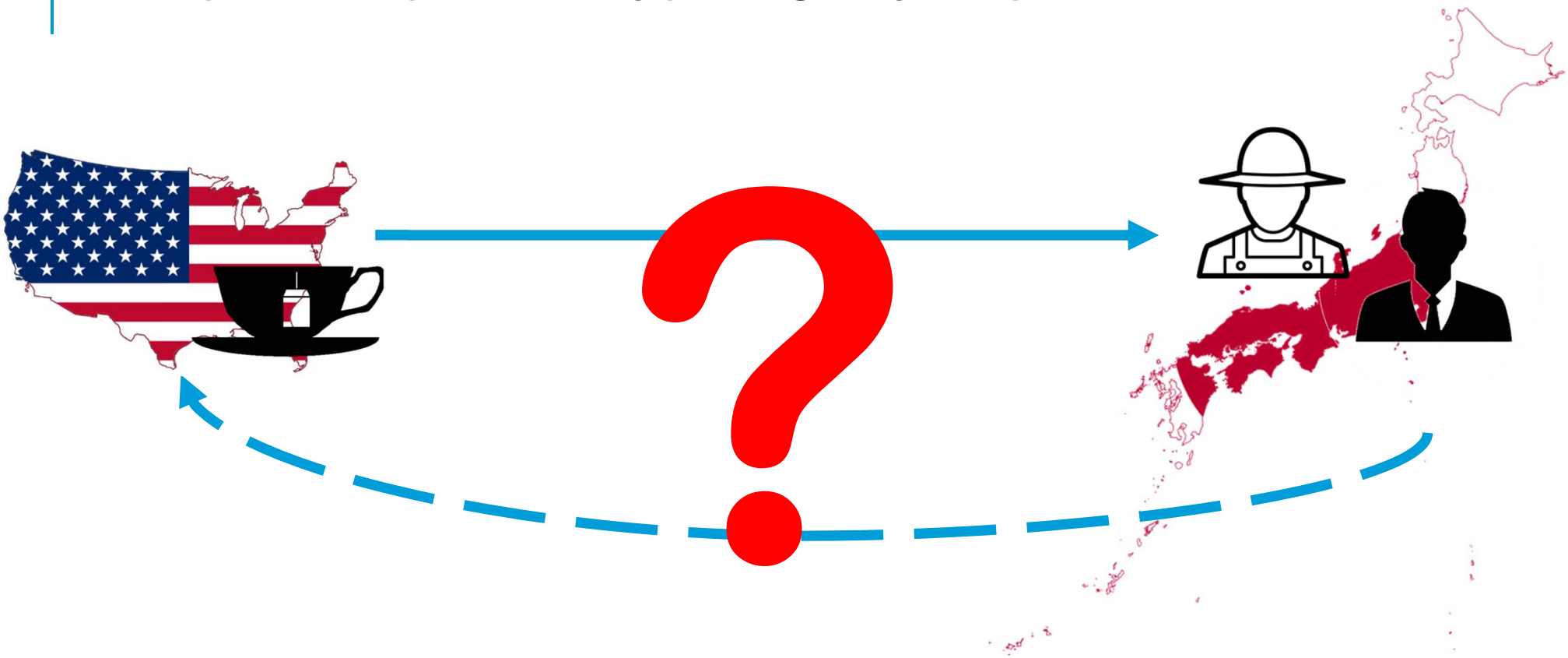
- Japan plans on changing maximum levels for contaminants in composite feeds for food safety and animal health reasons (G/SPS/N/JPN/639)
- The US plans on establishing tolerance for residues of an insecticide (cyflumetofen) in or on dried tea for food safety reasons (G/SPS/N/USA/3078)



Domestic and **imported products** need to comply:

- Exporting feeds to Japan? Comply with maximum levels
- Exporting tea to the US? Comply with tolerance level for insecticide

INFORMATION AND COMMUNICATION KEY



Why an SPS transparency mechanism?

Evolving product requirements affect market access

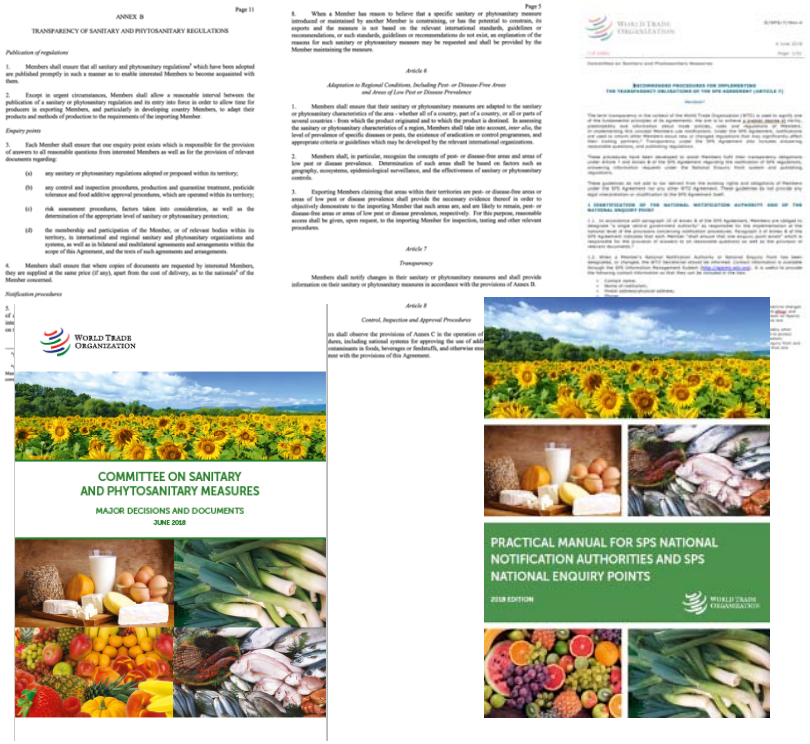
- Reduce trade disruptions/problems through advance warning/consultations
- Enhance clarity, predictability
- Promote regulatory cooperation among members
- Signal for a functioning system; builds trust

Facilitate trade without compromising on policy objectives

Transparency provisions and procedures

SPS Transparency: reference documents

- SPS Agreement: **Article 7 & Annex B**
- SPS Committee Decision: **G/SPS/7/Rev.4**
- Major Decisions and Documents
- Practical manual for NNAs/NEPs – *new 2018 revision*



Available at: www.wto.org/spstransparency

Transparency obligations

1. Notification of draft regulations
2. Publication of regulations
3. Establishment of enquiry point
4. Designation of notification authority

1. Notification of draft regulations

What to notify?

- New or modified regulation

+

- No existing international standard or different than the international standard

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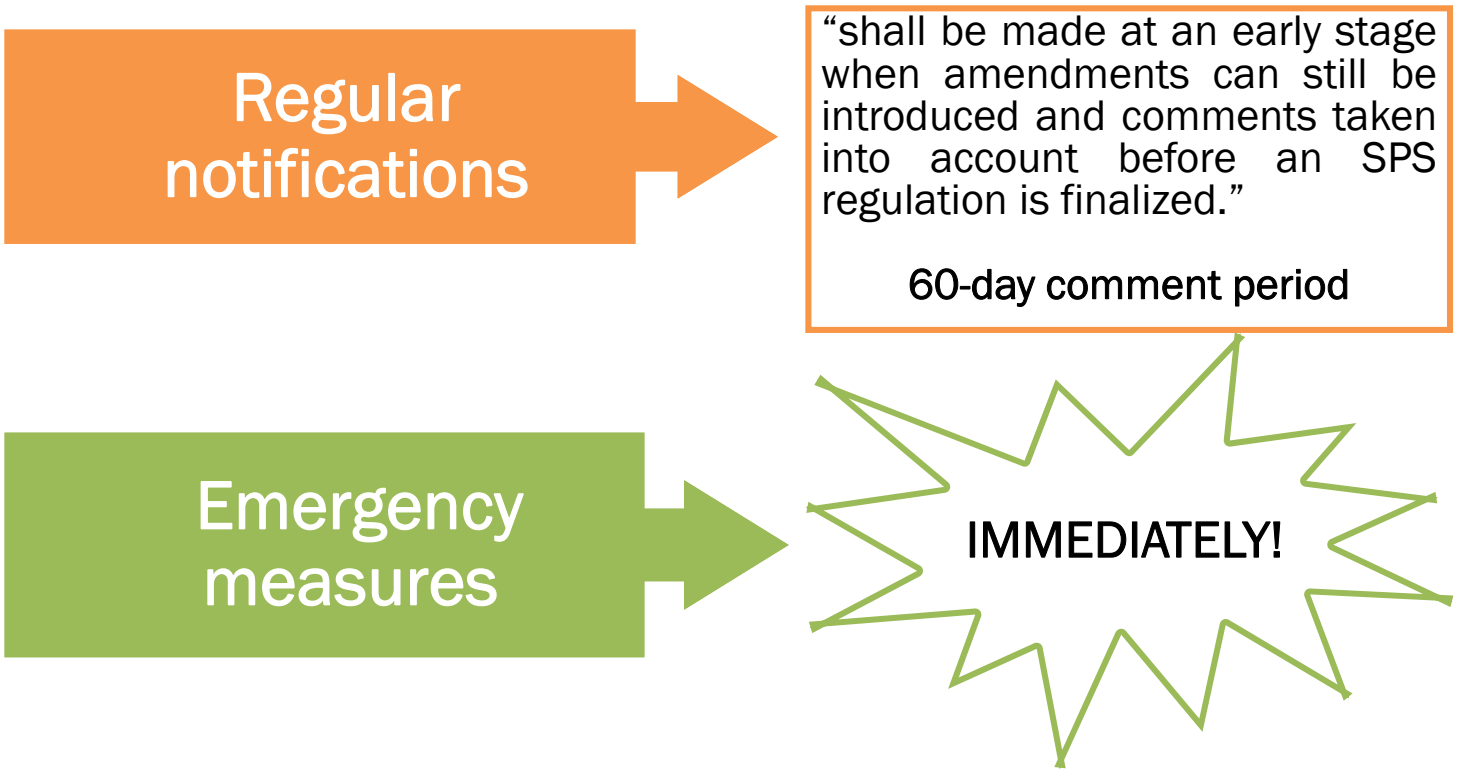
- Significant impact on trade (restricting or facilitating)

Notify

- *Same as international standard (G/SPS/7/Rev.4)*

1. Notification of draft regulations
When to notify?



1. Notification of draft regulations: What formats?

- In addition to original Regular or Emergency notifications, Members can provide additional information or changes through:
  - *Revision – replacement of original notification*
  - *Addendum* – changes/updates, e.g. entry into force*
  - *Corrigendum* – correct an error*
  - *Supplement* – availability of translation*

**Read in conjunction with original notification.*

1. Notification of draft regulations: How to share text of draft regulations?

- Full texts of draft regulations
  - *Submit in PDF format to WTO*
  - *Provide specific website address in notification*

1. Notification of draft regulations: How to access translations of regulations?

- Upon request, developed countries to provide regulation or its summary in English, French, or Spanish
- Members encouraged to share unofficial translations with each other – supplement format, ePing?

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G/SPS/N/JPN/668

8-August-2019

(19-5179)

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Committee on Sanitary and Phytosanitary Measures

Original: English

NOTIFICATION

1.	**Notifying Member:** JAPAN **If applicable, name of local government involved:**
2.	**Agency responsible:** Ministry of Health, Labour and Welfare (MHLW)
3.	**Products covered (provide tariff item number(s) as specified in national schedules deposited with the WTO; ICS numbers should be provided in addition, where applicable):** – Meat and edible meat offal (HS Codes: 02.01, 02.02, 02.03, 02.06, 02.07 and 02.09); – Dairy produce (HS Code: 04.01); – Animal originated products (HS Code: 05.04); – Animal fats and oils (HS Codes: 15.01 and 15.02).
4.	**Regions or countries likely to be affected, to the extent relevant or practicable:** **[X] All trading partners** **[ ] Specific regions or countries:**
5.	**Title of the notified document:** Revision of the Standards and Specifications for Foods and Food Additives under the Food Sanitation Act (revision of agricultural chemical residue standards). **Language(s):** English. **Number of pages:** 1 page. https://members.wto.org/crnattachments/2019/SPS/JPN/19_4401_00_e.pdf
6.	**Description of content:** Proposed maximum residue limits (MRLs) for the following agricultural chemical Veterinary drug: Gentamicin
7.	**Objective and rationale: [X] food safety, [ ] animal health, [ ] plant protection, [ ] protect humans from animal/plant pest or disease, [ ] protect territory from other damage from pests.**
8.	**Is there a relevant international standard? If so, identify the standard:** **[X] Codex Alimentarius Commission** ***(e.g. title or serial number of Codex standard or related text):*** Veterinary Drug Residues in food—Gentamicin **[ ] World Organization for Animal Health (OIE)** ***(e.g. Terrestrial or Aquatic Animal Health Code, chapter number):*** **[ ] International Plant Protection Convention** ***(e.g. ISPM number):*** **[ ] None** **Does this proposed regulation conform to the relevant international standard?** **[X] Yes [ ] No** **If no, describe, whenever possible, how and why it deviates from the international standard:**

9.	**Other relevant documents and language(s) in which these are available:** Food Sanitation Act (available in English). When adopted, these MRLs are to be published in Kampo (Official Government Gazette) (available in Japanese).
10.	**Proposed date of adoption** ***(dd/mm/yy):*** As soon as possible after the final date for the comment period. **Proposed date of publication** ***(dd/mm/yy):*** As soon as possible after the final date for the comment period.
11.	**Proposed date of entry into force: [ ] Six months from date of publication, and/or** ***(dd/mm/yy):*** These proposed standards will take effect after a certain period of grace. **[ ] Trade facilitating measure**
12.	**Final date for comments: [X] Sixty days from the date of circulation of the notification and/or** ***(dd/mm/yy):*** 7 October 2019. Comments only to updated MRLs (marked with black circles and white circles in attached annexes). **Agency or authority designated to handle comments: [ ] National Notification Authority, [X] National Enquiry Point. Address, fax number and e-mail address (if available) of other body:** Japan Enquiry Point International Trade Division Economic Affairs Bureau Ministry of Foreign Affairs Fax: +(81-3) 5501 8343 E-mail: enquiry@mofa.go.jp
13.	**Text(s) available from: [ ] National Notification Authority, [X] National Enquiry Point. Address, fax number and e-mail address (if available) of other body:** Japan Enquiry Point International Trade Division Economic Affairs Bureau Ministry of Foreign Affairs Fax: +(81-3) 5501 8343 E-mail: enquiry@mofa.go.jp

How about measures with both SPS and TBT components

notify according to both the SPS and TBT Agreements, preferably with an indication of which parts of the regulation fall under the SPS Agreement (e.g., a food safety measure)

and which parts fall under the TBT Agreement

(e.g., quality or compositional requirements)

Recommended procedures in G/SPS/7/Rev.4

SPS Agreement - Coverage Definition - Annex A

- A measure taken to protect:

Human or animal health	from risks arising from additives, contaminants, toxins or disease-causing organisms in food, drink, feedstuff
Human life	from plant- or animal-carried disease
Animal or plant life	from pest, diseases, disease-causing organisms
Territory of Member	from other damage caused by entry, establishment or spread of pests

TBT Agreement -- Coverage

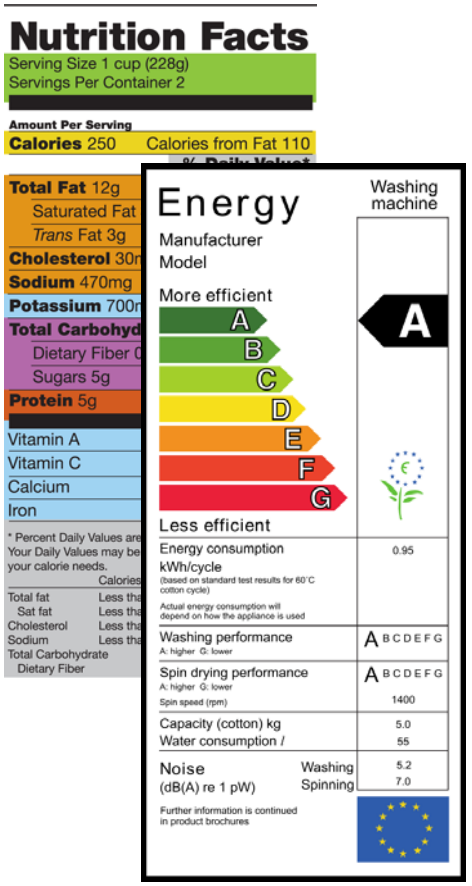
It applies to all:

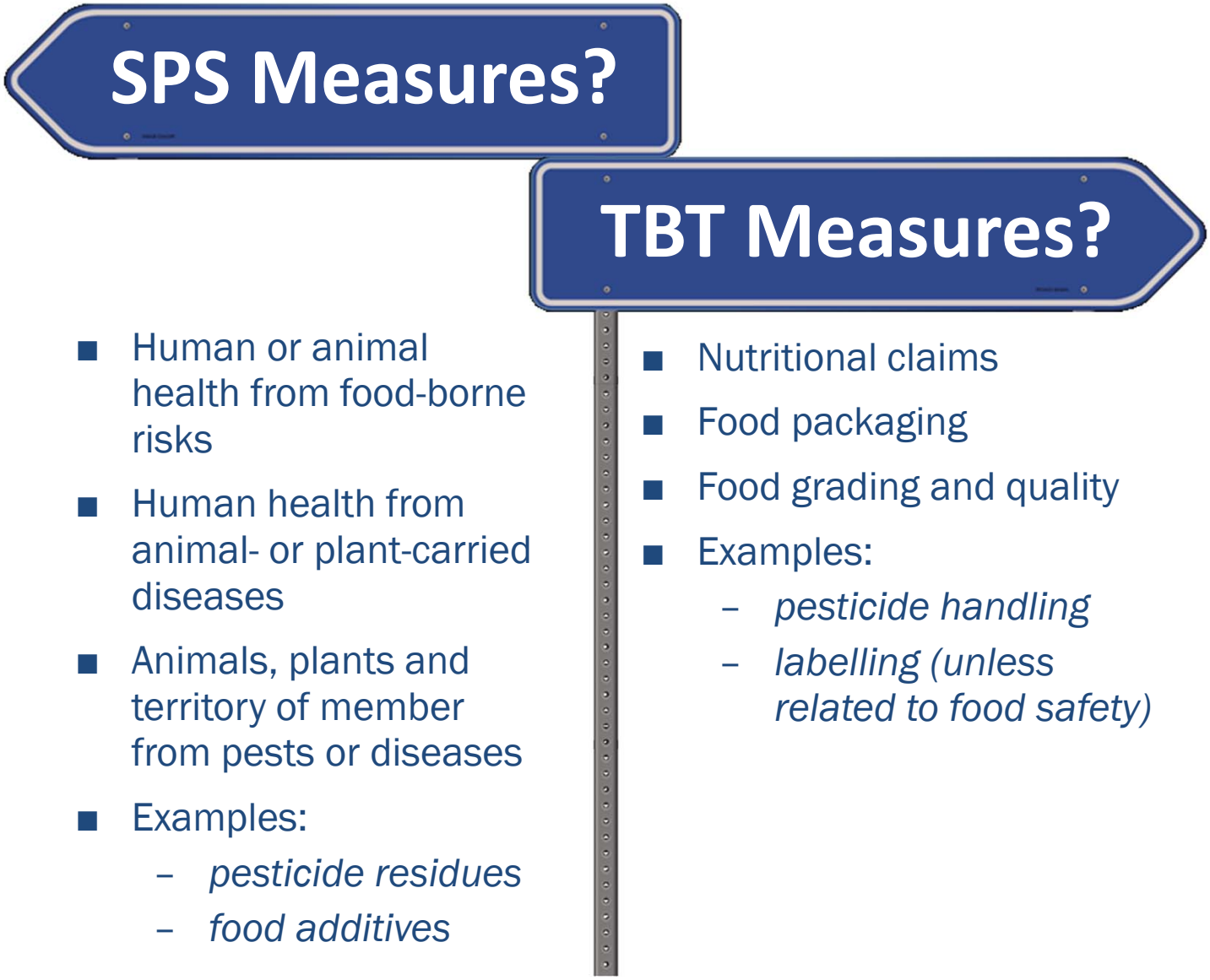
- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures

For all products, industrial and agricultural

TBT objectives

- “inter alia”
- National security requirements
- Prevent deceptive practices
- Protect human health and safety
- Protect animal and plant health
- Protect the environment





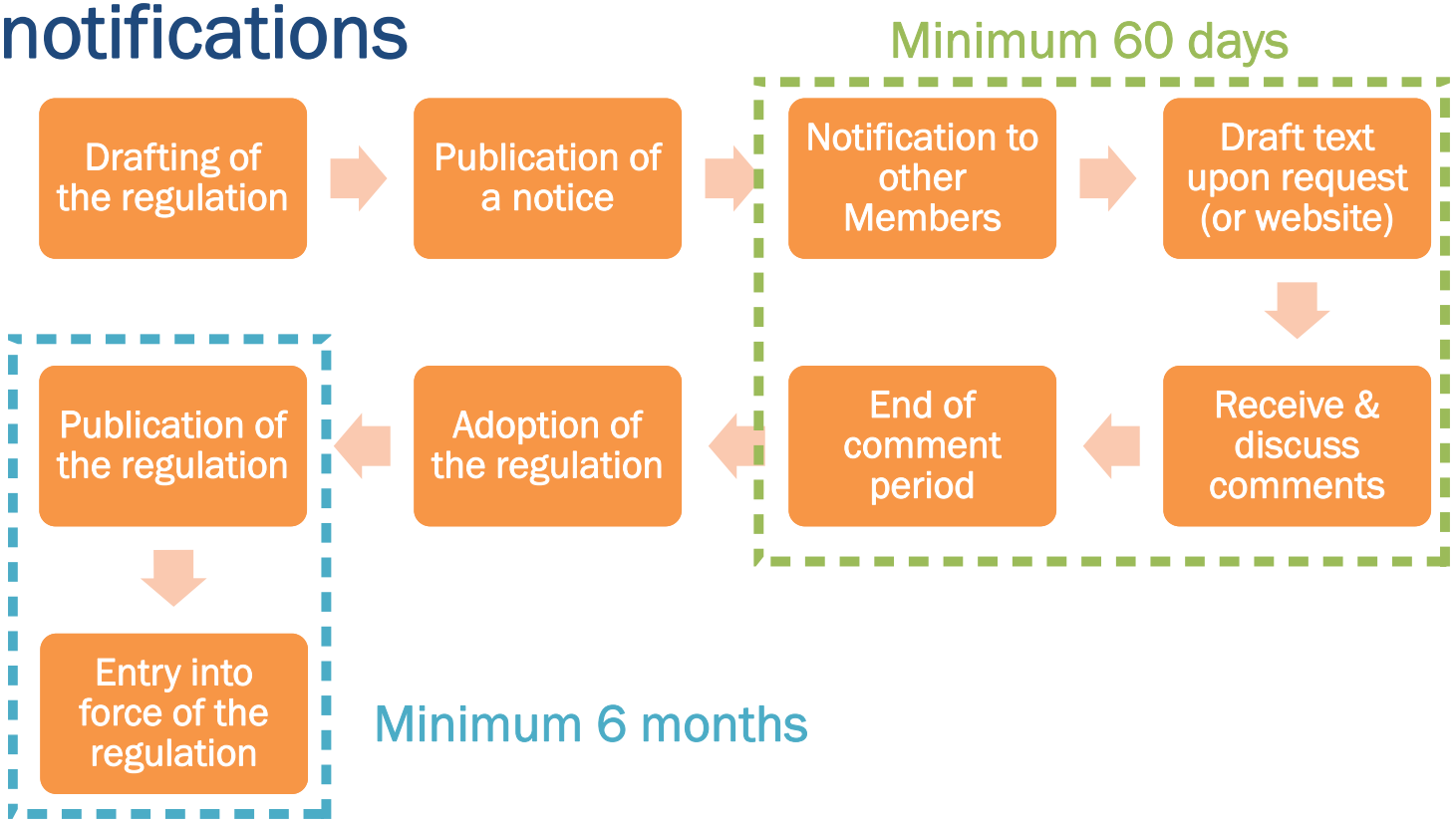
- Human or animal health from food-borne risks
- Human health from animal- or plant-carried diseases
- Animals, plants and territory of member from pests or diseases
- Examples:
  - *pesticide residues*
  - *food additives*

- Nutritional claims
- Food packaging
- Food grading and quality
- Examples:
  - *pesticide handling*
  - *labelling (unless related to food safety)*

2. Publication of regulations

- Members to publish all adopted regulations promptly
- Except in urgent circumstances, allow reasonable interval between publication and entry into force
  - *Normally entry into force 6 months after date of publication*
  - *If trade facilitating, do not delay (WT/MIN(01)/17, para. 3.2)*

Transparency timelines for SPS notifications



Upon receiving a notification, other Members can take ACTION:

- Seek more information on proposed regulation: copy of draft regulation, translation, justification for the measure
- Formulate and submit comments
- Request extension of comment period, delayed entry into force, technical assistance
- Raise a trade concern bilaterally/regionally or in the SPS/TBT Committees
- Adapt to new requirements

3. Designation of NNA :

Who notifies?

- National Notification Authority (NNA)
  - *Single central government authority responsible for the implementation of notification procedures e.g., agency responsible for food safety, animal and plant health*
- Only one NNA

3. Designation of NNA:

Where should notifications be sent?

Submission by NNA

- Online via the SPS Notifications Submission System (SPS NSS)
- Email (crn@wto.org)

Central Registry of Notifications (CRN)

Dissemination of the notification

4 .Establishment of Enquiry Point

- Provides answers to all reasonable questions from interested Members and relevant documentation
  - *Can be same as NNA*
  - *Can have more than one but clearly define responsibilities*

4. Establishment of Enquiry Point:

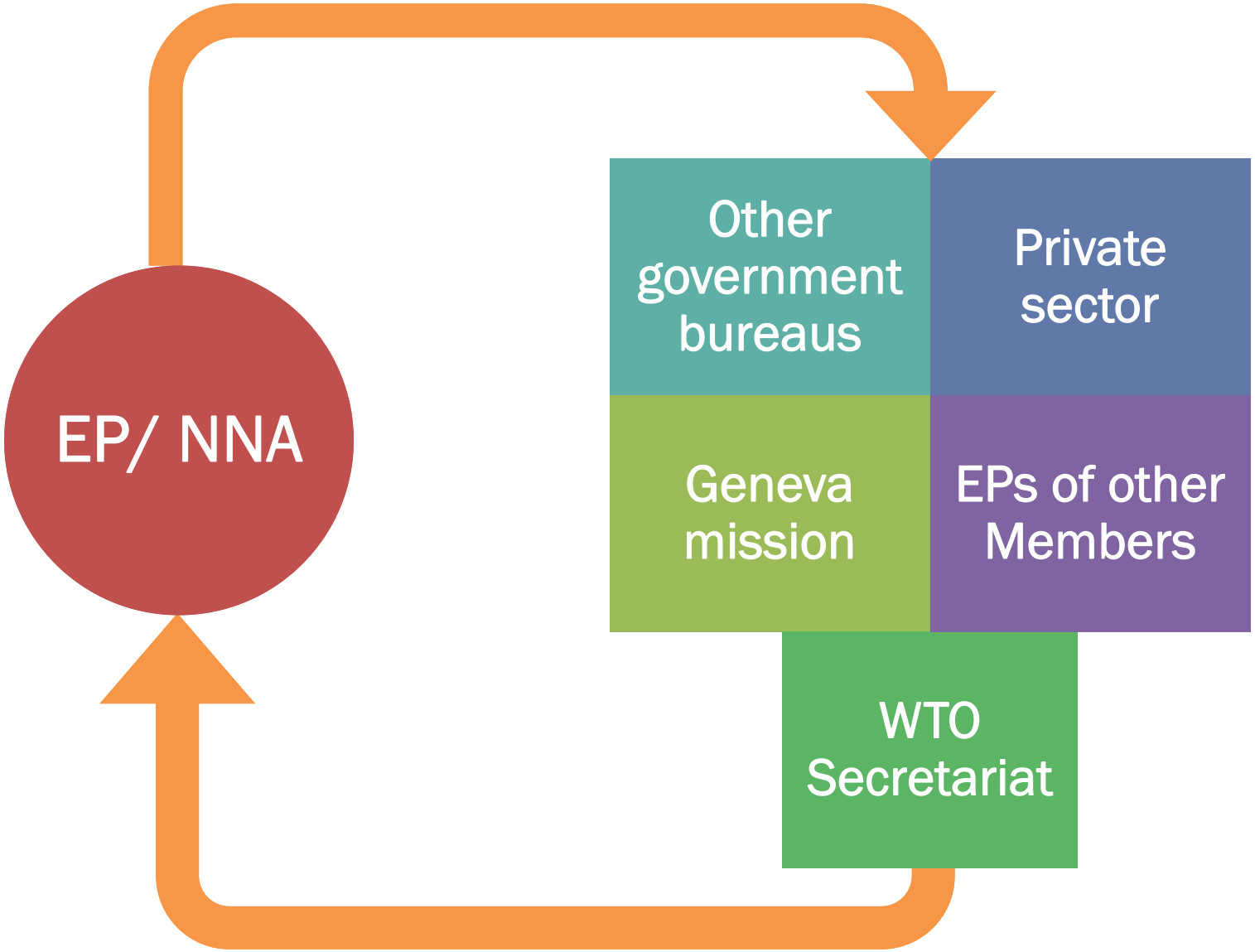
All reasonable questions?

- Regarding:
  - *SPS regulations, draft or adopted*
  - *Inspection procedures, etc.*
  - *Risk assessment*

- Reply within 5 working days, or
- Provide an estimate of time for the reply

Beyond obligations - EP or NNA could…

Track/ filter/disseminate SPS documents and notifications to interested parties	Alert other government agencies, private sector, other stakeholders of important changes	Coordinate/submit comments on notifications of concern to trading partners; follow up
Lead/facilitate/participate in national SPS coordination body	Participate in SPS Committee work (information exchange, specific trade concerns)	Raise awareness at the national level; facilitate capacity building; seek assistance


EP/ NNA
Other government bureaus
Private sector
Geneva mission
EPs of other Members
WTO Secretariat

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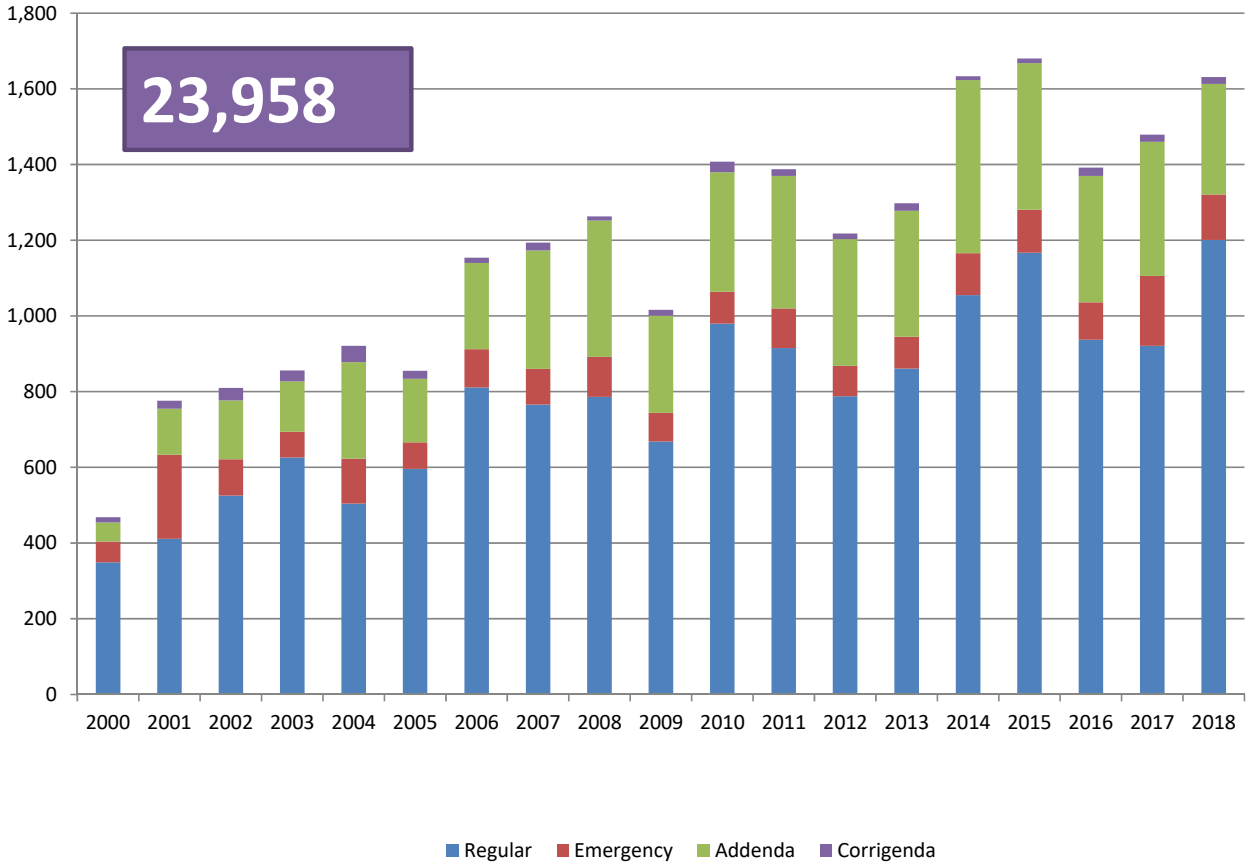
Level of implementation: facts and figures

(G/SPS/GEN/804/Rev.11)

Transparency implementation

- 157 out of 164 Members have designated a Notification Authority
- 161 Members have designated an Enquiry Point (30 have more than one)
- 127 Members have submitted at least 1 notification to the WTO

SPS Notifications submitted:
1995 – 2018



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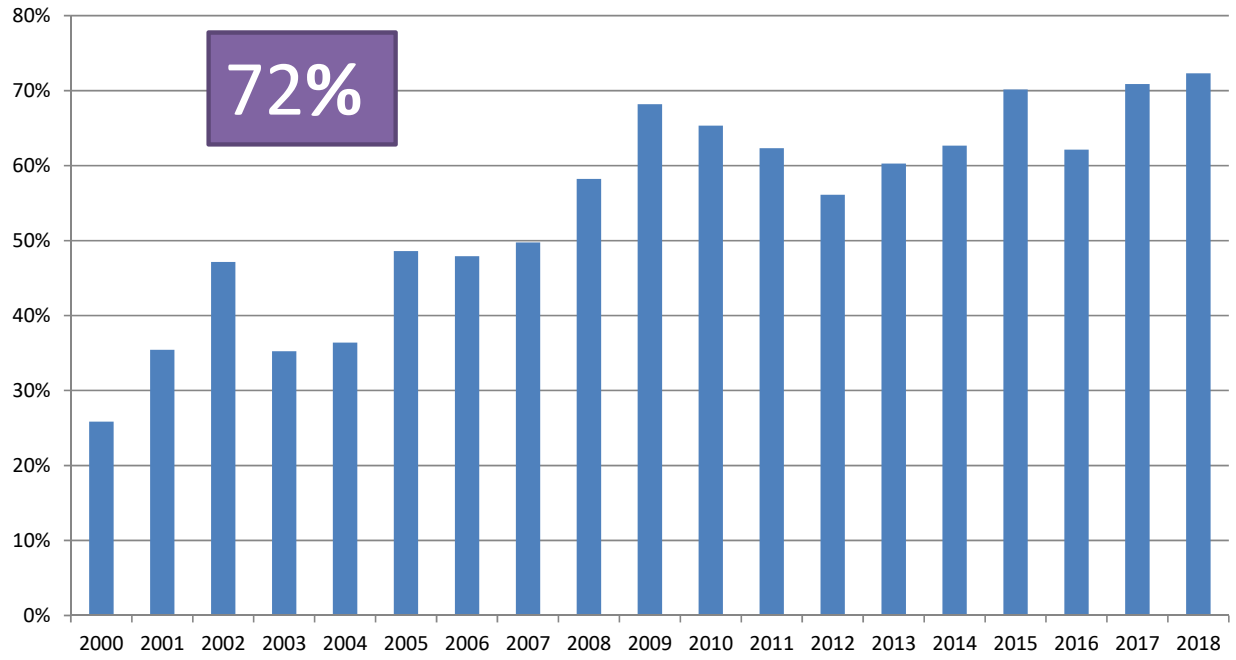
Share of Total SPS Notifications Submitted by Developing Country Members (including LDCs)



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Most active notifiers

Regular notifications			Emergency notifications		
Member	Number of notifications	Share of Total	Member	Number of notifications	Share of Total
United States of America	2,942	19%	Philippines	225	11%
Brazil	1,457	9%	Albania	174	8%
Canada	1,223	8%	Saudi Arabia, Kingdom of	172	8%
China	1,194	8%	New Zealand	129	6%
Peru	715	5%	United Arab Emirates	98	5%
European Union	620	4%	United States of America	82	4%
Korea, Republic of	595	4%	Ukraine	81	4%
Japan	589	4%	Colombia	78	4%
Chile	533	3%	Peru	72	3%
Chinese Taipei	472	3%	Russian Federation	72	3%
New Zealand	453	3%	European Union	68	3%
Australia	421	3%	Thailand	46	2%
Mexico	319	2%	Chile	46	2%
Thailand	221	1%	Australia	37	2%
Colombia	217	1%	Mexico	37	2%

SPS Notifications from APEC economies

Economy	Total no. of notifications	Economy	Total no. of notifications
Australia	648	New Zealand	762
Brunei Darussalam	4	Papua New Guinea	-
Canada	2,296	Peru	1,013
Chile	797	Philippines	583
China	1,332	Russian Federation	233
Hong Kong, China	62	Singapore	83
Indonesia	139	Chinese Taipei	830
Japan	735	Thailand	387
Korea, Republic of	777	United States of America	4,351
Malaysia	59	Viet Nam	762
Mexico	554		

Most common HS codes

Regular notifications			
HS Code	**Description**	**Number**	**Share of Total**
(02)	Meat and edible meat offal	1,466	9%
(06)	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	1,437	9%
(08)	Edible fruit and nuts; peel of citrus fruit or melons	1,324	8%
(04)	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	1,261	8%
(01)	Live animals	1,206	8%

WTO Central Registry of Notifications tries to assign HS codes when these are not provided

HS Code	**Description**	**Number**	**Share of Total**
(01)	Live animals	1,207	57%
(02)	Meat and edible meat offal	1,187	56%
(04)	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	784	37%
(05)	Products of animal origin, not elsewhere specified or included	523	25%
(23)	Residues and waste from the food industries; prepared animal fodder	258	12%

Objectives of SPS measures notified

(2017-2018)

Regular notifications	Notifications	Share
Food Safety	855	72%
Plant Protection	202	17%
Animal Health	144	12%
Protect humans from animal/plant pest or disease	98	8%
Protect territory from other damage from pests	98	8%
Emergency notifications	**Notifications**	**Share**
Animal Health	72	59%
Food Safety	65	53%
Protect humans from animal/plant pest or disease	23	19%
Plant Protection	18	15%
Protect territory from other damage from pests	11	9%

Dates/draft texts (Sept. 2017-Sept. 2018)

- Regular notifications
  - Around 20% indicated specific date of adoption; date of publication; date of entry into force *(these dates not necessarily known at drafting stage)*
  - 80% provided comment period; average of 54 days
  - 74% provided text electronically together with notification
- Addenda
  - Reason for addenda: %50 refer to adoption/publ./entry into force

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Recent developments in SPS/TBT Committees

Recent work of the SPS Committee

- Ongoing work on the Fifth Review of the SPS Agreement
  - *Proposal regarding notifying measures with both SPS and TBT components*

- SPS Transparency workshop held in July 2019
  - *SPS/TBT notifications*
  - *Domestic coordination*

- Next SPS transparency workshop in July 2020

Recent work of the TBT Committee

- TBT transparency obligations very similar to those under SPS

- TBT Committee adopted 8th Triennial Review report in 2018
  - *Many recommendations relate to transparency*
    - Improving information in notifications: eg product codes, dates of entry into force, RIA
    - Notifying to both SPS/TBT Committees when applicable
    - Discussing use of ePing by Enquiry Points and the private sector
    - Disseminating comments via ePing.
    - …
- TBT transparency thematic session held in June 2019
- Next TBT workshop in May 2020

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Sources of information

Online sources/tools

- WTO SPS gateway
- SPS Notification Submission System
  - Allows for collaboration among agencies in preparing/submitting notifications online; facilitates circulation within 2 days
- SPS Information Management System
  - Search function for notifications, STCs, other docs
- SPS/TBT notification alert system ePing
  - Notifications only; alert and communication functions, more private-sector oriented

To conclude

- Overall positive track record in SPS transparency
- Still, there is room for improvement in fulfilling obligations and benefitting from transparency framework (further discussion on this later)
- WTO Secretariat can assist (G/SPS/GEN/997/Rev.9)

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THANK YOU!