

CHAPTER 5 IMPARTIALITY AND TRANSPARENCY MEASURES

Notification for enhanced controls and inspections: Article 5.1

Documentation, inspections and other cross-border requirements often lack transparency. Lack of published information on the application of requirements can catch traders by surprise when a decision is taken or repealed.

To maintain sanitary and phytosanitary standards, WTO Members may introduce enhanced border controls or inspections for food, beverage and feedstuffs. However, the TFA mandates transparency in the issuance, termination or suspension of enhanced controls and inspections, without prejudice to the possibility of WTO Members to carry out such additional verifications.

Transparency in the issuance, termination, or suspension of notifications for enhanced control at the border on foods, beverages, or feedstuffs must be ensured.

The measure

Article 5	OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY
1	<p>Notifications for enhanced controls and inspections</p> <p>Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination, or suspension:</p> <ul style="list-style-type: none"> (a) the Member may, as appropriate, issue the notification or guidance based on risk; (b) the Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply; (c) the Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner; and (d) when the Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

Understanding the measure

What is covered?

Scope

Article 5.1 describes measures to enhance impartiality, non-discrimination and transparency with regard to the issuance, termination or suspension of notifications for enhanced controls of inspections imposed on food, beverages, and feedstuff at the border, with the aim of safeguarding human, animal or plant health within the territory of a Member.

Core obligation

Members must quickly terminate or suspend the notification of controls as soon as the underlying risk no longer exists, or if changed circumstances allow for a re-evaluation of the notification in a less trade-restrictive manner. It is important to clarify that this provision is only applicable when the WTO Member has set up or maintains a system of issuing notifications or guidance to enhance border controls for foods, beverages or feedstuffs. The TFA does not require WTO Members to establish rapid alert systems.

Prompt announcement of termination of notification or guidance

WTO Members must, as appropriate, readily publish the announcement of the termination or suspension of the notification or guidance of enhanced controls or inspections in a non-discriminatory and easily accessible manner or inform the exporting WTO Member or the importer. The use of the phrase 'shall, as appropriate' states that Article 5.1(d) is legally mandatory but with some degree of flexibility.

Risk-based notification or guidance recommended

Subparagraph (a) rules that WTO Members may, as appropriate, issue the notification or guidance based on risk criteria. The use of the verb 'may, as appropriate' does not impose a legally binding obligation but encourages the possibility and discretion of Members to issue the notification or guidance based on risk.

Application of notification or guidance to only affected entry points recommended

Subparagraph (b) states that the notification or guidance may apply uniformly only to those points of entry affected. As in the previous subparagraph, the use of the word 'may' reflects the absence of a mandatory obligation but gives WTO Members the discretion to decide whether to limit the issuance of notifications or guidance only to those points of entry where the sanitary and phytosanitary standards apply.

What is not covered?

This measure remains silent on the procedural aspects of notifications or alerts, including the specific means of announcement of termination or suspension.

Benefits and opportunities for stakeholders

Provisions addressed under this measure will enhance the quantity and quality of information available on enhanced controls or inspections, enabling traders to strengthen their capacity to comply with new cross-border requirements enforced to protect human, animal or plant health.

A prompt termination or suspension of notification of enhanced control will help traders to adapt and adjust their activities as soon as the announcement of termination is released. In addition, this measure will reduce unnecessary or redundant controls or inspections at the border, thus reducing time and financial cost of cross-border procedures for SMEs.

Availability of information – especially through the internet – will reduce the time and burden on government agencies to respond to traders' inquiries about any control-related issues. Moreover, transparency of information will create enhanced levels of confidence and trust among the private sector, fostering a climate of compliance and cooperation with border agencies.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A system of notifications/alerts of enhanced border inspections has been conceived and implemented in the country.
- Such a system has been designed and made effective according to a risk criterion.
- Notifications are issued and applied uniformly only to those points of entry affected.

- Alerts are promptly terminated or replaced by a less trade-restrictive measure when circumstances giving rise to the enhanced control no longer exist.
- The announcement of termination of a notification for enhanced control is published promptly in a non-discriminatory and easily accessible manner.
- The competent authorities of the exporting country or the importer are notified if a consignment does not meet the objective quality standards.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

Implementation sequence	Actions required
	Preparatory Phase
	Determine legal, procedural and technical needs for creating/improving the current notification system.
	Set-up phase
	Establish or improve the legal and institutional basis for an efficient notification system ensuring information exchange between border agencies for import control purposes.
	Designate an agency/department responsible for issuance of rapid alerts.
	Establish the procedural basis for the notifications system.
	Connect the notification system to a risk analysis system (or existing risk management system) for collecting positive evidence of enhanced inspections.
	Include a prompt, non-discriminatory and transparent termination mechanism for alerts, as well as notifications to exporting countries.
	Management and follow-up phase
Set up a mechanism for monitoring results of inspections and allow prompt terminations of alerts when no longer needed.	
Average time for implementation	Between two and three years.
Leading implementation agency	The ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

Government institutions may lack human, financial and technical capacity to regularly review notifications for enhanced inspections to assess their relevance and eventual termination. Border agencies may also not be able to manage a prompt issuance (or revision) of enhanced controls, leading to uncertainty of inspection requirements to be applied at the points of entry. The lack of necessary ICT capacity and infrastructure to set up a rapid system of alerts could also be a challenge. Poor collaboration between a large number of agencies may also lead to challenges in implementation, especially when border agencies are not being promptly and fully informed about changes in the level of controls.

Key factors for success

The use of a risk-based assessment system to release regular risk-based notifications of enhanced inspections will determine the successful implementation of this measure. This will ensure that the rules of enhanced inspections are widely available for the benefit of stakeholders. A robust mechanism for raising public awareness will enable traders to have access to notifications as soon as these are issued.