



ACTIVITY SPS/TBT-1

**“On the job training for best practices and management techniques of
SPS/TBT notification authorities and enquiry points”**

FINAL REPORT OF MUTRAP EU EXPERTS

By

DR. PETER NARAY

European Technical Assistance Team Leader

PAOLO VERGANO

Key expert

PROF. MICHEL KOSTECKI

EU Expert

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PREFACE

The following report is the final contribution, under Activity SPS/TBT-1, in relation to the study tour to Europe undertaken by 10 Vietnamese officials involved with the SPS and TBT networks of transparency provisions (i.e., the SPS and TBT Enquiry Points and Notification Authorities). This report is meant to fulfil the task and expected outcome as provided in the TORs for Activity SPS/TBT-1

The report is based on the information gathered during the various meetings and training sessions held between May 15th and May 24th in Geneva, Brussels and Rome and takes into account the discussion entertained between MUTRAP's delegation and the officials of the various visited organizations, the materials circulated ahead of and during the training courses and desk research and analysis conducted by the EU Experts.

The report has been prepared by Prof. Michel Kostecki (EU Expert in charge of TBT matters under activity SPS/TBT-1) and Mr. Paolo Vergano (MUTRAP Key Expert and EU Expert in charge of SPS matters under activity SPS/TBT-1), in cooperation and under the supervision of Peter Naray (MUTRAP Team Leader and coordinator of Activity SPS/TBT-1). The annexes to this paper include the study tour reports prepared by the SPS and TBT groups participating in the study tour.

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1 INTRODUCTION

The MUTRAP Project has considered SPS/TBT-1 as a priority activity as a result of the expected heavy burden what the implementation of SPS and TBT transparency provisions, right from the date of the country's WTO accession, would represent for the respective Vietnamese bodies. The ultimate objective of the activity as defined by the Terms of Reference (TOR) was to increase Government capacity to integrate effectively in international and regional trade and to increase the knowledge, networking and awareness of WTO issues among Government, the business community, and public and private stakeholders. The specific objective was to assist the competent Vietnamese ministries to adequately train the officials staffing and running the SPS and TBT enquiry points and notification authorities, including the ministerial and provincial level focal points, answering enquiries and making notifications to the WTO Secretariat at a time when WTO accession will result in a dramatic increase in the adoption or implementation of new standards, new technical regulations and new conformity assessment procedures, or in the amendment of existing ones. The method suggested by the TOR was the organization of a study tour to Europe for Vietnamese SPS and TBT experts who will be involved in the implementation of the transparency provisions of the WTO TBT and SPS Agreements. The underlying idea was that exposure to best practices and management techniques developed by SPS/TBT enquiry points and notification authorities of some European countries together with the attendance of training events organized by the WTO Secretariat and other competent international organizations, including the European Commission, would provide appropriate instruments to reach such goal.

2 SPS “ON-THE- JOB-TRAINING AND LESSONS LEARNT

2.1 Introduction

Institutional Framework and Organization of the SPS Office

The SPS National Notification Authority and Enquiry Point of Vietnam (hereinafter, Vietnam’s SPS Office) has been formally established by virtue of the Prime Minister’s Decision No. 99/2005/QD-TTg of 09 May 2005. Vietnam’s SPS Office is placed under the authority and administrative structure of the Ministry of Agriculture and Rural Development (hereinafter, MARD) and serves as the official channel of communication between Vietnam and other WTO Members on SPS issues. Vietnam’s SPS Office has been operating since the beginning of 2006.

Six Vietnamese Ministries are sharing responsibilities in relation to the state administration of SPS measures. In particular, they are: the Ministry of Agriculture and Rural Development, the Ministry of Public Health, the Ministry of Aquatic Products, the Ministry of Science and Technology, the Ministry of Industry and the Ministry of Trade. The choice of placing the SPS Office within the Ministry of Agriculture and Rural Development has been dictated by the fact that it is there that the vast majority of SPS regulations, standards and procedures are generated. The regulatory and administrative competences of the other relevant ministries are taken into account and safeguarded by means of a coordination network.

Vietnam’s SPS Office is based within the International Cooperation Department (ICD) of the Ministry of Agriculture and Rural Development. The Head of the SPS Office is the Deputy Director General of the ICD. In the future, particularly when Vietnam will become a full WTO Member, provision has been made for Vietnam’s SPS Office to be expanded into an independent unit under MARD with its own legal personality and eligible to open accounts and to carry out all functions related to the fulfilment of Vietnam’s SPS transparency obligations. Currently, however, there is only one full-time official working for the National SPS Office under the supervision of the Head of the SPS Office. This official acts as the coordinator for both the notification authority and enquiry point functions of the SPS Office. Such official is also responsible for drafting the operational rules and procedures as well as liaising with different national and international institutions.

The detailed responsibilities of Vietnam’s SPS Office are set forth in MARD’s Decision 1733 of 15 July 2005. The specific mandate of Vietnam’s SPS Office covers the following areas:

- Notifying WTO Members of any proposed or changed national SPS regulations that may affect international trade;
- Reviewing and forwarding to relevant stakeholders any foreign SPS notifications, which may have significant impact on Vietnam’s trade, for appropriate reference and comments;
- Responding to all reasonable questions and providing, upon request, the legal text of SPS regulations as well as documents regarding risk assessment process, control and inspection procedures, participation of Vietnam in bilateral and multilateral arrangements within the scope of the SPS Agreement, etc;

- Sending Vietnam's enquiries about SPS measures to other countries on behalf of governmental agencies, industrial associations and enterprises;
- Establishing an extensive SPS information-exchange network between the national SPS Office, its ministerial-level focal points, domestic industries and other relevant stakeholders;
- Coordinating with domestic and international stakeholders so as to promote the implementation of the SPS Agreement and increase market access opportunities for Vietnam's agro-food and agricultural products;
- Contracting with national and international organizations and/or individuals to provide advisory services on matters of SPS regulation, administration and certification;
- Acting as the focal point for the preparation of meetings or workshops, and reporting on Vietnam's SPS status to MARD.

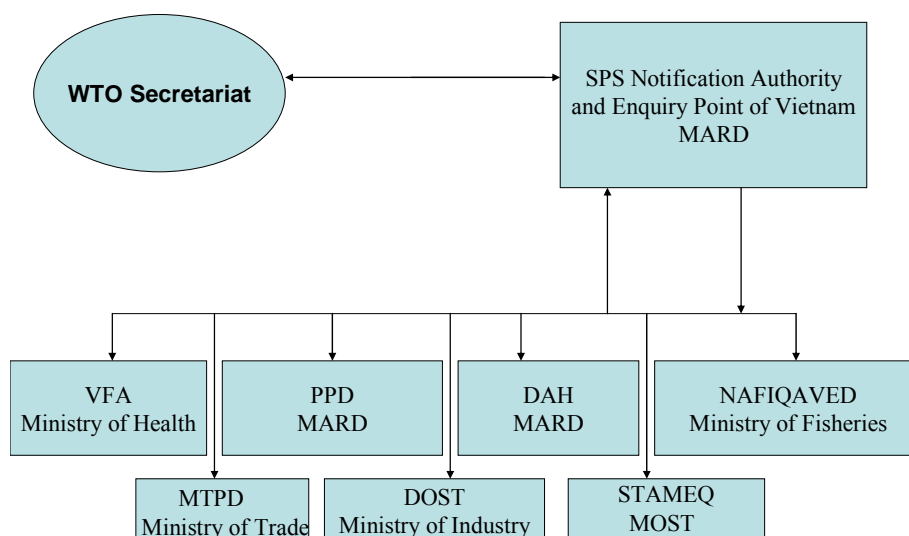
The wide range of the responsibilities delegated to the Vietnam's SPS Office clearly indicates that this new office is created not only to fulfil mandatory requirements of transparency under the SPS Agreement, but also to gain benefits from this obligation by stimulating the adoption and implementation of SPS regulations and practices in compliance with international standards and by assisting Vietnamese industry and economic operators with the necessary information to access export markets.

In fact, the Government of Vietnam appears committed to meet not only its WTO transparency obligations, but also to translate them into additional value-added rights and opportunities for its business community. One such example is the work being conducted (and supported by MUTRAP II through *ad hoc* TRTA activities) to make it possible for the SPS Office to regularly monitor all foreign notifications on new or changed SPS regulations and identify the ones that may negatively impact Vietnam's trade so as to distribute them to interested organizations or post them on the SPS portal. With respect to SPS regulation and administration, the broader objective is to promote agricultural exports from Vietnam.

Vietnam's SPS Office is coordinating with relevant ministries and departments through the SPS network of focal points, which are located in seven competent departments: MARD's Plant Protection Department (PPD), MARD's Animal Health Department (DAH), MoH's Food Administration (VFA), MoFI's National Fisheries Quality Assurance and Veterinary Directorate (NAFIQAVED), MoST's Directorate for Standardization, Measurement and Quality (STAMEQ), MoI's Department of Science and Technology (DOST) and MoT's Multilateral Trade Policy Department (MTPD).

The following chart illustrates the SPS ministerial network and the coordination flows of Vietnam's SPS Office with relevant governmental bodies:

ORGANIZATION CHART OF SPS NETWORK



The SPS network is also intended to connect with domestic enterprises and provide direct information about SPS measures in order to help them improve market access for their products by facilitating technical negotiations with foreign counterparts. Each of the seven focal points maintains one leader and one official who are responsible for drafting notifications and handling enquiries in their respective areas on a part-time working basis. So far, most of the departments concerned have officially designated two individuals to be the official contact points within the SPS network. Together, they constitute an inter-ministerial working group which supports Vietnam's SPS Office when performing its functions.

At present, the operating rules of the National SPS Office and network are being developed and are expected to be soon endorsed by MARD. The draft rules specify the duties and coordination mechanisms of the central SPS network for making notifications and handling enquiries. In light of this organizational work, the study-tour conducted under MUTRAP's activity SPS7TBT-1 was particularly timely and useful. The training offered by the WTO Secretariat and the European Commission's Enquiry Point and Notification Authority under DG Sanco appeared rightly tailored to the current needs of the SPS Office and its officials.

2.2 Training Modules and Presentation Topics

The study tour under MUTRAP's activity SPS/TBT-1 was organized on the basis of the different interests and competences of the SPS and TBT officials participating. The SPS Group attended meetings in Geneva (WTO Secretariat, WHO and ITC), Brussels (European Commission's DG Sanco and DG Trade) and Rome (FAO and Italian Ministry of Health). The following section provides a summarized overview of the relevant presentations given at the different international organizations and institutions. Reference is made to the core issues and most relevant teachings which were dealt with during the training sessions. With respect to the SPS transparency provisions and the central issues for purposes of the operation of the SPS enquiry point and notification authority, the most relevant presentations were the ones provided by the WTO Secretariat and the European Commission's DG Sanco. The actual

presentations and materials handed out during the training course are available with MUTRAP's PTF and the individual Vietnamese officials who attended the study tour.

15 and 16 May 2006

Large part of the day on 15 May 2006 was devoted to a training course at the World Trade Organization's Secretariat. The following topics and presentations were given: Introduction to the TBT and SPS Agreements; The key provisions of the SPS Agreement and the TBT Agreement; The transparency obligations and procedures under the TBT Agreement and the SPS Agreement; Practical exercise on notifications; and Debate on the experiences of WTO Members in meeting the transparency obligations and benefiting from them.

On 16 May 2006, further training at World Trade Organization's Secretariat was conducted. The following topics and presentations were provided: The Standards and Trade Development Facility for technical assistance; The WTO dispute settlement procedures and relevant SPS cases (i.e., EC-Hormones; Australia-Salmon; and Japan-Variety testing and apples); Current issues (i.e., Specific trade concerns; Special and differential treatment; and SPS Committee) and Questions and answers.

In relation to the key teachings on WTO transparency and on the functioning and management of the SPS enquiry points, the emphasis of the WTO Secretariat was on the resources to set up and run the SPS transparency authorities, the important element of coordination, and the possibility to seek and obtain technical assistance, for example through the Standards and Trade Development Facility initiative.

With respect to the issue of the resources to be allocated, the WTO Secretariat indicated that, for an enquiry point to function well, it must have analytically and technically skilled staff and appropriate equipment. Among the resource constraints identified by WTO Members and reported by the Secretariat were problems with finding and keeping skilled staff, the lack of infrastructure, translation requirements, limited technical capacity as well as institutional capacity and financial constraints.

The Secretariat recalled that WTO Members have often housed enquiry points and national notification authorities in separate agencies. However, several WTO Members which have combined the enquiry point and notification authority functions in the same agency indicated that this helped ensure coordination, and could be especially useful if the enquiry point/notification authority was contained within an agency dealing with SPS-related measures. For example, it was reported that the SPS enquiry point and/or notification authority in some WTO Members also served as the TBT enquiry point and/or notification authority, and could also be a designated contact point for the international standard-setting organizations (i.e., the national Codex, OIE or IPPC contact points).

To facilitate the effective establishment of an enquiry point and/or notification authority, the Secretariat suggested that WTO Members identify an effective enquiry point/notification authority in another country and use its systems and procedures as a model. A discussion with the Vietnamese delegation on the set-up agreed in Vietnam ensued and the SPS and TBT transparency obligations were analysed in relation to the particular Vietnamese structure of administrative competences and ministerial power-sharing.

The Secretariat recalled that it is crucial that WTO Members regularly inform the WTO of the names, addresses, telephone numbers, fax numbers and e-mail addresses of all SPS enquiry points and notification authorities, particularly before each SPS Committee meeting. Failure of WTO Members to keep the contact information up-to-date means that their enquiry point or notification authority might not receive pertinent information and the technical assistance which they may need.

With respect to the structure of the SPS enquiry point, the WTO Secretariat indicated that it does not need to have a large number of staff if they possess the necessary skills. On the basis of assessments made by the WTO Secretariat, the average number of staff servicing the enquiry point appears to be 3.1, while an average of 2.6 officials seems to be responsible for the notification authority. In many cases, the staff appears not work full-time as the enquiry point or notification authority, this function being combined with other professional responsibilities.

However, the Secretariat recalled that, due to the large volume of SPS notifications which is being circulated, WTO Members should strive to have well-qualified, technically skilled and experienced staff to undertake a preliminary screening of notifications to determine the relative importance of any notification to domestic traders. Staff in the enquiry points of the majority of WTO Members appears to have a scientific background which enables them to directly answer questions of a technical nature, such as questions regarding control and inspection procedures, quarantine treatment, risk assessment, bilateral and multilateral agreements, etc. The WTO Secretariat also emphasized that the other main roles for the enquiry points are coordination, organization and monitoring.

With this respect, certain suggestions and considerations were made by the Secretariat in light of the experiences matured by other WTO Members:

- The continuity of staff is considered as an extremely important feature for ensuring an effective functioning of an enquiry point. Several WTO Members noted that rapid staff turnover may dramatically affect the quality of service provided by the enquiry point. One solution, suggested by the EC, was that officials from other SPS-related agencies be trained at the enquiry point for several months. Such training would not only enhance the understanding of the SPS Agreement and coordination between the agencies, but could facilitate eventual replacement of staff working at the enquiry point.
- The lack of technical capacity to analyze risk assessments and other technical information available from the notifying WTO Members, in order to prepare substantive comments within the short comment period which is allowed appears to be at times a serious constraint. The suggestion is made that requests be made for technical assistance to the relevant standard-setting organizations, developed WTO Members, or other institutions to assist in enhancing the technical capacities in this respect.
- Appropriate IT infrastructure greatly enhances the effectiveness of the operation of the SPS enquiry points by strengthening their communication capability and documentation management systems. Most of the functions of the enquiry point can be done by e-mail, including the dissemination of documents.

- It may prove very useful and highly desirable for the enquiry point or notification authority to maintain an inventory of all national SPS regulations. However, it may also be sufficient that these measures be stored by the relevant technical agencies.
- It is not necessary to have a sophisticated database to manage SPS notifications and information from the standards setting organizations. However, it appears essential that the staff working in the SPS enquiry point be able to effectively search existing databases, including the WTO document dissemination facility, Codex, IPPC, FAO, OIE, and countries' available databases, in order to access notifications and legislation.
- One possible constraint that should be adequately addressed is the strengthening of the staff's capacity to communicate in (at least) one of the WTO official languages with a relatively high degree of proficiency.
- The recommended SPS notification procedure encourages WTO Members to indicate, on the notification, if a translation is available, and, recommends WTO Members to send it along with any requested document.
- Coordination appears as a major constraint for both developed and developing countries, particularly for WTO Members with limited IT resources and technical capacity. The lack of effective communication amongst SPS-related institutions has been identified as a key factor contributing to a country's failure to notify, send comments and reply to questions.
- Coordination with all of the agencies responsible for SPS-related policy stands out as a particularly serious challenge. Many WTO Members have indicated that countries should have a legal framework establishing a national SPS network or coordinating committee which ensures that representatives from all relevant SPS-related agencies attend coordination and other relevant meetings. This particular feature is one that Vietnam has already equipped itself with and specific mention was made by MUTRAP's delegation.
- The involvement of the private sector appears essential to enable WTO Members to formulate comments on SPS measures notified by other WTO Members. A lack of IT infrastructure may increase the difficulty of ensuring coordination with domestic stakeholders.
- The importance of coordination through continued dialogue with stakeholders, to ensure their awareness of the relevance of the enquiry point to them and their full participation in its work, was emphasised. The suggestion was made that information workshops for stakeholders (i.e., importers, exporters, government agency representatives and consumer groups) be regularly held to inform them of the SPS Agreement and of the role of the enquiry point and international SPS standards.
- The suggestion to adopt an automated system whereby stakeholders could identify their preferences (i.e., specific products, countries, languages and types

of notifications of interest to them) and then be systematically e-mailed notifications meeting these preferences was made. The adoption of this system, through MUTRAP's support, was described by the Vietnamese delegation.

- The WTO Secretariat highlighted the fact that the list of contact details for enquiry points and notification authorities are updated and circulated regularly, in the G/SPS/ENQ/# and G/SPS/NNA/# document series, respectively. To this extent, the Secretariat stressed the responsibility of WTO Members to inform the WTO Secretariat of any changes in their contact details. This operation can be done via e-mail, fax or letter.
- The Secretariat went on to describe some of the advantages of having the SPS enquiry point also serve as the contact point for one or all of the three international standards-setting organizations (i.e., Codex, OIE and IPPC). Such a structure could promote centralized coordination and awareness of the work being undertaken in these organizations. The Secretariat also indicated the importance that WTO Members participate to the activities of the SPS Committee and that their SPS enquiry points and notifications authorities' staff be regularly informed about these activities.
- The need for continued technical assistance, particularly for developing countries, was referred to as a crucial aspect of the interaction between WTO Members and the Secretariat in relation to the implementation of the SPS Agreement's rights and obligations. Seminars on these issues are held on a regular basis and risk assessment was highlighted as an area where many WTO Members continued to lack know-how and laboratory equipment.
- In the WTO Secretariat's experience, several WTO Members have received SPS-related technical assistance from many international and individual agency such as, inter alia:
 - The WTO (<http://www.wto.org>);
 - The FAO (<http://www.fao.org>);
 - The ITC (<http://www.intracen.org>);
 - The JITAP or Joint Integrated Technical Assistance Programme, (<http://www.jitap.org>);
 - The Commonwealth Secretariat (<http://www.thecommonwealth.org>);
 - The European Commission (<http://ec.europa.eu>);
 - The IICA or Inter-American Institute for Agricultural Cooperation (<http://www.iica.int/home.asp>);
 - GTZ or the German Corporation for International Cooperation (<http://www.gtz.de>);
 - SIDA or the Swedish International Development Corporation Agency (<http://www.sida.se>);
 - DFID or the UK Department for International Development (<http://www.dfid.gov.uk>);
 - USDA or the US Department of Agriculture (<http://www.usda.gov>);
 - USAID or the US Agency for International Development (<http://www.usaid.gov>); and
 - The STDF or Standards and Trade Development Facility (<http://www.standardsfacility.org>).

- With particular regard to this last technical assistance initiative, the WTO Secretariat indicated that the STDF database provides information on SPS-related technical assistance and capacity building projects, including national as well as regional projects. Data is available from the five partner institutions (i.e., FAO, OIE, World Bank, WHO and WTO), multilateral agencies, regional and bilateral donors. A dedicated presentation was offered on the scope and procedures of the STDF and on how to apply for assistance through it.

17 May 2006

The meetings at World Health Organization concentrated on food safety, zoonoses and foodborne diseases. Presentations were given on the instruments of “Global Salmonellosis Surveillance”, “International Food Safety”, “Public Health Aspects of SPS in Relation to CODEX”, and the “Current Status of Global Environment Monitoring Systems (GEMS) and Food Safety”. No particular aspects related to SPS transparency obligations were discussed.

The meeting at the International Trade Centre and the presentation on “Improving and Maintaining Market Access Using the WTO Agreements on TBT and SPS” was particularly interesting to show the interaction between the SPS transparency provisions, the role of the SPS enquiry point and notification authority, and the business stakeholders and ultimate beneficiaries (both private and public).

18 May 2006

The meetings at the European Commission’s DG Sanco were both policy-oriented and of practical nature in relation to the procedures and organizational set-up of the EC enquiry point and notification authority for purposes of SPS regulation. In particular, a very useful and operational presentation on the implementation of SPS transparency obligations by the EC was offered.

DG Sanco also organized a training session on management of the European Community’s SPS Enquiry Point and Notification Authority (on the basis of the EC model and the Manual of Procedures prepared, consolidated and regularly updated by DG Sanco’s competent officials. While this Manual was expressly offered for circulation and dissemination to the Vietnamese Delegation by the relevant officials, various attempts to secure its release have been unsuccessful. The recommendation is made that MUTRAP’s PTF, in cooperation and coordination with the EC Delegation in Hanoi, officially contacts DG Sanco to request the above mentioned instrument. That consolidation of procedures and very practical guidelines on how to run in practice an SPS enquiry point and notification authority appears to be a potentially essential instrument to facilitate the early operation of Vietnam’s SPS enquiry point and notification authority on the basis of a well-tested and perfected international best practice.

19 May 2006

The meeting at the European Commission's DG Trade was meant to introduce and offer a practical guide to the EC Export Helpdesk for developing countries. The Export Helpdesk is an online service, provided by the European Commission, to facilitate market access for developing countries to the European Community. This free and user-friendly service provides relevant information required by developing country exporters interested in supplying the EC market. The meeting at DG Trade was centred on a practical simulation exercise to the benefit of the Vietnamese delegation. Easy and free access to these online services is available at <http://export-help.cec.eu.int> and can be of use to Vietnam's SPS Enquiry Point and Notification Authority.

Thereafter, the SPS Group attended a luncheon and presentation at O'Connor and Company, European Lawyers, given by Mr. Bernard O'Connor, a senior Brussels trade lawyer and specialist on WTO law and agricultural trade. The presentation focussed on WTO and EC regulation and standardization: the legal issues, harmonization and practical problems as seen by a European legal practitioner.

22 May 2006

The meetings at the Food and Agriculture Organization (FAO) focussed on a number of presentations by FAO officials on: "Introduction to FAO's Role", "Mandate, Institutional Framework and Activities"; "Codex Alimentarius Commission"; and "Animal Health Issues and FAO". None of them was particularly related to the provision of SPS transparency, but they proved useful to indicate FAO's scope of action and the need for coordination with this important standards-setting organization.

23 May 2006

The meeting at the Italian Health Ministry's Veterinary Health Department provided the opportunity to follow a presentation on the Italian SPS system and understand the coordination between individual EC Member States and the European Community in relation to SPS issues and regulatory frameworks.

Further meetings at the Food and Agriculture Organization were based on presentations dealing with: "IPPC and Plant Protection Issues"; "FAO's International Portal on Food Safety, Animal and Plant Health"; and the "International Rice Convention".

2.3 Best Practices, Procedures and Working Modalities

This section focuses on the best practices that were identified during the training course in relation to SPS issues and the provision of transparency. It is largely built on the working manuals and the experiences of the relevant WTO Members' authorities contained in the SPS Transparency Handbook prepared by the WTO Secretariat.

Under the SPS Agreement, each WTO Member has obligations relating to "transparency". In essence the word transparency in the context of the WTO is used to signify one of the fundamental principles of its agreements: the aim to achieve a greater degree of clarity, predictability and information about trade policies, rules and regulations of WTO Members.

In implementing this concept, WTO Members use notifications. Under the Agreement on Agriculture, notifications are used to follow the implementation of commitments, *inter alia*, in the areas of subsidies and market access. Under the SPS Agreement, notifications are used to inform other WTO Members about new or changed regulations that affect their trading partners.

Transparency under the SPS Agreement also implies answering reasonable questions and publishing regulations. For example, countries are required to publish all sanitary and phytosanitary measures (i.e., SPS measures) and notify changes to SPS measures. In implementing the agreement, countries are required to identify a *single* central government authority to be responsible for the notification requirements of the SPS Agreement (the notification authority). Also, countries are required to establish an enquiry point responsible for answering questions from other countries about SPS measures and related issues (the enquiry point).

2.3.1 Responsibilities of the SPS Notification Authority

Under the SPS Agreement, countries are required to designate a single central government authority as responsible for implementing, on a national level, the notification requirements of the SPS Agreement. This is the SPS notification authority. The notification authority is responsible for: 1) ensuring proposed regulations are published early, to allow for comments; 2) notifying other countries through the WTO Secretariat of SPS regulations, using the appropriate notification forms; 3) providing copies of proposed regulations on request; and 4) ensuring that comments are handled correctly.

Choice of Agency

The task of establishing a notification authority is not very difficult. Most countries already have existing government departments or agencies responsible for handling the areas covered in the SPS Agreement (food safety, animal and plant health measures), or for disseminating government information. One of these agencies can be designated by the government to fulfil its notification obligations. The notification authority must be part of the central government, so this function cannot be carried out at the sub-national level (by a state, provincial or regional agency).

Most countries find it most convenient for the notification authority to be operated by the government department that is most concerned with the responsibilities covered by the SPS Agreement (i.e., food safety, animal health, plant health). Even if these functions are the responsibility of more than one government agency, there should be only one SPS notification authority. The notification authority should have access to or have relationships with the technical experts in the sanitary and phytosanitary areas who will be writing regulations (potentially future SPS measures).

2.3.2 Responsibilities of the SPS Enquiry Point

The enquiry point is responsible for answering all reasonable questions and providing relevant documents regarding: 1) any sanitary or phytosanitary regulations adopted or proposed within the country; 2) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within the country; 3) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection; 4) the membership and participation of the country, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems; 5) the membership and participation of the country in bilateral and multilateral agreements and arrangements within the scope of the SPS Agreement; and, 6) the texts of any such agreements and arrangements.

Enquiry points should also provide, upon request, information on participation in any bilateral or multilateral equivalence agreements and arrangements. While the notification authority may handle questions on notified draft measures, the enquiry point is responsible for answering questions on all existing SPS measures (even those that existed before the WTO and the SPS Agreement came into force).

Choice of Agency

The enquiry point system was created so that countries could easily obtain information about SPS and related issues, without having to identify and directly contact the agency responsible for any given function in another country. The enquiry point is the single contact point to which any relevant enquiries can be made. It has the responsibility of obtaining the answers from the relevant national bodies and replying to the country making the enquiry.

The task of establishing an enquiry point is not a very difficult one. Most countries already have existing government departments or agencies responsible for handling the areas covered in the SPS Agreement, sanitary and phytosanitary measures, or for disseminating government information. The agency designated as the enquiry point should have relationships with officials in the areas of food safety, animal and plant health so that any answers to any requests can be readily obtained.

Some countries have found it an advantage to have the same body operating both the national notification authority and enquiry point. The principal benefit of such an arrangement is to minimize the impact on financial and physical resources and to build up trade policy expertise in this area in a dedicated unit. In addition, it eliminates the need for coordination between the notification authority and enquiry point.

There are two common choices for selecting an agency to operate the SPS enquiry point: 1) an existing standards information office; or 2) a government department that is most concerned with the responsibilities covered by the SPS Agreement (i.e. food safety, animal

health, plant health). The enquiry point does not necessarily have to be a government office, it could be contracted to an independent body. Nor does the enquiry point necessarily have to have officials who can themselves answer any requests made by other countries. The primary role of the enquiry point is to manage this part of the transparency process: that is, to obtain answers from the relevant government bodies (as quickly as possible and provide them to the countries requesting the information. Alternatively, the relevant government body could respond directly to the requestor, with the enquiry point providing oversight.

When a country's notification authority or enquiry point has been established, the WTO should be informed of it. The WTO Secretariat should also be informed if the notification authority or enquiry point is changed. The WTO Secretariat regularly circulates a list of all WTO Members' notification authorities and enquiry points. This list is updated three or four times a year. The enquiry points are listed in the G/SPS/ENQ/ document series of the WTO, and the notification authorities are listed in the G/SPS/NNA/ series. To be included in this list, a WTO Member should provide the following information: 1) contact name; 2) name of institution; 3) postal address or physical address; 4) phone number; 5) fax number; 6) e-mail address; and 6) internet address.

2.3.3 Operating the SPS Notification Authority

The SPS Agreement requires prior notification of proposed SPS measures. The main advantage of this notification system is to make consultation international, by allowing other countries to comment on proposed measures. There is evidence that in countries where a national consultation system did not exist, meeting or complying with the WTO notification requirements contributed to reinforce domestic transparency. Any country proposing to introduce a new SPS measure is, in most circumstances, required to:

- submit a notification through the WTO Secretariat when a new measure is proposed or a measure is changed;
- allow reasonable time for other countries to make comments in writing;
- discuss these comments upon request;
- take the comments and the results of the discussions into account;
- explain to the submitting country how it plans to take the comments into account;
- where appropriate, provide additional relevant information on the proposed SPS measure concerned;
- provide the submitting country with a copy of the text of the corresponding SPS regulations as adopted, or information that no corresponding SPS measure will be put into force for the time being.

2.3.4 Making an SPS Notification

What to notify?

The SPS Agreement uses the terms "measures" and "regulations" somewhat interchangeably. Regardless of the term used, the SPS Agreement is referring to any sanitary or phytosanitary measure such as laws, decrees, or ordinances applied to protection human, animal or plant life

or health as defined under paragraph 1 of Annex A to the SPS Agreement. The SPS Agreement states that countries should notify changes to their SPS measures. The subject areas covered by the term “SPS measure” are defined quite specifically (i.e., SPS Agreement, Annex A, paragraph).

SPS measures are 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;
- to 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;
- to 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; or
- to prevent or limit other damage from the entry, establishment or spread of pests.

The SPS Agreement states that “sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, 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; and packaging and labelling requirements directly related to food safety”.

The term “regulation” is also used in Annex B of the SPS Agreement. The scope of what constitutes a regulation is quite broad. SPS regulations are defined as “sanitary and phytosanitary measures such as laws, decrees or ordinances that are applicable generally” (i.e., SPS Agreement, Annex B, footnote 5). The SPS Agreement requires countries to notify the WTO of proposed new sanitary and phytosanitary regulations or modifications to existing regulations whenever:

- either an international standard, guideline or recommendation does not exist, or;
- the content of a proposed SPS regulation is not substantially the same as the content of an international standard, guideline or recommendation,
 - and, in both cases, if;
- the regulation may have a significant effect on trade of other countries.

All proposed SPS measures which fit the above-mentioned criteria, including generic standards and measures affecting bilateral or plurilateral trade, should be notified to the WTO. When a regulation contains both SPS or TBT elements, it should be notified according to both the SPS and TBT Agreements, preferably with an indication of which parts of the regulation fall under SPS (i.e., a food safety measure) and which parts fall under the TBT Agreement (i.e., quality or compositional requirements).

The TBT Agreement is similar to the SPS Agreement in its content and format. Both agreements promote the use of international standards (harmonization) and the principle of equivalence in the development of non-tariff measures. In implementing these measures, both agreements promote the concepts of non-discrimination and the avoidance of unnecessary obstacles to trade. The transparency provisions are also very similar. The difference between the agreements is primarily one of coverage and the underlying basis for the application of a measure.

International Standard, Guideline or Recommendation

What constitutes an “international standard, guideline and recommendation” is also quite specifically defined (i.e., SPS Agreement, Annex A, paragraph 3):

- For food safety: the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;¹
- For animal health and zoonoses: the standards, guidelines and recommendations developed under the auspices of the Office International des Epizooties (the OIE);²
- For plant health: the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with regional organizations operating within the framework of IPPC.³

Note that the criterion for notification relating to international standards, guidelines or recommendations is whether the content of a proposed SPS regulation is substantially the same as the content of an international standard, guideline or recommendation. So even if the health objective, or the level of protection achieved, is the same as that delivered by the standard, if the measures required are not substantially the same as those in the international standard it still has to be notified.

¹ The Codex Alimentarius is a collection of international food standards that have been adopted by the Codex Alimentarius Commission (the "Codex"). The Codex is based in Rome and financed jointly by the FAO and the WHO. For more information see: <http://www.codexalimentarius.net>.

² The OIE, also known as the World Animal Health organization, is a source of information on the occurrence and course of animal diseases and of ways to control these diseases. It coordinates, at the international level, studies devoted to the surveillance and control of animal diseases and harmonizes regulations for trade in animals and animal products. For more information see: <http://www.oie.int/>.

³ The International Plant Protection Convention (IPPC) is a multilateral treaty administered through the IPPC Secretariat located in FAO's Plant Protection Service. The Convention provides a framework and forum for international cooperation, harmonization and technical exchange in collaboration with regional and national plant protection organizations. For more information see: <http://www.ippc.int>

Significant Effect on Trade

The concept of “significant effect on trade of other WTO 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, group of products or products in general; and
- between two or more countries (so strictly bilateral SPS regulations must still be notified if they meet other criteria).

The concept of a significant effect on trade of other countries includes both import-enhancing and import-reducing effects on trade, as long as such effects are significant. This means that SPS regulations that facilitate trade must also be notified. When assessing whether the SPS regulation may have a significant effect on trade, countries should take into account, using relevant information that is available, such elements as:

- the value or other importance of imports in respect of the importing and/or exporting country countries concerned, whether from other countries individually or collectively;
- the potential development of such imports, and;
- difficulties for producers in other countries to comply with the proposed SPS regulations.

2.3.5 Routine or emergency format?

Routine Notifications

Except in emergencies, a notification 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. The notification procedures require that measures are to be notified “well before the entry into force of the relevant measure”. As such, a notification should be made when a draft with the complete text of a proposed regulation is available and when amendments can still be introduced and taken into account. The procedures recommend that a normal time limit for comments on notifications of at least 60 days is allowed before a measure comes into force.

Notifying countries should grant requests for extension of the comment period wherever practicable, in particular with regard to notifications relating to products of particular interest to developing countries. Extensions may be necessary 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 should normally be provided. For proposed SPS measures that unambiguously facilitate trade, countries may reduce or eliminate the period for receiving comments. But to enhance transparency, notifications should be made as early as possible.

Emergency Measures

The routine consultation process can be reduced or eliminated in genuine emergencies, which the SPS Agreement defines as cases “where urgent problems of health protection arise or threaten to arise” for the country implementing the measure. Emergency measures may be notified either before or immediately after they come into effect, with an explanation of the reasons for resorting to emergency action, as requested in the emergency notification form.

However, it should be noted that if the notification of a routine measure has been “overlooked” or is late for whatever reason, the routine notification form should be used even if the recommended comment period cannot be offered. In other words, the fact that the notification is late should not become the reason for using the emergency format; it is preferable that the notification is made late rather than not at all.

2.3.6 Filling in the Notification Form

Who Writes the Notification?

Notifications should be written, or at least scrutinized, by someone (such as the author of the document being notified) who has a good knowledge of the measure being notified. It is not necessarily the officials working at the notification authority that have to do this. This competence may be elsewhere. For instance, the notification form could be filled in by a person working at a national standard-setting body responsible for developing the regulation which will give rise to the proposed new trade measure. Nevertheless, given that the measure is an SPS measure, it remains the responsibility of the notification authority to ensure that a notification is correctly completed and is sent to the WTO.

All notifications to the WTO Secretariat are required to be in one of the three working languages of the WTO: English, French or Spanish. The SPS Committee has adopted forms to be used for routine and emergency notifications. These are available from the Secretariat in electronic format or in document G/SPS/7/Rev.2 (Recommended procedures for implementing the transparency obligations of the SPS Agreement (Article 7) contained in Annex C).

Routine Notifications

Information contained in the notifications should be as complete as possible and no section should be left blank. Where necessary, “not known” or “not stated” should be indicated.

Routine Notification Form	
Item	Description
1. Member notifying	Government, including the competent authorities of the European Communities, which is making the notification. <u>Example</u> : Canada

Routine Notification Form	
Item	Description
2. Agency responsible	<p>Body elaborating a proposal for or promulgating a sanitary or phytosanitary regulation.</p> <p><u>Example:</u> Department of Health</p>
3. Products covered	<p>Use clear definitions to aid understanding of the notification by country officials and translators. Avoid abbreviations.</p> <p><u>Example:</u> Fresh fruit and vegetables, ornamental, fruit-bearing and forest plants</p> <p>Tariff item should be provided, using the Harmonized System, where possible, at least to chapter level.</p> <p><u>Example:</u> Frozen/chilled de-boned beef (HS Nos. 0201 30, 0202 30)</p>
4. Regions or countries likely to be affected	<p>Identify the geographical regions or countries likely to be affected, to the extent relevant or practicable. Where possible, list the countries affected. Otherwise use suitable wording such as “any countries exporting the commodities to Thailand”, or “all countries susceptible to bluetongue”.</p> <p><u>Example:</u> State of California, United States</p>
5. Title, language and number of pages of the notified document	<p>This item must contain the title of the proposed or adopted (in the case of late submissions) sanitary or phytosanitary regulation, the number of pages in the notified document, and the languages in which it is available.</p> <p>If a translation exists of the whole document, or a translated summary of the document, indicate this here.</p> <p><u>Example 1:</u> Department of Agriculture (DA) Memorandum Order No. 18, series of 1999: SGS Inspection of Buffalo Meat Export from India to the Philippines (2 pages).</p> <p><u>Example 2:</u> (Draft) Regulations Governing the Tolerances for Certain Seeds in Certain Agricultural Products. Government Notice No. R.1202 dated 15 October 1999 (3 pages). Available in English and French.</p>
6. Description of content	<p>Summarize the SPS regulation clearly, indicating its health protection objective and content. Describe the species or products and countries affected, the status quo and significance of the proposed changes. Where practicable also include an outline of the specific sanitary measures the regulation will impose. To the extent possible, describe the likely effects on trade.</p> <p>The summary should be as complete and accurate as possible to allow full understanding of the proposed regulation. Write clearly and without abbreviations. You could specify the exact risks, e.g. “to protect Australian horses from the entry, establishment or spread of equine influenza”.</p> <p>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 and which parts fall under the TBT Agreement.</p>

Routine Notification Form	
Item	Description
	<p><u>Example 1:</u> Limits the number of seeds of <i>Argemone mexicana</i>, <i>Convolvulus</i> spp, <i>Crotalaria</i> spp, <i>Datura</i> spp, <i>Ipomoea purpurea</i>, <i>Lolium temulentum</i>, <i>Ricinus communis</i> or <i>Xanthium</i> spp. to 1 seed per 10 kg of each of the mentioned agricultural products. Soya beans may contain 3 seeds per 10 kg (excluding soya beans intended for consumption by infants or young children). Does not apply to an agricultural product that will undergo sifting to reduce the number of poisonous seeds or that is intended for animal consumption.</p> <p><u>Example 2:</u> The Pest Management Regulatory Agency (PMRA) of Health Canada has recently approved an application to amend the registration of ethylene-bisdithiocarbamate fungicides in order to allow their use on endives and to establish safe handling procedures for this fungicide.</p> <p>SPS element: This proposed regulatory amendment would establish an MRL for residues of ethylene-bisdithiocarbamate fungicides resulting from this use in endives, in order to permit the sale of food containing these residues. After the review of all available data, the PMRA has determined that an MRL for ethylene-bisdithiocarbamate fungicides of 7 p.p.m. in endives would not pose an unacceptable health risk to the public.</p> <p>TBT element: The proposed regulatory amendments also establish safe handling guidelines to prevent health risks from domestic or international transportation and handling.</p> <p><u>Example 3:</u> The Animal and Plant Health Inspection Service (APHIS) is establishing regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment to meet specified certification or destination requirements if they are intended to be moved into or through areas of the United States that are not infested with gypsy moth.</p>

Routine Notification Form	
Item	Description
7. Objective and rationale	<p>Put a cross in the relevant box. SPS measures must belong to one of these categories (and can fit into more than one).</p> <p><input checked="" type="checkbox"/> Food safety if the measure is to protect human life or health from:</p> <ul style="list-style-type: none"> risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs. <p>Take particular care that food safety measures fit these very specific criteria. They must be to protect against health risks, and not merely set compositional standards. They must also deal with one of the four categories of health risk (additives, contaminants, toxins or disease-causing organisms). Note that contaminants include pesticide and veterinary drug residues and extraneous matter. Food safety measures involving labelling, quality or nutrition may also (or alternatively) require notification under the TBT Agreement.</p> <p><input checked="" type="checkbox"/> Animal health if the measure is to protect animal life or health, including fish and wild fauna, from:</p> <ul style="list-style-type: none"> risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs. <p><input checked="" type="checkbox"/> Plant protection if the measure is to protect plant life or health, including fish and wild fauna, from:</p> <ul style="list-style-type: none"> risks arising from the entry, establishment or spread of pests (including weeds), diseases, disease-carrying organisms or disease-causing organisms. <p><input checked="" type="checkbox"/> Protect humans from animal/plant pest or disease if the measure is to protect human life or health from:</p> <ul style="list-style-type: none"> risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests. <p><input checked="" type="checkbox"/> Prevent territory from other damage from pests if the measure is to protect from:</p> <ul style="list-style-type: none"> other damage from pests, including weeds <p>This could for example be relevant to plants that pose a problem by their invasiveness or weediness, but may not necessarily spread a disease.</p>
8. Existence of international standard, guideline or recommendation	<p>If a relevant international standard, guideline or recommendation exists, put a cross in the box provided for the appropriate standard-setting organisation. Give the appropriate reference of the existing standard, guideline or recommendation and briefly describe how the proposed regulation deviates from the international standard, guideline or recommendation. If no international standard, guideline or recommendation exists, put a cross in the box 'none'.</p> <p><u>Example:</u> The current Codex standards for histamine levels are applicable only to certain species of fish. The proposed Australia/New Zealand standard restricts histamine levels in all fish.</p>
9. Relevant documents and language(s) in which these are available	<p>Several different types of publications can be referenced here. Publications which you should reference are:</p> <p>(a) Publication where notice of the proposed regulation appears, including date and reference numbers;</p> <p>(b) Proposal and basic document to which proposal refers (with specific reference number or other identification), and the language(s) in which the notified documents and any summary of these are available;</p> <p>(c) Publication in which proposal will appear when adopted;</p> <p>If it is necessary to charge for documents supplied, the amount of the charge should be indicated.</p>

Routine Notification Form	
Item	Description
	<p><u>Example 1</u>: Official Journal No.3, February 1999 (in Albanian).</p> <p><u>Example 2</u>: Resolution No. 30 of the Ministry of Agriculture, Livestock, Fisheries and Food of 18 September 1998 (6 pages, in Spanish. Summary in English available upon request). Charge: 2 USD per copy.</p> <p><u>Example 3</u>: Framework Directive on materials and articles intended to come into contact with foodstuffs (89/109/EEC, O.J. No L349 – 13 February 1990 p.2b).</p>
10. Proposed date of adoption	<p>The date when the sanitary or phytosanitary regulation is expected to be adopted (or approved); when no more changes will be made to the text of the measure.</p> <p><u>Example 1</u>: 2 February 2000</p> <p><u>Example 2</u>: Anticipated early 2000</p> <p><u>Example 3</u>: When the final regulations are published in the Government Gazette. This will not be before 1 April 2000.</p>
11. Proposed date of entry into force	<p>The date from which the requirements in the regulation are proposed or decided to enter into force. Where appropriate, Members should accord longer time-frames for compliance on products of interest to developing country Members. In the Decision on Implementation-Related Issues and Concerns (WT/MIN/(01)/17) taken on 14 November 2001 at the Fourth Ministerial Conference in Doha Qatar, it was decided that this “longer time-period for compliance” shall be understood to mean normally a period of not less than 6 months. Furthermore, where the appropriate level of sanitary and phytosanitary protection does not allow scope for the phased introduction of a new measure, but specific problems are identified by a Member, the Member applying the measure shall upon request enter into consultations with the country with a view to finding a mutually satisfactory solution to the problem while continuing to achieve the importing Member’s appropriate level of protection.</p> <p><u>Examples 1</u>: To be determined.</p> <p><u>Example 2</u>: On publication of the final regulations in the Government Gazette. This will not be before 1 April 2000.</p>
12. Final date for comments and agency or authority handling comments	<p>The day by which other countries may submit comments should normally be at least 60 days after the notification is distributed by the WTO. Give a specific date.</p> <p>Give a specific contact for receipt of comments. This can be the notification authority or enquiry point, or another agency which is actually handling the comments on this notification. Give the full address, including fax number in international format, and email address.</p> <p>For proposed measures which facilitate trade, Members may reduce or eliminate the period for receiving comments.</p>

Routine Notification Form	
Item	Description
	<p><u>Example 1:</u> 15 January 2000 Director: Food Control Department of Health Private Bag X828 Pretoria 0001 South Africa Tel: +(27 12) 312 0185 Fax: +(27 12) 326 4374 E-mail: ventert@hltrsa.pwv.gov.za</p> <p><u>Example 2:</u> The domestic closing date for comments is 17 November 1999. However comments from Members will be accepted until 17 December 1999 if notice of intention to comment is received by the domestic closing date. Agency or authority designated to handle comments: <input checked="" type="checkbox"/> National notification authority,</p>
13. Texts available from	<p>If available from the notification authority or the enquiry point, put a cross in the respective box. If available from another body, give its address, fax number and (if available) E-mail address. Give the precise Internet address of this document if available.</p> <p>Example 1: Texts available from: ... , <input checked="" type="checkbox"/> National enquiry ... Also available on Internet: "http://www.maf.govt.nz/SPS/index.htm" Example 2: Ms Doris Chan Principal Trade Officer Trade Department Trade Department Tower 700 Nathan Road Hong Kong, China Fax: (852) 2789 2491</p>

Emergency Measures

Information contained in the notification form should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated. The emergency notification form is contained in the recommended procedures for implementing the transparency obligations of the SPS Agreement, in Annex C.

Emergency Notification Form	
Item	Description⁴
1. Member notifying	Government, including the competent authorities of the European Communities, which is making the notification.
2. Agency responsible	Body elaborating a proposal for or promulgating a sanitary or phytosanitary regulation.

⁴ For examples on how to fill the notification form see shaded boxes in routine form except for Items 7 and 10 in the emergency format.

Emergency Notification Form	
Item	Description⁴
3. Products covered	<p>Use clear definitions to aid understanding of the notification by country officials and translators. Avoid abbreviations.</p> <p>Tariff item should be provided, using the Harmonized System, where possible, at least to chapter level.</p>
4. Regions or countries likely to be affected	<p>Identify the geographical regions or countries likely to be affected, to the extent relevant or practicable. Where possible, list the countries affected. Otherwise use suitable wording such as “any countries exporting the commodities to Thailand”, or “all countries susceptible to bluetongue”.</p>
5. Title, language and number of pages of the notified document	<p>This item must contain the title of the sanitary or phytosanitary regulation. Number of pages in the notified document. Languages in which the notified document is available.</p> <p>If a translation exists of the whole document, or a translated summary of the document, indicate this here.</p>
6. Description of content	<p>Summarize the SPS regulation clearly, indicating its health protection objective and content. Describe the species or products and countries affected, the status quo and significance of the proposed changes. Where practicable also include an outline of the specific sanitary measures the regulation will impose. To the extent possible, describe the likely effects on trade.</p> <p>The summary should be as complete and accurate as possible to allow full understanding of the proposed regulation. Write clearly and without abbreviations. The specification could be made of the exact risks, e.g. “to protect Australian horses from the entry, establishment or spread of equine influenza”.</p> <p>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 and which parts fall under the TBT Agreement</p>

Emergency Notification Form	
Item	Description ⁴
7. Objective and rationale	<p>Put a cross in the relevant box. SPS measures must belong to one of these categories (and can fit into more than one).</p> <p><input checked="" type="checkbox"/> Food safety if the measure is to protect human life or health from:</p> <ul style="list-style-type: none"> risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs. <p>Take particular care that food safety measures fit these very specific criteria. They must be to protect against health risks, and not merely set compositional standards. They must also deal with one of the four categories of health risk (additives, contaminants, toxins or disease-causing organisms). Note that contaminants include pesticide and veterinary drug residues and extraneous matter. Food safety measures involving labelling or nutrition may also (or alternatively) require notification under the TBT Agreement.</p> <p><input checked="" type="checkbox"/> Animal health if the measure is to protect animal life or health, including fish and wild fauna, from:</p> <ul style="list-style-type: none"> risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs. <p><input checked="" type="checkbox"/> Plant protection if the measure is to protect plant life or health, including forests and wild flora, from:</p> <ul style="list-style-type: none"> risks arising from the entry, establishment or spread of pests (including weeds), diseases, disease-carrying organisms or disease-causing organisms. <p><input checked="" type="checkbox"/> Protect humans from animal/plant pest or disease if the measure is to protect human life or health from:</p> <ul style="list-style-type: none"> risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests. <p><input checked="" type="checkbox"/> Prevent territory from other damage from pests if the measure is to protect from:</p> <ul style="list-style-type: none"> other damage from pests, including weeds. <p>This could for example be relevant to plants that pose a problem by their invasiveness or weediness, but may not necessarily spread a disease.</p>
8. Nature of urgent problem(s)	<p>Indicate the reason (s) for resorting to emergency action (e.g., animal disease outbreak with suspected links to imports).</p> <p><u>Example 1:</u> Emergency measures to preserve plants and protect them against the harm caused by the Mealy bug <i>Maconellicoccus hirsutus</i> (Green).</p> <p><u>Example 2:</u> Findings of higher content of arsenic in poultry meat.</p> <p><u>Example 3:</u> The Colombian Agricultural Institute - ICA (the official phytosanitary protection body of Colombia) has declared the presence of <i>Thrips palmi</i> karny on its territory and other unidentified species of thrips, but without identifying the areas affected, the areas unaffected or the quarantine measures taken to control and/or eradicate the problem.</p>
9. Existence of international standard, guideline or recommendation	<p>If a relevant international standard, guideline or recommendation exists, put a cross in the box provided for the appropriate standard-setting organisation. Give the appropriate reference of the existing standard,</p>

Emergency Notification Form	
Item	Description⁴
	guideline or recommendation and briefly describe how the proposed regulation deviates from the international standard, guideline or recommendation. If no international standards, guideline or recommendation exists, put a cross in the box 'none'.
10. Relevant documents and language(s) in which these are available	Documents which should be referenced include: (a) Measure(s) taken and basic regulation which was modified (with specific reference number or other identification), and the language(s) in which the notified documents and any summary of these are available; (b) Publication in which regulation will appear; If it is necessary to charge for documents supplied, the amount of the charge should be indicated.
11. Date of entry into force and period of application	The date from which the requirements in the measure entered into force, and, the period of time during which they will apply. (For example: immediate entry into force [date], duration [of two months] or [to be decided].) <u>Example 1:</u> This interim rule was effective 23 August 1999. <u>Example 2:</u> Entry into force on the day of signing by the Director-General of Health and in all other cases when notified in the <i>Gazette</i> (15 June 1999) and will remain in force for a period not exceeding 6 months unless revoked earlier.
12. Agency or authority handling comments	Give a specific contact for receipt of comments. This can be the notification authority or enquiry point, or another agency which is actually handling the comments on this notification. Give the full address, including fax number in international format, and email address.
13. Texts available from	If available from the notification authority or enquiry point, put a cross in the respective box. If available from another body, give its address, fax number and (if available) E-mail address. Give the precise Internet address of this document if available.

Making an Addendum, Corrigendum or Revision to an SPS Notification

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

- An addendum is used to provide additional information or changes to an original notification. A Member may wish to indicate on the addendum if the final regulation has been substantially modified from 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. The recommended procedures for implementing the transparency obligations of the SPS

Agreement (Article 7) contain suggested formats for addenda, corrigenda and revisions. These procedures are contained in Annex C.

Addenda

WTO Members should notify changes in the status of a notified SPS regulation. The issuance of an addendum allows WTO Members to track the status of an SPS regulation via its unique notification number. Addenda to SPS notifications should be made in a number of circumstances, such as:

- when a proposed regulation is either adopted or comes into force. A WTO Member may wish to indicate on the addendum if the final regulation has been substantially modified from the notified proposal.
- if a proposed regulation is withdrawn;
- if a regulation is revoked;
- if the comment period has been extended;
- if the period of application of the existing notification is extended;
- if the scope of application of the existing notification is reduced, either in terms of WTO Members affected or products covered. Such a change may warrant the extension of the comment period.

An addendum should:

- briefly recap what was notified, when and what it was about - this is a practical requirement, and reduces the need for WTO Members to have to go back to the original notification to check what it was about;
- specify what change has been made and why - briefly state why the information, dates, etc have been changed; and
- restate the comments deadline, even if it has not been changed - as a reminder to Members that if they wish to comment it must be done by this date.

Corrigenda

WYTO Members should inform the Secretariat of any error(s) contained in their original notification. The Secretariat will issue a corrigendum accordingly.

Revisions

Revisions replace an existing notification. Revisions should be submitted, for example, when the scope of application of a notified regulation is extended, either in terms of WTO Members affected or products covered, or if a notification contained a large number of errors which necessitated issuing a revision. A WTO Member should provide a further period for comments on the revised notification, normally 60 days.

Rescinding an SPS Emergency Measure

Emergency SPS measures are invoked on a temporary basis. This means that after its period of application has expired an emergency notification should be revoked. As the revocation of a measure also affects trade, it is necessary to make a notification to the WTO when this happens. This applies also to the revocation of an SPS measure notified on a routine basis. The WTO Secretariat is available on request to assist countries with filling out the notification formats. Some countries in the past, when unsure about how to notify, have sent the Secretariat draft notifications for comments on format, structure or clarity.

2.3.7 Where to Send an SPS Notification?

Notifications should be sent by fax, e-mail or air mail to the central registry of notifications (CRN) at the WTO either through the WTO representative or directly. Countries are not required to send the legal texts of the proposed regulation that is being notified. The address is:

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

2.3.8 Responding to Requests and Comments

Responding to Requests from Others

When a country has notified an SPS measure, it is obliged to supply copies of the proposed regulation upon request. The notification authority should ensure it has the document in hand before making a notification. Requests for notified document normally come through the other country's notification authority or enquiry point and WTO Members have a legal obligation to respond only to these. However, ideally countries should respond in the same way to all requests for notified documents, including those which may come directly from industry groups or individuals.

Requests should normally be fulfilled within five working days; if this cannot be done, the request should be acknowledged by fax or e-mail and an estimate given of the anticipated delay. Documents to be sent may include the following:

- a covering letter responding to the request;
- the regulation that has been notified;
- an explanatory note (if one has been prepared); and
- any relevant documents specified in box 8 of the routine notification form or box 9 of the emergency notification form, if requested.

Any documents which are still at a draft stage should be clearly identified as such. Each document sent should be marked with the relevant WTO notification number. WTO Members should use fax and e-mail facilities to the extent possible in responding to requests

for documentation or information. WTO Members are encouraged to publish their sanitary or phytosanitary measures on the World Wide Web, to facilitate the supply of documents.

Translations

When a translation of a relevant document exists or is planned, this fact should be indicated on the WTO notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available should be similarly indicated. If a translation of a document or summary exists in the language of the requesting country, or, as the case may be, in the WTO working language used by the requesting country, it should be automatically sent with the original of the document requested.

Where documents are not available in English, French or Spanish, developed countries shall, upon request, supply a translation of the document, or in case of voluminous documents, a translation of a summary of the document, in English, French or Spanish. When a country seeks a copy of a document relating to a notification which does not exist in that country's WTO working language, the notifying country should indicate if any other countries have requested a copy of the document. The country seeking a copy of a document relating to a notification may contact other countries in order to determine whether they are prepared to share their translation.

Any country possessing an unofficial translation of a document relating to a notification should inform the notifying country of the existence of the unofficial translation and is encouraged to make it available to other interested countries, through electronic facilities where appropriate. In doing so, the country should clearly indicate the unofficial and non-committal nature of the translation.

Dealing with Comments from Others

A prime purpose of notifying proposed regulations is to allow countries that might be affected by them to be consulted during the drafting process. Government authorities that have notified proposed regulations might receive comments on such regulations. Comments will either go to the notification authority or any other address specified in the final box of the notification form (Items 13 and 12 for routine and emergency notifications, respectively). Nevertheless, regardless of where comment is sent to, the notification authority remains responsible for ensuring that the tasks outlined in the previous paragraphs are carried out. The notification authority should establish good working relationships with relevant agencies, and documented administrative procedures to ensure this happens.

When other countries make comments on a notified SPS measure, the country notifying has certain obligations to meet. The country receiving comments should, without further request:

- acknowledge the receipt of such 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 it will take these comments into account and, where appropriate, provide additional relevant information on the proposed sanitary or phytosanitary regulations 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;
- where possible make available to other countries comments and questions it has received and answers it has provided, preferably through electronic facilities.

WTO Members should grant requests for extension of the comment period wherever practicable, in particular with regard to notifications relating to products of particular interest to developing country WTO Members, 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 should normally be provided.

2.3.9 Requesting Documents Notified by Other Countries

As noted above, all requests for documents should be made to the notifying country's notification authority unless the enquiry point is specified or an alternative address is listed in the final box of the notification. Up-to-date notification authority addresses are listed in documents in the G/SPS/NNA/ series. Addresses for enquiry points are listed in the G/SPS/ENQ/series. Both are available electronically from the WTO Internet site (<http://www.wto.org/>). You are encouraged to ensure that the information about your own enquiry point and notification authority in these documents is correct, and inform the WTO Secretariat of any changes.

Any requests for the documents notified should give the notification symbol (for example: G/SPS/N/COL/1), and specify exactly which documents are needed. If your working language is not that of the notifying country, request any translation that exists.

2.3.10 Operating the SPS Enquiry Point

Responsibilities

The following section explains the operation of an enquiry point and the major tasks that it handles on a routine basis:

- document and information requests;
- general enquiries; and
- delivery and charging.

The enquiry point is the single government body responsible to provide "answers to all reasonable questions" from interested countries, as well as for the provision of relevant documents, regarding:

- any sanitary or phytosanitary regulations adopted or proposed within its territory;

- any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;
- risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;
- the membership and participation of the country, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems,
- the membership and participation of the country in bilateral and multilateral agreements and arrangements within the scope of the SPS Agreement; and,
- the texts of such agreements and arrangements.

Enquiry points should also provide, upon request, information on participation in any bilateral or multilateral equivalence agreements and arrangements.

Requests for Information

Other government agencies than the enquiry point in your territory will continue to receive direct requests on matters such as those outlined above, and they should be free to continue answering them. Enquiries that come to the individual units within government agencies (i.e. not through the enquiry point) can be answered directly and do not need to be processed through the enquiry point system. However, the enquiry point is listed by the WTO as having this responsibility, and must respond to any requests made of it.

Requests to the enquiry point may come from other countries' enquiry points or originate from other interested parties (such as industry groups) in countries, and from non-Member countries. Although the legal obligation is only to respond to requests from other WTO Members, the enquiry point is encouraged to treat all such enquiries equally, and respond to all reasonable requests for information about the country's SPS measures. It is best to reply directly to whoever makes the request, but to support the enquiry point system, it is recommended to send a copy of replies (and a list of material supplied) to the relevant country's enquiry point.

Requests for information that are best filled (completely or in part) by another agency should be forwarded to the appropriate agency. That agency should be asked to advise the enquiry point when the request is fulfilled; if this is not done within a reasonable time, the enquiry point should remind that agency to do so.

Delivery and Charging

While the mode of delivery is at the discretion of the WTO Member concerned, it is recommended that delivery of documents should be by the fastest means possible. In the first instance, if the WTO Member has such facilities, the documents should be sent by e-mail, or by fax. Alternatively, a WTO Member can send the documents by post or via a requesting WTO Member's diplomatic mission in their territory.

A country may only charge the same cost for the documents as it would for its own nationals plus the cost of delivering the documents. However, it is not very cost-effective or easy to recover such small amounts as are normally charged for any documents and therefore you are encouraged not to charge as a gesture of goodwill.

2.3.11 Publication of Regulations

The Requirement

The fundamental component of transparency under the SPS Agreement is publication of regulations. This is a general obligation on WTO Members, and does not relate specifically to the work of either the notification authority or enquiry point. WTO Members are obliged to:

- ensure that all SPS regulations which have been adopted are published promptly in such a manner as to enable interested countries to become acquainted with them. Regulations to be published include laws, decrees or ordinances which are applicable generally.
- 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 countries and particularly in developing countries, to adapt their products and methods of production to the requirements of the importing country.

In the Decision on Implementation Related Issues and Concerns (WT/MIN(01)17) taken on 14 November 2001 at the Fourth Ministerial Conference in Doha, Qatar, it was decided that the “reasonable interval” between the publication of an SPS regulation and its entry into force shall normally mean a period of not less than 6 months. However, the entry into force of measures which liberalize trade should not be unnecessarily delayed.

The Internet

Countries are encouraged to publish SPS regulations on the Internet where possible. Publication on the internet has a number of advantages and benefits to countries than more traditional methods. It:

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

3 TBT “ON-THE JOB-TRAINING AND LESSONS LEARNT

3.1 Introduction

A study tour of the Vietnamese officials responsible for the Network of Notification Authorities and Enquiry Points on Technical Barriers to Trade took place from 15 to 25 May 2006 in conformity with the TOR. The tour enabled the Vietnamese experts to discuss with a number of specialists the operation of the TBT Agreement with special emphasis on its transparency provisions and collect publications and other documents provided by the various institutions listed in Box 1.

Box 1

The TBT-relevant Institutions Visited by the Vietnamese Delegation

- WTO (World Trade Organisation) Secretariat, Geneva
- ISO (International Standardization Organisation) Central Secretariat, Geneva
- ITC (International Trade Centre UNCTAD/WTO), Geneva
- EC Commission DG ENTR, Brussels
- EC Commission DG Trade, Market Access Unit, Export Help Desk for Developing Countries
- SECO (The State Secretariat for Economic Affairs); Berne, Switzerland

The TOR of the activity indicated the specific objectives as follows:

- to assist the competent Vietnamese ministries to adequately train the officials staffing and running the TBT enquiry points;
- to assist the notification authorities (including the ministerial and provincial level focal points) to answering enquiries and making notifications to the WTO Secretariat at a time when WTO accession will result in an increase in the adoption or implementation of new standards, new technical regulations and new conformity assessment procedures, or in the amendment of existing ones.

The TOR also suggests that exposure to best practices and to management techniques for TBT databases and information-exchange platforms developed by the TBT enquiry points and notification authorities of model countries, appear as essential instruments to reach such goal.

With its accession to the WTO, Vietnam will be bound by the WTO Agreement on Technical Barriers to Trade (TBT) and will have to comply with its transparency obligations including the obligation to publish the relevant materials and maintain a TBT enquiry point which deals with product standards, technical regulations and certification systems.

Technical regulations and standards (TRS) are an increasingly important aspect of international trade. TRS can raise unit costs of production and therefore they may inhibit international export and import operations. In general, if TRS differ across countries this will segment markets, even if identical norms are applied in each country to domestic and foreign goods. Prices for similar goods of uniform quality will then not be equal across countries, as the different standards inhibit arbitrage. This trade-impeding effect of TRS explains why they are dealt with in the GATT/WTO and are subjected to a greater transparency through the operation of national enquiry points and notification authorities created under the provisions of the TBT Agreement of WTO.

3.2 Institutional Framework and Organization of the TBT Office in Vietnam

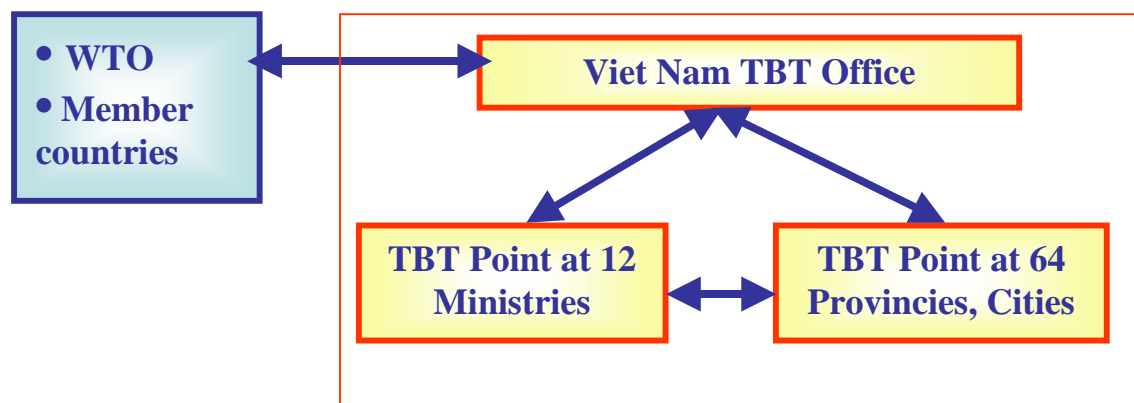
Vietnam's WTO/TBT Notification Authority and Enquiry Point (hereinafter, Vietnam's TBT Office) belongs to the Directorate for Standardization, Metrology and Quality (STAMEQ) of the Ministry for Science and Technology (MOST). It was established by Decision No. 356/2003/QĐ-BKHCHN of 25 March 2003 of the Ministry of Science and Technology and reconfirmed in the Prime Minister's Decision No. 140/2004/QĐ-TTg of 5 August 2004. The charter on the organization and functions of Vietnam WTO/TBT Office was adopted with Decision No.12/2003/QĐ-BKHCHN of 26 May 2003. The TBT Office is the national contact desk which carries out the transparency obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

Vietnam's TBT Office has a network in 64 provinces directly subordinated to the central government and in 12 central ministries (as implemented by Decisions 444/2005/QĐ-TTg and 114/2005/QĐ-TTg of the Prime Minister). The network of central ministries is made-up by the Ministry of Trade, Ministry of Construction, Ministry of Transportation, Ministry of Health, Ministry of Justice, Ministry of Labour, Invalids and Social Affairs, Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment, Ministry of Post and Telecommunications, Ministry of Fisheries and Aquatic Resources, Ministry of Culture and Information, and Ministry of Science and Technology.

Detailed responsibilities of the Vietnam TBT Office are set forth in the Regulation of 26 May 2006 on the organization and operation of Vietnam's TBT network adopted together with Prime Minister's Decision 114/2005/QĐ-TTg. In relevant part, they cover the following areas:

- Notifying Vietnamese technical regulations, standards and processes of conformity assessment and on other issues related to Vietnam's technical barriers to trade;
- Taking initiative in reviewing, detecting and notifying on technical regulations and process of conformity assessment, which can restrict trade of WTO Member countries;
- Receiving TBT notifications from ministerial-level or local TBT notification authorities and processing them before forwarding them;
- Notifying bilateral and multilateral agreements which Vietnam has signed and which are related to technical regulations, standards and processes of conformity assessment;
- Receiving and forwarding WTO Member countries' notifications, questions and document-supplying requests to ministerial-level or local TBT notification authorities and enquiry points;
- Coordinating operation and guiding notification and enquiry operations to the authorities in the network.

ORGANIZATION CHART OF TBT NETWORK



Up to now, the network of Vietnam's TBT Office has been undergoing a process of gradual establishment and organization. An Inter-Branch Committee for Technical Barriers to Trade (called the Inter-Branch TBT Committee) was established on 3 November 2005 by virtue of Decision No. 2788/QD-BKHCN of the Minister of Science and Technology.

According to Decision No. 444/2005/QD-TTg of 26 May 2005, a large amount of technical and regulatory activities will be undertaken during the course of the next 5 years to perfect the system of technical regulations, to improve the system of Vietnamese standards, and to intensify the procedures for assessing the conformity with technical regulations and standards. All these activities will need to be reflected by an equivalent amount of transparency efforts by Vietnam's TBT Office and Vietnam's TBT network. For example, a database containing the full range of standards, technical regulations and conformity assessment procedures is being considered. Vietnam's TBT Office has also just started to build-up the internet links/networks (not the LAN) and its website (<http://www.tbvn.org>) with regular updated information being linked with the STAMEQ's pre-existing website (<http://www.tcvn.gov.vn>).

Vietnam's TBT Office has one collection of Official Gazettes in Vietnamese and English language dating from June 2003 to date. Some technical regulations, decisions, circulars, joint circulars, decrees, directives, resolutions, orders and laws related to TBT regulation and technical issues are also being progressively chosen and consolidated for building-up a database named "*TBT Regulations*". This database will be made available to interested stakeholders.

At the present time, there are 9 staff officials employed in Vietnam's TBT Office: a Director, a Deputy Director, an IT Officer, a Notification Authority Officer and an Enquiry Point Officer, an Interpreter and three support staff in the Administration Department (an accountant, an auditor and support staff). The ministerial and provincial level TBT Notification Authorities and Enquiry Points are undergoing a process of establishment.

3.3 General TBT Issues

This section focus on the general TBT matters that were considered in the presentations and in the materials that were handed-out by the speakers at the various institutions listed in Box 1.

The WTO Rules and TBT . The WTO does not require that member countries have product standards. Nor does the WTO develop or write standards. The GATT 1994 Agreement on Technical Barriers to Trade (TBT) aims to ensure that mandatory technical regulations, voluntary standards, and testing and certification of products do not constitute unnecessary barriers to trade.

There is close relationship between the TBT agreement, the national treatment requirement, and Article XX GATT (which allows for measures to restrict trade if necessary to protect public health or safety). The link with national treatment (Article III GATT) is that ‘like’ products produced in foreign countries may be subjected to a variety of conformity assessment requirements that can be construed to be discriminatory but may be necessary to ensure compliance with prevailing regulations.

Box 2

What Are Standards and Technical Regulations

It is important, for the following discussion, to make clear that there is an important difference between standards and technical regulations. Standards are usually voluntary. They are generally defined by industry or nongovernmental standardization bodies such as the *American National Standards Institute*, the *British Standards Institution*, the *Deutsches Institut für Normung* or the *Association Française de Normalisation*. In Vietnam, it is the *Directorate for Standards and Quality of Vietnam (STAMEQ)*, under the Ministry of Science and Technology (MOST) that is the national standardization agency and is responsible for advising the Government on issues in the fields of standardization, metrology and quality management domestically, as well as representing Vietnam in international and regional organizations.

Standards are defined as documents ‘established by consensus and approved by a recognized body, that provide, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context’ (ISO Guide, 1991). Technical regulations in contrast are legally binding, and are usually imposed to safeguard human or animal health, or the environment. In most industrialized economies the number of standards greatly exceeds the number of technical regulations. Certification systems comprise the procedures to establish that products or production processes conform to the relevant standard or regulation.

The use of product standards is under the direct control of firms and industries. More often than not standards are market driven, and firms desiring to export to or sell in a market have strong incentives to satisfy prevailing standards, be it to ensure compatibility or to signal that products meet minimum quality norms.

In the case of technical product regulations there is no choice. Firms must comply. In the case of both standards and technical regulations, the underlying norms are often determined through a cooperative international process that occurs under the auspices of specialized international bodies. A major player in this field is the International Organization for Standardization (ISO), which is located in Geneva, Switzerland. Whether or not to make norms developed by ISO technical committees mandatory is up to governments.

The link with Article XX is that both parts of the GATT deal with measures taken by governments to safeguard public health and safety, among other things. Indeed, the preamble of the TBT agreement repeats language found in Article XX:

Recognizing that no country should be prevented from taking measures necessary ... for the protection of human... life or health ... subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade
....

The TBT agreement is complemented by a stand alone agreement dealing with sanitary and phytosanitary (SPS) measures which is discussed in another section of this report.

The TBT agreement embodies disciplines on the adoption of TRS in member countries, and on conformity assessment, testing and certification procedures. It also has a variety of transparency provisions. The basic rule is that central government bodies do not discriminate (MFN, national treatment) and do not write technical regulations that are more trade-restrictive than necessary to meet legitimate objectives. The latter include national security, the prevention of deceptive practices, the protection of human health or safety, animal or plant life and health, and the environment.

Relevant international standards developed by bodies such as the ISO - if they exist - must be used as the basis for technical regulations, except if this would be inappropriate because of climatic, geographical or technological factors. Technical regulations based on product requirements should be worded in terms of performance rather than design or descriptive characteristics. A Code of Good Practice applies regarding the preparation, adoption and application of voluntary standards.

Conformity Assessment

Conformity assessment procedures are also subject to non-discrimination. Here again, if relevant guides or recommendations issued by international standardizing bodies exist, these are to be used, except if inappropriate for national security reasons or deemed inadequate to safeguard health and safety. In principle, WTO members are to join and use international systems for conformity assessment. The results of conformity assessment procedures undertaken in exporting countries must be accepted if consultations determine these are equivalent to domestic ones.

Accreditation on the basis of relevant guides or recommendations issued by international standardizing bodies is to be taken into account as an indication of adequate technical competence of the foreign entity. Members are encouraged to negotiate mutual recognition agreements (MRAs) for conformity assessment procedures, and to apply the MFN and national treatment principles when permitting participation of foreign certification bodies in their conformity assessment procedures.

National Enquiry Point

A third component of standards disciplines is transparency-related, and builds upon the principle of publication of regulations contained in Article X GATT. Each member must establish a national enquiry point to answer questions and provide documents on:

- technical regulations adopted or proposed by bodies which have legal power to enforce them;
- standards adopted or proposed by central or local government bodies, or by regional standardizing bodies; and
- conformity assessment procedures, existing or proposed, applied by enforcing bodies (for a more extensive discussion see below).

Best efforts are to be made to ensure that enquiry points are also able to answer enquiries regarding standards adopted or proposed by non-governmental standardizing bodies such as industry associations, as well as conformity assessment procedures operated by such bodies.

Box 3

Trade Disputes under the TBT Agreement

There have been few disputes under the agreement. The TBT agreement was invoked in a 1996 case brought by Venezuela and Brazil against US standards for reformulated and conventional gasoline. However, the panel ruled against the US on the basis of Articles I and III GATT, not on the basis of the alleged violation of the TBT agreement. Another case that is relevant is Asbestos (WT/DS135/R) which involved an argument by Canada that a French ban on the manufacture, importation and sale of asbestos violated the TBT agreement because it was not necessary, and was not based on international standards. The EU argued that the asbestos ban was not a technical regulation in the sense of the TBT agreement. In considering these arguments, the panel determined that a measure constitutes a 'technical regulation' if it affects one or more given products, specifies the technical characteristics of the product(s) which allow them to be marketed in the territory of the member imposing the measure, and is mandatory. The panel concluded that the general prohibition on marketing asbestos and asbestos-containing products does not satisfy this definition.

Another dispute settlement case directly related to the TBT Agreement is the EC-Sardines case brought by Peru in 2001 (WTO, 2006). The case is not presented here since it remains outside the scope of this paper.

The WTO Secretariat established an information system under which national standards Bodies or enquiry points transmit to the ISO Information Centre in Geneva the notifications required under the Code of Good Practice for the preparation, adoption and application of standards.

Transparency and the TBT Agreement

The publication and notification requirements of the TBT Agreement, in conjunction with the national enquiry points, have an important role to play in fostering transparency. They help ensure that traders can readily determine the regulatory situation that prevails in markets to which they want to export. A weakness of the TBT Agreement is that language on voluntary product standards developed by industry associations is largely of a best-efforts nature. This reflects the fact that WTO disciplines focus on government actions - not the private sector. Although the agreement works smoothly, an important challenge confronting WTO members is to explore avenues for reducing the transactions costs incurred by traders due to differences in TRS, and perhaps more important, the excess costs incurred due to redundant testing and certification requirements. It is generally recognized that a top-down approach aiming at eliminating TRS-related trade conflicts through harmonization or mutual recognition will be difficult in the WTO context (Box 4).

Initiatives using a bottom-up approach to enforcement are likely to be more fruitful. That is, the emphasis might more productively be concentrated on certification activities and an expansion of the role of the private sector in such activities. In addition to PSI-type models, greater acceptance of the supplier's declaration of conformity could be encouraged.

Moreover, given the importance that is accorded to the role of competent international standards-setting bodies in defining standards, an important issue for WTO members and civil society in member countries is to ensure that the process through which TRS are developed allows for participation by affected stakeholders. To date, the major players in standards-setting bodies have been industry and subsets of the scientific community.

Box 4
Harmonization and Mutual Recognition

There are two major policy options to reduce the trade-limiting effect of TBT: harmonization and mutual recognition. Harmonization may involve unilateral adoption by one country of another's set of rules, or negotiation of a common set of disciplines. Examples abound of unilateral harmonization to the standard of another country. These are often driven by market size disparities: in 1992 Canada adopted US auto emission standards to ensure that its auto makers could realize economies of scale by avoiding separate production lines for the home and US markets. Switzerland adopted the EU TRS regime to ensure that Swiss goods could enter and circulate in the EU on the same basis as EU-produced goods. Many developing countries use TRS regimes developed in Europe or the US, often by maintaining systems inherited from a colonial past or military occupation. Others have deliberately adopted foreign norms. Unilateral recognition of foreign regulatory regimes can be a complement to adopting the standards of a trading partner or international norms. Thus, foreign certification for certain imports may be accepted as proof of safety. The Under-writers Laboratories (UL) mark is accepted in many countries.

Another approach is mutual recognition, under which countries agree to recognize (accept as equivalent) each others standards and conformity assessment procedures. Mutual recognition agreements (MRAs) are a cooperative mechanism through which the transaction costs associated with conformity assessment systems to establish compliance with standards can be reduced. MRAs may require some degree of harmonization of either standards or test procedures, especially in areas where mandatory standards or regulations apply, to ensure that the underlying norms satisfy basic minimum standards.

Finally, consideration needs to be given to the implications of the burden of proof that is currently imposed on non-members of a MRA that seek to accede. This burden can be quite high and give rise to situations where countries that satisfy technical requirements are nonetheless excluded for political or other reasons. A major policy issue is therefore to ensure that the MFN rule does not get circumvented through the negotiation of MRAs. A necessary condition for this to be the case is that non-members have the opportunity to join such agreements.

3.4 Working Modalities, Procedures and Best Practices of EP and NA.

The Establishment of an Enquiry Point

Enquiry points are set up to manage the notification procedure, to respond to requests for information made by enquiry points in third countries on announced proposals, and to analyse in liaison with enterprises and to co-ordinate government comments on proposals notified by the third countries. The EP also exchanges information with its counterparts abroad.

Two provisions of the TBT Agreements mandate Members to establish enquiry points:

- Article 10.1 concerns enquires regarding, *inter alia*, technical regulations, conformity assessment procedures and standards issued by central and local government bodies and non-governmental bodies which are entrusted with the legal power to enforce technical regulations.
- Article 10.3 relates, *inter alia*, to enquiries on standards and conformity assessment procedures issued by other non-governmental bodies of which they are members.

There is no obligation to ensure that the task of a national enquiry point is performed by a single organisation. However, governments are encouraged to set up only one enquiry point (although the possibility exists under Article 10.2 of setting up more than one, for legal and administrative reasons. For example, in Switzerland for historical and local politics reasons, there are two different institutions involved. However, it has been suggested (even by the Swiss authorities) that Vietnam should be advised to establish a single central government body performing all the EP functions at the same time to gain in efficiency and effectiveness.

Communication

The members are encouraged to issue brochures on their enquiry points. These brochures should follow a recommended layout which includes: (a) the objective and complete contact details of the EP; (b) the type of information that may be obtained from the EP; and (c) the facilities offered (including charges if any). (For a full account see:G/TBT/1/Rev. (pp.19-21). An example of that type of brochure has been made available to the Vietnamese delegation by the EC (EC, 2004) and Switzerland.

What should be notified? Among the main objectives of the TBT notification procedures are (i) transparency (inform WTO members and stakeholders), (ii) dialogue (avoid obstacles to trade, (iii) harmonization (encourage compliance with international standards). Technical regulations, conformity assessment procedures and standards are to be notified at a draft stage, applying standstill period (3 months) and in a specific form (comments, detailed opinion, blocking, etc). An enquiry point is requested to provide information (Articles 10.1 and 10.3) regarding the following matters:

- **Technical regulations** adopted or proposed within the Member's territory by central government bodies; local government bodies; non-governmental bodies, which have legal power to enforce a technical regulation; or regional standardizing bodies of which central. Local or non-governmental bodies, which have legal power to enforce a technical regulation are members or participants (Article 10.1);
- **Conformity assessment procedures**, or proposed conformity assessment procedures, operated within its territory by central government bodies; local government bodies, non-governmental bodies, which have legal power to enforce a technical regulation; or regional bodies of which central, local or non-governmental bodies, which have legal power to enforce a technical regulation, are members or participants (Articles 10.1.3 and 10.3.2).
- **Standards** adopted or proposed within its territory by central government bodies; local government bodies; by non-governmental standardizing bodies; or regional standardizing bodies of which central local or non-governmental bodies are members or participants (Article 10.1.2 and 10.3.1).
- **The participation** in, the provisions and membership of, international and regional standardizing bodies and conformity assessment systems, as well as bilateral and multilateral arrangements within the scope of this Agreements, of the following bodies: the Member; relevant central government bodies; relevant local government bodies; or relevant non-governmental bodies (Article 10.1.4 and 10.3.3);
- **The location of notices published** pursuant to the Agreement of the provision of information as to where such information can be obtained (Article 10.1.5); and

- **The location of the enquiry points** mentions in Article 10.3, i.e. the enquiry point in charge of answering queries on standards and conformity assessment procedures issued by non-governmental bodies, which do not have legal power to enforce a technical regulation and regional bodies of which they are members (Article 10.1.6).

Time Allowed for Comments

Technical regulations and conformity assessment procedures must be notified to the WTO Secretariat at the proposal stage, when amendments can still be made and comments still taken into account (exceptions do exist for urgent problems – Article 2.10 and 5.7). The TBT Committee encourages the EP to share information, on a voluntary basis, with regard to the future preparation of proposed technical regulations and conformity assessment procedures, before the corresponding notifications are submitted and to draw the Committee's attention to such information. A minimum of 60 days should be allowed for comments and governments are encouraged to extend that period to 90 days to give other governments the opportunity to analyse the announced text. The text is usually not transmitted with the notification but it may be requested. (It is not excluded that a fee may be charged to cover the expenses relating to sending the document). "Developed" countries must on request provide a translation into one of the official WTO languages which are French, English and Spanish and in the case of voluminous documents translation of summaries of these.

Comments on announced texts are generally sent directly by the notifying Member, however, there is an emerging tendency to make public all comments received and the responses forwarded. Comments on more sensitive issues are often discussed within the TBT Committee. The comments and the results of the discussions shall be taken into account when working on the text of the proposed regulation. The comments sometimes may give rise to bilateral or even multilateral discussions.

Members are required to publish the definitive texts of the adopted texts (or otherwise make them available) but they are not required to send them to the WTO Secretariat. The publication time should permit the producers concerned to adapt their products or methods of production before the regulation enters into force. The recommended period is of 6 months.

Standard Notification Form

The proposed technical regulation or conformity assessment procedure is announced by sending the WTO Secretariat a standard notification form. The form can be downloaded from the WTO site and then filled out and returned by e-mail to the WTO Secretariat. It is imperative that the form is filled in accurately and completely as it saves time at the later stage by reducing the amount of future request for clarifications and enquiries. The notification is then made available to the public on the WTO's web site (www.wto.org). The WTO/TBT document (G/TBT/1/Rev. 8 of May 23, 2002) includes detailed explanations regarding the data to be included in the form. It requires, in particular that:

- The following must be indicated: the notifying member and where applicable, the local government involved, the body responsible for elaborating the proposal or the managing the notification procedure, the legal basis in the TBT Agreement under which the notification is made, allowing the nature and the announced measure to be identified, particularly whether this involves a

technical regulation or conformity assessment procedure, and the stage at which the text is being announced, particularly as to whether this involves a proposal or a text adopted due to urgent problems.

- The notification should provide information on the content of the announced text to allow other countries to make an initial assessment of this and to determine whether the notifying government should be asked for a copy of the text. It is recommended that not only the scope of the proposal is indicated, namely the products covered, but also that the content, objectives and rationale should be specified. With regard to texts announced under the urgency provisions, the reasons invoked for the urgency should also be provided. (When necessary the expression “not stated” or “not know” should be used instead of a section being left blank).
- The following additional indications should be provided: the documents relevant to the notification, for example the basic documents to which the proposal refers, the suggested date of adoption and entry into force of the proposed text, the final date for comments and the address of the body from which the text may be obtained.

Answering Reasonable Enquiries

An enquiry point is mandated to answer all “reasonable enquiries”. According to a recommendation of the TBT Committee (1995) an enquiry should be considered “reasonable” when it is limited to a specific product, or group of products. When an enquiry is made on a composite product, the parts or components for which information is sought should be defined to the greatest extent possible. Enquiries should not refer to an entire business branch or field of regulations or procedures for assessment of conformity. Concerning enquiries on the membership and participation in international and regional standardizing bodies and conformity assessment systems as well as in bilateral arrangements, the enquiry points should again be prepared to provide information with respect to a specific product or group of products.

An enquiry point should, as a first step, acknowledge the receipt of the enquiry, without further request.

Electronic Facilities

Most enquiry points have at their disposal electronic facilities, including Internet access and e-mail facilities and the electronic transmissions of documents between Members became a standard operating procedure. (There are several exceptions from that rule among some LDCs and several other countries complain about telecommunication problems – see “Survey on the Electronic Facilities Available in National Enquiry Points – G/TBT/W/10).

The essential tool of an efficient notification process is the database. In the case of the EU the data based has three major objectives:

- Increase productivity of the notification and dialogue through creation of automated procedures, creation of templates for common message transmission

and by storing all information in a centralized database

<http://ec.europa.eu/enterprise/tbt/>

- Improve transparency; almost all documents – from notification forms to comments - are available on public website.
- Managers of the system do right things (rather than doing things right) i.e. they focus on less repetitive tasks such as development and problem-solving.

The alert process implies a number of activities which may be summarized as follows:

- Look for new documents in the WTO database (<http://docsonline.wto.org>);
- Send alert to managers and mail it to subscribers;
- Extract title, content and objectives,
- Save the documents in the database
- Send as report to the managers.

The use of the automated procedures also facilitate the task of the notification and enquiry point (NEP) when acting as the exporter's alert system. The NEP may learn about the forthcoming TBT regulations in other countries and communicate it to the home business community to get their reaction to it. (The EU official in charge goes twice a day to the WTO notification site – <http://docsonline.wto.org> – to see what is new).

Certain enquiry points maintain a true system of exporters' alert which permits a prompt business respond to any TBT-related proposals or changes in the legislation. Such systems have proven to be useful in Canada in a number of developing countries which adopted similar schemes with a help of a Canada-sponsored technical assistance project. Vietnam might probably request similar assistance from Canada to develop its own alert system for the benefit of the Vietnamese business community.

The use of the management application not only ensures that every case is stored in the database via the management application but also renders the internal follow-up much easier. Every new notification of interest is immediately assigned to a co-ordinator in the NEP unit. The notification is immediately published on the website with a single click, relevant services in the different government departments are immediately alerted, draft text from 3rd countries are promptly requested and made available on line, etc. The management application tasks include the following:

- Verify extracted texts,
- Complete with additional information;
- Assign product category : ICS (International Code for Standards)
- Assign to a desk officer
- Authorize the publication on the EC-TBT website
- Add draft texts, comments, etc.

Access to the database is of twofold nature:

- Restricted access to EC Staff (<http://.....>) and
- Public with restricted access to registered users
[/http://europa.eu.int/comm/enterprise/tbt/](http://europa.eu.int/comm/enterprise/tbt/)

Public website enable to inform the stakeholders and to make them part of the decision-making process concerning both the domestic draft legislation and the action to be taken with respect of the third country measures.

Box 4

An example of the EU internal message concerning the US draft legislation

New Notification G/TBT/N/USA/187

Title: Technical Amendments to the Highway and Non-road Diesel Regulations

Summary:

EPA is proposing to correct, amend, and revise certain provisions of the Highway Diesel Rule, and the Nonroad Diesel Rule. This action proposes to correct additional errors and omissions from the previous rules, and make minor changes to the regulations to assist entities with regulatory compliance. Further, this action also proposes technical amendments resulting from discussions with various diesel stakeholders. These technical amendments would: provide a temporary increase in the non-petroleum diesel fuels (i.e. biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defence provisions to account for conductivity additives and red dye. This proposed action is intended to help facilitate compliance with the diesel fuel regulations and ensure a smooth transition to ultra low sulphur diesel fuel.

Categor(ies)y:

13 – ENVIRONMENT, HEALTH PROTECTION, SAFETY

We will inform you when the draft text is available on our web site.

More details at the following address:

http://europa.eu.int/comm/entrepise/tbt/nview.cfm?p=USA_187_EN

TBT Support Team

Human Resources

The EU needs 3 people to ensure day-by-day management of the notification requirements (including one computer specialist). The EP has contact points in various other ministries (DG s). Personal contacts are essential. It is important for personnel to maintain good relationship with the staff in other ministries and to ensure that they are properly and rapidly informed about any notifications of direct concern to them. When inputs from various sectors are needed they are obtained by the ministry staff. On average some 8 – 12 ministry staff is alerted about notifications that call for an enquiry.

In certain countries groups bringing to-gather the national services responsible for notifications have been created. (e.g. at the EC level in the EU). When necessary, meeting are organized with other ministries. The NEP coordinates official position after consultations with services concerned. If there are comments they are sent directly to 3rd country's TBT contact point and copied to the EU Delegation at WTO in Geneva.

In 2005 there were some 673 TBT notifications produced by the WTO members (China 112, US: 72, Israel: 51, EEC: 22). The EC made comments to 61 3rd country notifications (e.g. to China, South Africa, Colombia, Argentina, etc.). Total number of notifications submitted to the WTO Secretariat constantly increasing. About half of the submitted notifications concern protection of human health and safety.

Relationship between EP and the TBT Committee

The work of the Committee is relevant for the inquiry points because it conducts debates on matters relating to the operations of the TBT Agreements including the operation of the inquiry points themselves. The participants of the TBT Committee tend to be members of the Geneva-based delegations and employees of the capital-based standard bodies and TBT inquiry points. It is probably desirable that the TBT experts from the Vietnamese enquiry points also get involved in the TBT Committee meetings in Geneva.

In 2007 there will be a meeting of the inquiry points at WTO in Geneva. Perhaps Vietnam should send somebody to establish a network and to see whether there are opportunities for support from another member country. (For example, Canada, at one of the meetings presented its system, they provided assistance to certain Latin A. countries that implemented similar systems of export alerts concerning TBT and this permitted substantial increase in exports).

Networking with Other Enquiry Points

Over more than a decade the TBT agreement has worked smoothly. The committee dealing with the agreement has held regular meetings, and has completed numerous triennial reviews of the agreement— a good portion of which concerned the pre-WTO period when the agreement was one of the Tokyo Round codes.

The TBT Committee meetings provide a good opportunity to exchange experiences with TBT experts from enquiry points in other countries, and to learn about new developments. In 2007 the TBT Committee plans to organize a special meet for TBT experts from national enquiry points. The invitations will be send out to the Geneva-based missions which can forward them to the interested parties. Perhaps Vietnam should send somebody to initiate the networking and to see whether there are opportunities for an additional technical support from another member country or from the organizations that enjoy the observer status in the Committee. (The intergovernmental organisations with observer status in the TBT Committee are: African, Caribbean and Pacific Group (ACP), European Free Trade Association (EFTA), United nations Food and Agricultural Organization (FAO), International Electrotechnical Commission (IEC) International Monetary Fund(IMF), International Standardization Organization (ISO), International Organization for Legal Metrology (IOML), International Trade Centre UNCTAD/WTO, Latin American Integration Association (ALADI),Office International des Epizooties (OIE), Organisation for Economic Cooperation and Development (OECD), United Nations Conference for Trade and Development (UNCTAD), United Nations Economic Commission for Europe (UNECE), United nations Industrial Development Organisation (UNIDO), World Health Organisation (WHO), WHO/FAO Codex Alimentarius Commission (Codex) and World Bank .

Dealing with Mini-Disputes

TBT Committee often discusses mini disputes and this creates pressures to adapt the measure. Vietnam might thus bring such issues to the Committee after its accession. Certain observer organizations also participate and may inform about their technical assistance.

Dealing with TBT Concerns and Coalition Building

Over the last 10 years there were more than 150 concerns discussed in the TBT Committee. The concerns are typically brought to the attention of the enquiry points or other government agencies and then brought to the attention of the Committee by the country concerned. For example, China became very active in the Committee since its accession presenting its concerns especially in relation to the EU and US measures. Countries such as Japan and the US also voice numerous concerns about the China's regulations. Another interesting case is that of rum. Brazil wanted to introduce a new technical regulation concerning rum. Small Caribbean country - St Lucia opposed it in the TBT Committee and there was a coalition against the Brazilian regulation. As a consequence the Brazilian regulation has been modified. Given the rapid growth of the Vietnamese exports it is likely that Vietnam will become an active participant of the TBT Committee voicing its concerns and being confronted with other countries' concerns about various TBT measures in Vietnam.

Negotiations and System Management

The TBT Committee is performing a housekeeping function of the WTO commitments related to TBT. It is useful if the enquiry point representatives get pro-active in the negotiations and the management of the system of TBT Agreement and assume the role of a catalyst or proposal-maker in the TBT area.

ISO and the Enquiry Points

ISO has some 156 members which are non-governmental organizations and Vietnam is also involved. ISO has observer's status at WTO. What type of relations does ISO maintain with the TBT enquiry points? This question came up in a recent plenary meeting of the organization. How can one improve the relations between the ISO delegates and the TBT experts? The relationship is not very intensive. In many countries the enquiry point and the ISO offices are grouped together.

Concerning the TBT –related technical assistance activities there is not much going on for the time being in the ISO but there is a growing awareness that more should be done. ISO should do something with the WTO. In the past the two organisations used to have a series of *ad hoc* seminars but nothing on the regular basis. A three-day seminar on ISO and TBT-related issues will be held in Vietnam by the end of 2006. ITC provides a more systematic technical assistance on TBT.

Can Vietnam become more involved in standard development at ISO? Certainly it could. Define your priorities. Become a P- member in a relevant technical committee to have your voice heard in standard development.

There is little doubt that the TBT Agreement and the operation of the National Enquiry Point in Vietnam results in benefits for the local business community. Enterprises have interest in making themselves heard and in using the enquiry point services to reinforce their competitiveness. It is thus important to make sure that there is enough awareness among the Vietnamese enterprises of the EP functions and that the companies concerned are associated with the work of the EP through transparency and an appropriate consultation mechanism.

4. CONCLUSIONS

The study tour provided good opportunities for both SPS and TBT experts to get acquainted with the accumulated experience of WTO members in implementing the transparency provisions of the WTO TBT and SPS Agreements. The programme of the study tour and the sequencing of the events was appropriate. The two day training in the WTO Secretariat provided a good basis for the follow-up of the tour. The first presentations of the WTO specialists focused on some general aspects of the Agreements which made easier to absorb the more technical presentations on the operation of the transparency provisions and provided useful background information for the visits to EC and national TBT/SPS EPs and NAs.

All meetings provided ample opportunity to the Vietnamese specialists to raise special questions and ask for more detailed information. The visit to the EC TBT and SPS EP and NA as well as the meeting with SECO concentrated on specific practical matters and was very useful in shedding light on day-to-day operational challenges. The visit of the Italian SPS EP and NA indicated that the most competences in this area have already been delegated to Brussels, but the role of EU member states EPs and NAs are very important in networking with the business community and the local authorities.

The visited institutions provided additional information to the delegations in paper and also in electronic form.

Finally, it can be stated that the study tour has met all its objectives set by the TOR and the officials have a much clearer notion about the functioning of the TBT/SPS EPs and NAs and the programme has facilitated meeting the practical challenges which they may face during the implementation of the WTO TBT and SPS Agreements.

The Vietnamese officials have met regularly with the country's diplomatic representations in Geneva and Rome.

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ANNEXES

Annex 1: Study Tour Report of the SPS Officials

Annex 2: Study Tour Report of the TBT Officials



**MULTILATERAL TRADE ASSISTANCE PROJECT VIETNAM II
(MUTRAP II)**

**Ministry of Trade in partnership with the European Commission
ASIE/2003/005711**



ACTIVITY CODE: SPS/TBT-1

**“On the job training for best practices and management techniques of
SPS/TBT notification authorities and enquiry points”**

STUDY TOUR FINAL REPORT

By

SPS & TBT groups

Hanoi, June 2006

This document has been prepared with financial assistance from the Commission of the European Communities. The views expressed herein are those of the author and therefore in no way reflect the official opinion of the Commission nor the Ministry of Trade

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Deputy Director General, Vietnam Food Administration, Ministry of Health

Bui Thi Cuc
Deputy Head of Planning Division, Department of Animal Health, Ministry of Agriculture and Rural Development

Le Ba Anh
Head of Planning and General Affairs Division, National Fisheries Quality Assurance and Veterinary Directorate, Ministry of Fisheries

Nguyen Sinh Nhat Tan
Deputy Head of WTO Division, Department of Multilateral Trade Policy, Ministry of Trade

Pham Quang Huy
Vietnam SPS Notification Authority and Enquiry Point, Ministry of Agriculture and Rural Development

2. STUDY TOUR REPORT OF TBT GROUP

By Ho Quang Trung
Deputy Director, Import-Export Department, Ministry of Trade

Pham The Vinh
Senior Officer, International Cooperation Department, the Government Office

Pham Thu Giang
Senior Officer, TBT Office, Department of Science and Technology, Ministry of Industry

Le Bich Ngoc
Viet Nam TBT Office, Directorate for Standards and Quality, Ministry of Science and Technology

Tran Thi Van Anh
Viet Nam TBT Office, Directorate for Standards and Quality, Ministry of Science and Technology



**MULTILATERAL TRADE ASSISTANCE PROJECT VIETNAM II
(MUTRAP II)**

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Activity Code: SPS/TBT-1

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By

DR. CHU QUOC LAP

Deputy Director General, Vietnam Food Administration, Ministry of Health

BUI THI CUC

Deputy Head of Planning Division, Department of Animal Health,
Ministry of Agriculture and Rural Development

LE BA ANH

Head of Planning and General Affairs Division,
National Fisheries Quality Assurance and Veterinary Directorate, Ministry of Fisheries

NGUYEN SINH NHAT TAN

Deputy Head of WTO Division, Department of Multilateral Trade Policy,
Ministry of Trade

PHAM QUANG HUY

Vietnam SPS Notification Authority and Enquiry Point,
Ministry of Agriculture and Rural Development

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1. INTRODUCTION

Under the framework of the MUTRAP Project which is funded by the European Commission, the Project Task Force organized a study tour for a group of 5 Vietnamese officials from the central network of SPS Notification Authority and Enquiry Point to visit the WTO Secretariat, EC Headquarters in Brussels, Italian SPS Enquiry Point and Notification Authority and a number of international organizations such as International Trade Center/UNCTAD/WTO, FAO, WHO, Codex Alimentarius, IPPC Secretariat, etc. The study tour took place from 15 – 25 May 2006 and participated by the following local officials:

1. Dr. Chu Quoc Lap, Deputy Director General, Vietnam Food Administration, Ministry of Health – Group Leader;
2. Ms. Bui Thi Cuc, Deputy Head of Planning Division, Department of Animal Health, Ministry of Agriculture and Rural Development;
3. Mr. Le Ba Anh, Head of Planning and General Affairs Division, National Fisheries Quality Assurance and Veterinary Directorate, Ministry of Fisheries;
4. Mr. Ngyen Sinh Nhat Tan, Deputy Head of WTO Division, Department of Multilateral Trade Policy, Ministry of Trade;
5. Mr. Pham Quang Huy, Coordinator, Vietnam SPS Notification Authority and Enquiry Point, Ministry of Agriculture and Rural Development

Hereunder is the draft report of the SPS Group which can be combined with the report of the TBT Group and inputs from the European experts to consolidate a final report on the best practices, procedures and working modalities. This draft report attempts to summarize lessons learned from the tour and recommendations for the follow-up activities to be carried out.

The group would be very grateful to the members of MUTRAP Task Force for their excellent arrangements before and during the visit. Our special thanks are also given to Mr. Peter Naray, MUTRAP European Team Leader and Mr. Paolo Vergano, Key Expert of MUTRAP who accompanied and facilitated productive meetings for the delegation during the whole trip.

2. OBJECTIVES OF THE STUDY VISIT

The broad objective of this activity is to assist Vietnam in complying with its transparency obligations under the SPS Agreement. The ultimate goal is to increase Government capacity to integrate effectively in international and regional trade, and to increase the knowledge, networking, and awareness of WTO issues among Government, business community, public and private stakeholders.

The specific objective is to assist the competent Vietnamese ministries to adequately train

the officials staffing and running the SPS and TBT enquiry points and notification authorities, including the ministerial and provincial level focal points, to answering enquiries and making notifications to the WTO Secretariat at a time when WTO accession will result in a dramatic increase in the adoption or implementation of new standards, new technical regulations and new conformity assessment procedures, or in the amendment of existing ones. The exposure to best practices and to management techniques for SPS/TBT databases and information-exchange platforms developed in the SPS and TBT enquiry points and notification authorities of model EU countries, together with the attendance of the specialized training.

3. STUDY TOUR SCHEDULE

Monday, 15 May 2006, Geneva, Switzerland

9:00 - 9:45 Visit to the Permanent Mission of Vietnam in Geneva

Person met: Ambassador Ngo Quang Xuan

Discussion themes: Update of Vietnam's accession to the WTO, particularly with regard to results of the latest bilateral talk with the US and Vietnam's preparation for post-WTO period.

10:00 – 17:30 Visiting the WTO Secretariat

Persons met: Mrs. Stefania Bernabè, Economic Affairs Officer, Trade and Environment Division; Mrs. Christiane Wolff, Economic Affairs Officer, Agriculture and Commodities Division

Discussion themes: Introduction to the WTO, key provisions of the WTO/TBT and SPS Agreements, transparency obligations under the TBT and SPS Agreements.

Tuesday, 16 May 2006, Geneva, Switzerland

14:30 – 17:00 Visiting the WTO Secretariat

Persons met: Mr. Melvin Spreij, Agriculture and Commodities Division; Mrs. Christiane Wolff, Economic Affairs Officer, Agriculture and Commodities Division.

Discussion themes: Introduction to the Standards and Trade Development Facility, SPS cases of dispute settlement, current issues regarding specific trade concerns, SPS Committee and special and differential treatment.

Wednesday, 17 May 2006, Geneva, Switzerland

11:00 - 13:00 Visiting the World Health Organization

Persons met: Dr Gerald G. Moy, GEMS/Food Manager, Department of Food Safety, Zoonoses and Food-borne Diseases.

Discussion themes: Introduction to the international Food Safety Authorities Network, Global Evaluation and Monitoring System, WHO Global Foodborne Disease Surveillance and Response.

14:30 - 17:00 Visit to the International Trade Center/UNCTAD/WTO

Persons met: Ms Nadia Hebboul, Head of Trade Information Reference Center; Mr. Shyam Gujadhur, Senior Adviser, Division of Trade Support Services.

Discussion theme: Improving and maintaining market access using the WTO Agreements on TBT and SPS

Thursday, 18 May 2006, Brussels, Belgium

09:15 -13:00 Visiting EC Health and Consumer Protection Directorate General (SANCO)

Persons met: Mr. Scannell, head of the unit, Mr. Tadas Briedis, Mr. Perez Lanza Juan, Mrs. Rollier, Mr. Beltran.

Discussion theme: Operation of the SPS Notification Authority and Enquiry Point of EU

Friday, 19 May 2006, Brussels, Belgium

10:00 – 12:00 Meeting with DG Trade - European Commission

Persons met: Marie-Hélène Vareille, Market Access Unit

Discussion theme: Helpdesk for developing countries

Monday, 22 May 2006, Rome, Italy

10:00 - 13:00 Visit to the Food and Agriculture Organization (FAO)

Persons met: Ms. Joke Sipkes Onorati, Visitors' Resource Centre, Information Division
Ms. May Pineiro, Nutrition Officer, Food and Nutrition Division, Dr. Juan Lubroth, Senior Officer, Animal Health Service, Animal Production and Health Division.

Discussion themes: Introduction to FAO, Codex Alimentarius and animal health issues.

Tuesday, 23 May 2006, Rome, Italy

10:30 - 12:30 Visit to the Department of Veterinary, Public Health, Nutrition and Food Safety of Italy.

Persons met: Dr. Giulia Ippolito

Discussion theme: Introduction to the structure and activities of the Department

15:00 - 17:00 Meeting with FAO

Persons met: Dr. Richard Ivess, Coordinator of the IPPC Secretariat, Mr. Mike Robson, System Manager, Plant Protection Service, Plant Production and Protection Division, Mr. Nguu Nguyen, Executive Secretary, Secretariat of International Rice Commission.

Discussion theme: Introduction to the IPPC, International Portal on Food Safety, Animal and Plant Health.

4. LESSONS LEARNED FROM THE STUDY TOUR

Although the duration of the visit is not long, the SPS group had many opportunities to meet with various agencies and organizations dealing with SPS issues in general and SPS enquiries and notification in particular. Through comprehensive presentations and interactive discussions with international speakers, all members of the SPS group have gained considerable knowledge on SPS which is very helpful for their work. Lessons acquired during the study tour start with very broad concept of WTO, then come to details of the TBT and SPS Agreements of the WTO, and finally the introduction of best practices of SPS enquiry point and notification authority.

4.1. Overview of WTO

The speakers provided the delegation with an overview of history and development of the WTO. After the World War II, the United Kingdom and the United States submitted proposals to the Economic and Social Council (ECOSOC) of the United Nations regarding the establishment of International Trade Organization (ITO).

In 1946, ECOSOC organized the Conference on Trade and Employment to consider the UK and US proposals. A Preparatory Committee drafted the ITO Charter and it was approved in 1948 at the conference in Havana, Cuba. Despite of such great efforts, ITO never came into existence because the US Congress refused to ratify the Charter and did not support the establishment of another international institution. However, with a view to expedite the process of trade liberalization, a treaty named as the General Agreement on Tariffs and Trade (GATT) was concluded in which 23 original member countries agreed to set a rules governing international trade and reduce tariffs for each other. The GATT was signed in 147 and took effect in 1948.

After more than 40 years, the GATT completed 8 rounds of multilateral trade negotiations. The Uruguay Round, the last one, concluded with the signing of the Final Act on April 15, 1994, in Marrakesh, and give birth to the World Trade Organization.

The WTO is the only global international organization regulating the rules and practices of trade between countries. The ultimate objective of the WTO is to keep international trade running in a free, fair and predictable manner. The WTO is responsible for performing the functions as follows:

- Administering about 20 agreements related to trade;
- Providing forum for trade negotiations;
- Reviewing national trade policies;
- Settling trade disputes;
- Providing technical assistance and training to developing countries;
- Cooperating with other international organizations such as FAO, WHO, WB, etc.

So far, the WTO has admitted 149 members, accounting for over 97% of world trade. Around 30 other countries are negotiating membership. Decisions are made by the entire membership by consensus. A majority vote is also possible but it has never been used in the WTO. The WTO's agreements have been ratified in all members' parliaments.

The top level decision-making body is the Ministerial Conference which meets at least once every two years. Below this is the General Council which is usually represented by ambassadors and heads of delegation in Geneva and meets several times a year in the Geneva headquarters. The General Council is also serves as the Trade Policy Review Body and the Dispute Settlement Body.

At the next level, there are some subsidiary bodies such as the Goods Council, Services Council and Intellectual Property (TRIPS) Council which are responsible fore reporting to the General Council. In addition, many specialized committees, working groups and working parties are formed to deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements.

The WTO Secretariat, based in Geneva, has around 600 staff and is headed by a director-general. The Secretariat's main duties are to supply technical support for the various councils and committees and the ministerial conferences, to provide technical assistance for developing countries, to analyze world trade, and to explain WTO affairs to the public and media. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO.

4.2. Understanding of WTO Agreements on SPS and TBT

Various speakers spent most of their time to explain about the contents, significance and relation of the TBT and SPS Agreements. These two agreements were negotiated during the Uruguay Round and formed as an integral part of WTO agreements. They are key instruments of the WTO system, binding on all WTO members as of its establishment in January 1995. In fact, the number of technical regulations and SPS measures adopted by

countries worldwide has grown significantly. Increased regulatory policy can be seen as the result of higher living standards, which have increased consumers' demand for safe and high quality products. The protection of human, animal and plant life or health is also resulting in increased regulation. To this end, the SPS and TBT Agreements are needed to ensure that the technical barriers and SPS measures are not applied in arbitrary and trade discriminatory ways and do not result in disguised restriction to trade.

The TBT Agreement affirms that WTO members have the right to adopt technical regulations, product standards and conformity assessment procedures but these must not constitute unnecessary obstacles to international trade. The agreement encourages standard equivalence between countries, in other words, the formal acceptance of the standards of other countries through mutual recognition agreements. It also promotes the use of international standards. Lastly, it indicates that countries must establish enquiry points and national notification authorities (normally, the two can be combined into the same body) in order to answer questions about TBT regulations and notify other nations of new regulations respectively. Enquiry points compile all available information in that country on product standards and trade regulations and provide it to other members upon request. The national notification authorities report changes in trade policy to the WTO and receive and take comments on these measures.

Similarly, The SPS Agreement confirms the rights of WTO member countries to protect the health of their people, animals, and plants by setting and adopting SPS measures, provided that such measures are consistent with the SPS Agreement and facilitate international trade. Key features of the SPS Agreement are as follows:

- Scope of application: the Agreement applies to all kinds of SPS actions taken by governments that may affect international trade.
- Main objective of the Agreement is to maintain the sovereign right of any country to provide the appropriate level of health protection while ensuring that these rights do not result in unnecessary barriers to international trade.
- Rights and obligations: The Agreement recognizes the fundamental right of countries to adopt SPS measures to protect the health and life of humans, animals and plants against pests, diseases and other risks to health. However, such protection measures must be based on international norms established by a recognized standard setting organizations or based on scientific risk assessment.
- Key provision, also principles of the SPS agreement such as harmonization, risk assessment, regionalization, equivalence, transparency, etc.

As for harmonization, the SPS Agreement encourages countries to base their national SPS measures on international standards, guidelines and recommendations which have been developed by relevant international standard setting organizations (ISSOs). In this regard, speakers provided a comprehensive introduction to 3 important ISSOs involving in SPS areas which can be briefed as follows:

- Codex Alimentarius Commission (CAC)

Created in 1963 by FAO and WHO, CAC is the major intergovernmental body for 165 member countries to encourage fair trade in food while improving the health and interests of consumers through the development of food standards and guidelines covering food quality and food safety.

- Office International des Epizooties (OIE)

The OIE - also known as World Animal Health Organization, is established in 1924 as an international veterinary organization of more than 160 member countries with a mission of facilitating cooperation to prevent the spread of animal diseases. The OIE adopted 2 important standard documents namely International Animal Health Code and Manual of Standards for Diagnostic Tests and Vaccines.

- International Plant Protection Convention (IPPC)

The IPPC was endorsed by FAO and came into force in 1952 with the purpose of securing common and effective action to prevent the spread and introduction of plant pests, while facilitating international trade of plants and plant products. The revision of IPPC was completed in 1997 and aligned with the principles of the SPS Agreement. The revised text has taken effect since October 2005 when two third of the contracting parties submit their instruments of acceptance or adherence to the FAO Headquarters. The IPPC works closely with international, regional and national organizations to develop international plant health standards (so far 24 international phytosanitary standards have been adopted), promote the harmonization of plant quarantine activities, facilitate the dissemination of phytosanitary information and provide assistance to developing countries in plant health area.

International standards are often higher than national norms of many countries so the SPS Agreement allows WTO member not to use international standards. However, if national requirements result in greater restriction to trade, a country may be asked to provide scientific justification demonstrating that the relevant international standards would not achieve the appropriate level of SPS protection of that country.

With regard to risk assessment, the speakers emphasized the use of scientific principles as a basis for health protection measure in trade. This means that SPS measures must be based on risk assessment or evaluation of scientific evidence once relevant international standards do not exist. Concepts and methodologies of risk assessment in the areas of food safety, plant and animal health were introduced with a number of factors that should be taken into account when conducting risk assessment. Those factors include relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific pests; existence of pest or disease free areas; relevant ecological and environmental conditions; and quarantine and other treatments. For those developing countries with no or little experience in undertaking risk assessment like Vietnam, it were recommended to adopt international standards, apply risk assessment methodologies

developed by relevant ISSOs, conduct qualitative rather than quantitative evaluation and secure assistance of external consultants so as to reduce the burden of risk assessment.

Another concern of the participants was WTO dispute settlement mechanism which was also explained in details. The speakers introduced about Dispute Settlement Body of the WTO that was formed to manage the dispute settlement system and through which WTO members can ensure that their rights under the SPS Agreement are respected. The dispute settlement process involves complaining and defending parties, panel, appellate body, WTO Secretariat, independent experts, etc. with details of roles and functions of each party being provided by the speakers.

Dispute settlement proceedings begin with bilateral consultations. If these negotiations fail to resolve the issue, then a challenging party might request to establish a panel consisting of experts from relevant international standard setting organizations (Codex, OIE or IPPC) to evaluate the technical issues on a scientific basis. Normally, the judgment of the panel is made as to whether SPS measures imposed by the defending party are based on scientific principles, international standards or appropriate risk assessment. If non-compliance with the SPS Agreement is concluded by WTO, the offending country will face trade sanction and have to change measures that are inconsistent with the Agreement. The dispute settlement procedures were illustrated by 4 cases of dispute that were formally considered by Dispute Settlement Body:

- EU's ban on the use of growth enhancing hormones in meat: The Panel concluded that the ban on imports of hormone-treated meat was not based on the Codex standards, since it achieved a significantly higher level of protection as compared with international standards.
- Japan's testing of varietal apples: The Panel focussed its analysis on whether there was sufficient scientific evidence supporting the need for the varietal testing requirement. It concluded that there was no rational relationship between the scientific evidence submitted by Japan and the measure, and that therefore Japan was maintaining its measure without sufficient scientific evidence.
- Australia's ban on imported salmon: The Panel found that the existing risk assessment that Australia conducted did not fulfill the requirements of the SPS Agreement, and there was no risk assessment for the types of local salmon.
- Japan's inspection for apple fireblight: The Panel concluded that there was no evidence that fresh apple fruit could serve as a pathway for the spread of fire blight and Japan was maintaining its measure without sufficient scientific evidence.

4.3. Operation of SPS Enquiry Point and Notification Authority of EC

In the visit to the EC Notification Authority and Enquiry Point, the group has acquired information regarding the legal basis for the establishment of this unit, how does it work

with EC member States and experience in running the notification authority and enquiry point.

Annex B of the SPS Agreement requires that WTO members will have to designate a single central government authority to be responsible for the implementation of notification procedures as well as one Enquiry Point responsible for providing answers to all reasonable questions from interested members, and the provision of relevant documents.

According to Decision 94/800/EC, the European Community has assigned the Directorate General for Health and Consumer Protection (SANCO) to run the obligations of both the SPS Notification Authority and Enquiry Point of EC. It is the responsibility of SANCO to submit new SPS proposals that will apply in the whole EC territory as well as notify other legislation from EC member states that may affect international trade. EC maintains a network of contact points located in each of its 25 member States to help SANCO prepare SPS notifications for the EC to submit to the WTO Secretariat as well as handle SPS enquiries in case of need.

Last year, SANCO sent more than 40 SPS notifications to the WTO for which nearly 30 comments were collected, mainly from USA and South American countries. In the same year, EC made 20 comments to SPS measures that have negative impacts on EC export, mainly to USA, Japan and Korea. In addition, there was an increase in mail correspondence with developing countries asking specific SPS questions.

SANCO official in charge of notification explained to the Vietnam participants about the procedure for making notifications of EC member States and the procedure for handling comments to third countries' SPS notification. In EU, member States have right to adopt legislation, especially in the areas related to the protection and consumer health and food safety. However, such proposed legislation is subject to internal examination period of at least 3 month. Member States are obliged to notify the EC all draft regulations before they are adopted at national level. This procedure facilitates the evaluation of such regulations by the EC and other member States so as to avoid any barriers to the free movement of products in internal markets. After this "stand-still" period, if there is no objection, EC Notification Authority will consult the draft notifications with SANCO legal service before sending them to the WTO Secretariat.

With regard to handling comments, in recent years, SANCO has centralized the reception and submission of comments to and from third countries. This is an improvement in the operation procedures as compared to the previous practices where comments were handled and replied separately by competent units. This new practice allows rapid analysis and assessment of comments so as to timely minimize the impacts by amending the proposed SPS measures. It therefore requires a very high degree of coordination between EC and member States, because many agencies and stakeholders might be involved in an SPS subject. Generally, SANCO is in right position to prepare common viewpoints on notifications of third countries on behalf of EC member States. The

proposed comments are circulated to all member States or discussed in a Standing Committee responsible for this kind of legislation before being submitted.

Although SANCO assigns a small team of only 3 officials in charge, the operation of the EC Notification Authority and Enquiry Point is proved to be very efficient and successful. This good management practice is attributed to the following elements:

First of all, EC has prepared the manual for the operation of the Notification Authority and Enquiry Point which serve as guidance to those officials involved in these tasks and related activities. This is a very important working tool that helps ensure the consistency and continuity, even in case of staff changes.

Second, officials involved in notifications and enquiries have sufficient knowledge and experience in SPS measures that help them identify the most sensitive notifications and important comments that need to be taken into account as early as possible, because the number of incoming and outgoing mails to and from the office is on increase and there is a need to set priorities for consideration.

Third, SANCO has built an extensive network of persons with adequate knowledge to handle notifications, comments and replies. They are policymakers, scientists, lawyers, importers, exporters, etc. who are able to review any SPS measures upon request of the notification authority and enquiry point.

Last but not least, SANCO has a very good IT infrastructure which greatly helps strengthen the communication and management capacity as well as improve the operation of the SPS notification authority and enquiry point. Most of the functions of the enquiry point can be performed through e-mail, including the distribution of documents. The EC notification authority automatically disseminates full texts of its draft SPS regulations to all interested members and parties that register the mailing list to give comments within 60 day period.

Responding to the question on the database required for the enquiry point, the representative of SANCO noted that it was not necessary to duplicate efforts by building and maintaining other databases that contain foreign SPS notifications, legislation and standards from relevant international organizations, because the EC Enquiry Point can access to the databases of the WTO Secretariat, OIE, FAO, Codex to search for required information. In fact, the construction and maintenance of database are costly and time consuming and beyond the capacity of enquiry points of many developing countries.

4.4. Recommendations for follow-up actions

- Valuable knowledge and lessons learnt from this study visit should be passed to relevant staff in the SPS network.
- More full-time staff must be provided to the National SPS Office. At this stage, the Office needs at least 4 full-time staff including 1 coordinator, 2 officials

dealing with notifications and enquiries, 1 informatics officer responsible for SPS portal and database.

- In addition to the operating regulation of the SPS Office that has been endorsed by Minister of MARD, the procedures for making notifications and handling comments should be developed to provide guidance for officials involved.
- In-depth training for all officials of Vietnam SPS Network who are involved in day-to-day handling notifications and enquiries, including training in risk assessment.
- On the basis of EC best practices, operation model for Vietnam notification authority and enquiry point should be justified and tested.
- There should have a mechanism to strengthen the public-private partnership in order to take advantage of transparency rights and obligations in support of market access.
- Support for Vietnam officials to participate in the WTO SPS Committee Meetings and standard setting bodies in which national interest could be well represented.
- Adequate budget needs to be allocated to cover operating costs for the national notification authority and enquiry point, particularly with regard to the development and maintenance of the SPS portal.



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STUDY TOUR REPORT OF TBT GROUP

By

HO QUANG TRUNG

Deputy Director, Import-Export Department, Ministry of Trade

PHAM THE VINH

Senior Officer, International Cooperation Department,
the Government Office

PHAM THU GIANG

Senior Officer, TBT Office, Department of Science and Technology,
Ministry of Industry

LE BICH NGOC

Viet Nam TBT Office, Directorate for Standards and Quality,
Ministry of Science and Technology

TRAN THI VAN ANH

Viet Nam TBT Office, Directorate for Standards and Quality,
Ministry of Science and Technology

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INTRODUCTION

1. A study tour for the Vietnamese officials responsible for the Network of Notification Authorities and Enquiry Points on Technical Barriers to Trade (TBT) and Sanitary and Phyto-sanitary Measures (SPS) was organized from 15 to 25 May 2006 according to the Work Plan of the Multilateral Trade Assistance Project Vietnam II (MUTRAP II). The Study tour is aimed at strengthening capability of the Government and relevant agencies in order to prepare for accession of Viet Nam to the World Trade Organization (WTO).

I. OBJECTIVE OF THE MISSION

2. The overall objective of this activity is to assist Viet Nam in meeting the requirements of the WTO TBT and SPS Agreements, particularly the transparent obligations and procedures.

II. TBT GROUP OF THE MISSION

3. The TBT Group consists of 5 Officials as follows: 2 from Ministry of Science and Technology, 1 from Ministry of Trade, 1 from Ministry of Industry and 1 from the Office of the Government.

III. OUTCOME OF THE MISSION

4. The programme of the study tour was well prepared to arrange necessary meetings with the relevant officers of the WTO Secretariat, the European Commission (EC), the International Trade Center of the UNCTAD and WTO, the international Standardization Organization (ISO), and the State Secretariat for Economic Affairs (SECO) of Switzerland.

5. The TBT Group would like to highlight some important outcomes as follows:

Meeting with the WTO Secretariat

6. During meeting with the WTO Secretariat, Ms. Stefania Bernabe provided a briefing on the structure of the WTO Secretariat and issues associated with Non-Tariff Barriers (NTB) in international trade. She also briefed the Group on the key provisions of the TBT Agreement, which include the principles of non-discrimination and avoidance of unnecessary obstacle to trade, the requirements related to harmonization and conformity assessment, and the provisions for developing countries.

7. The Group had useful discussion on relevant provisions of the TBT Agreement and noted the trend that standards and regulations are often used by countries as TBT to protect their industry when import duty is being lifted or reduced. The Group also noted, among others, the important role that the TBT Agreement

plays in order to reduce TBT in international trade, the functions of the TBT Committee and the current issues of the agreement.

8. With regard to the transparency obligations and procedures, the Group had chance to discuss in detail relevant requirements of the TBT Agreement. This includes the notifications, handling of comments and the role of the Enquiry Point.

9. On the SPS Agreement, Ms. Christiane Wolff shared with the Group on key provisions of the agreement as well as its transparency obligations. The Group noted the requirements of each agreement and its scope and application, the role and function of the SPS Committee.

10. With the assistance of the two speakers above, the Group conducted practical exercise on notification, discussed TBT and SPS cases. The cases and exercise were indeed useful to help the Group to have better understanding on the two agreements.

Meeting with ITC

11. During a meeting with the ITC Officers, the Group visited the ITC library and had some discussion related to database of the ITC. The Group was briefed by Mr. Shyam Gujadhur, Senior Adviser, Division of Trade Support Services on issues related to "Improving and Maintaining Market Access using the WTO Agreements on TBT and SPS".

12. The Group had some discussion with Mr. Gujadhur and his team. The Group noted the following measures to promote exports:

- Assistance by Government in establishing and strengthening national infrastructure for standardization, metrology, accreditation and certification, as well as quality assurance;
- Active participation in international standardization work and regional/international cooperation;
- Close coordination with the respective National Permanent Mission to the WTO;
- Active participation in the work of the TBT Committee.

Meeting with the ISO

13. The Group visited the ISO and had discussion with Ms. Sari Rajakoski, Project Manager, Technical Assistance and Training Services, and Ms. Joyce Bleeker, Senior of Conformity Assessment.

14. The ISO Officers briefed the Group on the Structure of the ISO, its role in international standardization. As Viet Nam is ISO Member, it is important for us to become the P-Member of relevant technical committees to discuss issues of importance to Viet Nam.

15. The Group noted that as the TBT Agreement requires member countries to use relevant international standards in developing and adopting regulation, it is necessary to take part in ISO standards development and ISO conformity assessment work.

Meeting with the EC

16. Discussion and meeting with the EC Officers marked an important activity of the Study Tour. The Group had discussion in detail with the DG Enterprise and Industry, DG Trade of the EC and the Team responsible for the EC-TBT Enquiry Point.

17. A number of important issues were discussed, which among others include the following:

- Role and organization of the DG INTER;
- Objectives of the TBT notification procedure;
- EC TBT notification and enquiry point;
- Functioning of the TBT notification authority and enquiry point;
- Relationship between the EC-TBT Enquiry Point and Member States' notification and enquiry point;
- Issues related to the 4th triennial review of the TBT Agreement.

18. The Group observed that:

- Within the EC, each Member State has its own notification and enquiry point for the TBT and SPS matters, but at the EC, there is an enquiry point named as "European Communities' TBT Enquiry Point". This has been set up within the Commission to manage the notification procedure.
- The EC-TBT Enquiry Point ensures the European Communities' participation in the information and notification system for technical regulations and conformity assessment procedures established by the TBT Agreement. Its main responsibilities include the following:
 - Sending the WTO Secretariat notifications of proposed Community acts falling within the scope of the TBT Agreement;
 - Following up comments received by the European Communities;
 - Responding to requests for information made by the enquiry points of third countries on announced proposals.
 - In liaison with enterprises, it also analyses proposals announced by third countries and coordinates the comments of the European Communities on these texts;
 - Exchanges information with its counterparts in Member States.

- There is a clear function of Member States' Notification and Enquiry Points and the EC-TBT Enquiry Point:

- Community texts are announced by the Commission on behalf of the European Communities at a stage which allows any comments from other WTO Members to be taken into account.
 - When a third country asks for an extension to the deadline in order to analyze a text announced by the European Communities, the latter tries, as far as possible, to grant this extension.
 - Where a Community text is subject to comments, the European Communities takes account of these and tries not to adopt the text before having replied to them. It generally responds to comments made on Community texts and on proposals of its Member States. This ensures it is in the best position when it asks third countries to respond to its own comments.
 - Member States are responsible for notification, with the Commission not being involved at this stage. However, the European Communities do intervene where one of their Member States receives a comment from a third country. In fact, where the exercise of Community competence is involved, Member States cannot themselves react; they must send the Commission a proposed reply via the EC-TBT Enquiry Point. The Commission then prepares the definitive reply in close liaison with the Member State in question and sends this on behalf of the European Communities.
 - The national authorities responsible for notification may, however, contact the Commission if they have any doubts about the obligation to announce a proposal.
 - For Community enterprises, the main advantages of the notification procedure are being informed about proposed regulations of third countries, being able to adapt their production in time to the new requirements and having the opportunity to make their opinion known on the announced texts.
 - Enterprises can send their comments on the proposals of third countries either to the enquiry points of Member States of the European Union or to the enquiry point of the European Communities.
 - The Commission, based on the reactions of enterprises, Member States of the European Union and its own departments, prepares the definitive text of the comments which is then sent to the enquiry point of the notifying Member on behalf of the European Communities. These reactions are mainly aimed at preventing the adoption of measures creating unnecessary obstacles to trade and going against the interests of Community enterprises or at obtaining a delay in their entry into force to allow Community exporters to adapt and use up their stocks.
- In order to assist the process, a database on notifications has been set up with a link to the WTO TBT website. This provides update information on

notifications received by the WTO Secretariat from WTO Members. The database offers Members States, enterprises and the general public the possibility of accessing the official TBT notifications as they are circulated by the Secretariat of the WTO and posted on their website. Users can consult and download the notifications and any texts available related to them, like draft text of project, scientific evidence, etc. the database is synchronized twice per day at 9:00am and 2:00pm.

19. The Group also had useful discussion with the Market Access of the DG Trade, particularly with the Export Helpdesk. The Group noted that:

- The Export Helpdesk is an online service, provided by the European Commission, to facilitate market access for developing countries to the European Union.
- This free and user friendly service for exporters, importers, trade associations and governments, provides the following online:
 - Information on EU and Member States' import requirements as well as internal taxes applicable to products;
 - Information on EU preferential import regimes benefiting developing countries;
 - Trade data for the EU and its individual Member States;
 - A market place where exporters in developing countries can establish contacts with importers from the EU;
 - Links to other authorities and international organizations involved in practical trade operations and trade promotion.
 - The possibility to lodge detailed information requests about real-life situations encountered by exporters.

Meeting with SECO

20. On behalf of SECO, Ms. Ariane Sotoudeh, Trade and Clean Technology Cooperation and Ms. Flaminia De Pourtales, Non-Tariff Measures Division welcomed the Group to the SECO and briefed the Group on the following:

- Swiss Economic Development Cooperation Activities in the Area of Technical Barriers to Trade and Standards;
- Functioning of the Swiss TBT/SPS Enquiry Point and National Notification Authority.

21. The Group had discussion in detail on the day-to-day work of the Swiss TBT/SPS Enquiry Point and National Notification Authority.

IV. CONCLUSION AND RECCOMENDATIONS

22. The Study Tour has been completed and its objectives have been well met. The Group has gained a quite comprehensive knowledge about all the issues related to TBT/ SPS Agreements, especially the operation of the notification and enquiry point. This will help to build up and strengthen the Network of TBT and SPS Notification Authorities and Enquiry Points in Viet Nam.

23. The TBT Group would like to thank:

- All the staff of the MUTRAP II, particularly those personnel directly involved in the mission preparation and those experts accompanying the Group for their assistance;
- All the organizations and its officers for meeting with the Group and for providing the Group with necessary briefings and information;
- The Permanent Mission of Viet Nam in Geneva as well as the Trade Office of Viet Nam in Brussels for their help.

24. The Group would like to put forward some recommendations, for consideration of the Project Team, as follows:

- Assist in establishing an Information Management System related to TBT/SPS;
- Organize some training on notification skills and operation skills of the enquiry point for the relevant officers of the Network of TBT and SPS Notification Authorities and Enquiry Points;
- Assist in establishing a database for notification like the one created in the European Commission./.
