



**Asia-Pacific  
Economic Cooperation**

**Advancing** Free Trade  
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# **Study on Transparency of Technical Barriers to Trade Notifications in the APEC Region**

**APEC Committee on Trade and Investment**

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Economic Cooperation**

# **Study on Transparency of Technical Barriers to Trade Notifications in the APEC Region**

**APEC Committee on Trade and Investment**

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*Study on Transparency of Technical Barriers to  
Trade Notifications in the APEC region*

## **GLOSSARY**

ABAC	APEC Business Advisory Council
APEC	Asia-Pacific Economic Cooperation
ASC	APEC Study Center
COMEXPERU	Foreign Trade Association of Peru
CTI	Committee on Trade and Investment
HS	Harmonized System
ICS	International Classification of Standards
I-TIP	Integrated Trade Intelligence Portal
MAG	Market Access Group
MSME	Micro, Small and Medium-sized Enterprise
NTB	Non-Tariff Barrier
NTM	Non-Tariff Measure
PPD	Public – Private Dialogue
REDAP	Peruvian National Network for Asia Pacific Studies
RIA	Regulatory Impact Assessment
SCSC	Sub-Committee on Standards and Conformance
SPS	Sanitary and Phytosanitary
STC	Specific Trade Concern
TBT	Technical Barriers to Trade
TBT IMS	TBT Information Management System
WTO	World Trade Organization

## EXECUTIVE SUMMARY

As tariffs tend to decrease, Non-Tariff Measures (NTMs) are increasing in number and complexity across the world. In APEC, measures that may contain non-tariff barriers to trade, such as Technical Barriers to Trade (TBT), are one of the most employed NTMs.

Under the WTO Agreement on Technical Barriers to Trade, Members are required to notify technical regulations and conformity assessment procedures. Although WTO Members generally comply with notifying technical regulations and conformity assessment procedures, some TBT notifications lack adequate information necessary to satisfy business needs, an issue which APEC economies have also witnessed.

In fact, the APEC Business Advisory Council's (ABAC) study, *Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions (2016)*, reports that TBT measures are most burdensome when compared to other NTMs, since they have the greatest negative impact in terms of time and cost. The ABAC study also highlights APEC Economies businesses' major problems with WTO Members' TBT notifications, including inconsistency, lack of transparency, and sudden changes to notified measures. These problems are mainly related to technical measures addressing labelling, testing protocols and product classification. If unaddressed, these problems will continue to increase transaction costs and pose obstacles to Micro, Small and Medium-sized enterprises (MSMEs) looking to formulate efficient business decisions to export their products. As the APEC's study *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region (2016)* states, from the business perspective, specially MSMEs, TBT measures tend to impose complicated requirements, and several procedural obstacles. MSMEs would benefit greatly from improved transparency in TBT notifications. The inclusion of available, accessible information, particularly regarding compliance with new requirements, would ease the current obstacles faced by MSMEs and increase the utility of TBT notifications.

In 2020, APEC's Committee on Trade and Investment (CTI) approved Peru's *Initiative on Promoting Transparency of Technical Barriers to Trade (TBT) World Trade Organization (WTO) Notifications: Improving Completeness and Clearness of Information*" (2020/CTI2/IS06). This self-funded study represents the first part of the initiative and aims to evaluate the completeness and clearness of the information provided by APEC Members in accordance with the WTO TBT Enquiry Point Guide: Making Transparency Work (2018) and Decisions and Recommendations adopted by the WTO TBT Committee (G/TBT/1/Rev.14). The scope of this study includes a representative sample of regular and emergency notifications, and their respective addenda and corrigenda; submitted by APEC economies between 2015 and 2019. It also includes a questionnaire to evaluate private sector experiences on the matter.

This study is divided into five sections. The first section focuses on transparency principles in the WTO TBT Agreement and identification of the general problem. The second section presents the methodology used for the analysis of WTO TBT notifications. The third section provides the results of the evaluation of TBT notifications with their respective addenda and corrigenda. The fourth section outlines private sector perceptions on WTO TBT notifications. The fifth and final section presents conclusions. The results of this self-funded study will (1) identify key items in TBT notifications that should be



improved with respect to completeness and clearness, and (2) highlight private sector perceptions regarding the main challenges related to the transparency of current TBT notification practices.

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## **1. TRANSPARENCY OF TECHNICAL BARRIERS TO TRADE IN APEC**

### **1.1. TRANSPARENCY PRINCIPLES IN THE TBT AGREEMENT**

The framework of the World Trade Organization (WTO) features transparency as a fundamental principle of the multilateral trading system. This principle aims to provide clarity, predictability and information on the policies and regulations of the different WTO Members. To achieve a high level of transparency, several legal instruments of the WTO, including the WTO Agreement on Technical Barriers to Trade (the “TBT Agreement”), have incorporated this principle.

As transparency is the cornerstone of TBT Agreement, several articles aim to ensure that technical regulations, standards, and conformity assessment procedures do not create unnecessary obstacles to trade. Towards these aims, the TBT Agreement establishes three core elements enshrining the principle of transparency:

- i. Provisions of notification process: Articles 2.9, 2.10, and 3.2 contain notification obligations related to technical regulations, while Articles 5.6, 5.7, and 7.2 establish provisions on notification of conformity assessment procedures.
- ii. Establishment of an Enquiry Point: Article 10.1 ensures that each Member must have an Enquiry Point to manage enquiries from other Members and to provide information related to TBT regulations. Moreover, Article 10.10 establishes that Members shall designate a single notification authority.
- iii. Publication requirements: Technical regulations (Articles 2.9.1 and 2.11) and conformity assessment procedures (Articles 5.6.1 and 5.8) shall be published at an early appropriate stage and promptly. Also, Annex 3 of the TBT Agreement contains obligations regarding publication of standards.

The TBT Committee has set out a series of decisions and recommendations on the implementation of the provisions related to transparency, which have been refined over the years. Through these efforts, the TBT Committee has reiterated the importance that Members fulfill their TBT notification obligations, as they are critical in preventing unnecessary barriers to trade and allowing Members to provide input on other Members’ development of technical requirements.

The latest, fourteenth revision of the compilation of the *TBT Committee’s Decisions and Recommendations*, published in 2019, reiterates the importance of (1) ensuring that Members comply fully with the notification requirements in Articles 2.9 and 5.6 of the TBT Agreement, and (2) establishing mechanisms to facilitate internal coordination for the effective implementation of the TBT Agreement’s transparency-related obligations. The Committee also encourages Members to submit notifications at an early stage when measures are still in draft form; and to ensure time and adequate opportunity for comments, for comments to be considered and for proposed measures to be modified. Furthermore, the revision includes specific decisions and recommendations on notification timing and format, procedures for handling comments, and information provided by enquiry points.

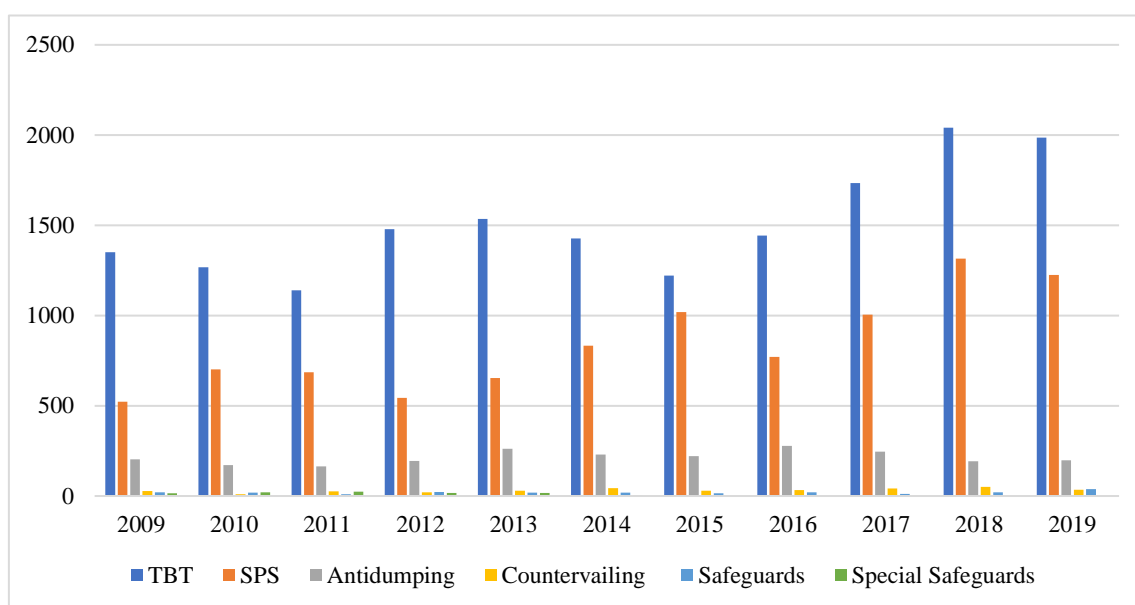
The notification provisions in the TBT Agreement, as well as the TBT Committee’s decisions and recommendations, highlight the importance of Members’ implementation

of transparency. According to the *WTO TBT Enquiry Point Guide (2018)*, TBT notifications identify how Members intend to regulate towards specific policy objectives and the potential trade implications of the notified regulations. Moreover, notifications provide trading partners with the opportunity to receive information about new technical regulations, standards, or conformity assessment procedures at an appropriate early stage and even provide comments and feedback to ensure concerns and constructive insights are properly considered before the regulations become finalized. Early notifications also help producers and exporters to identify and adapt to changing requirements within a reasonable timeframe.

## 1.2. IDENTIFICATION OF THE PROBLEM

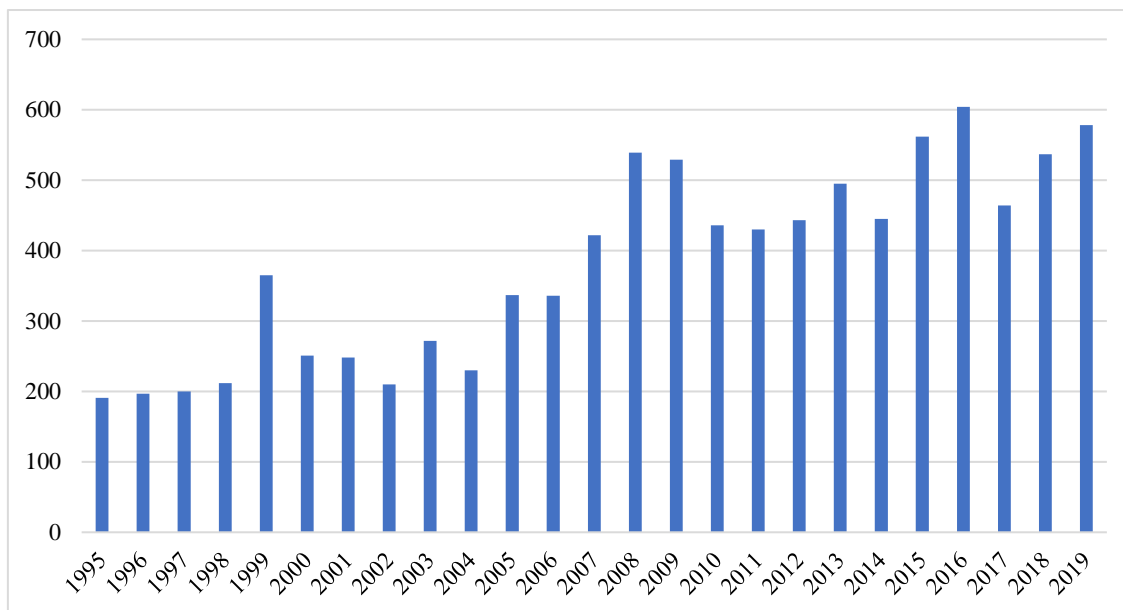
According to the WTO's Integrated Trade Intelligence Portal (I-TIP), the frequency of Non-Tariff Measures (NTMs) of all types has increased significantly over the past few years. In addition, TBT measures are by far one of the most commonly used NTMs among WTO Members (NZIER, 2016). As Figure 1 shows, the number of TBT notifications increased by 47.00% between 2009 and 2019, representing 59.03% of all NTMs notifications submitted in 2019.

**Figure 1. Notifications of Non-Tariff Measures (2009-2019)**



Similar patterns have been observed in the APEC region. According to the *Final Review of APEC's Progress Towards the Bogor Goals (2020)*, TBT and Sanitary and Phytosanitary (SPS) measures are by far the most used NTMs by APEC economies. Figure 2 shows that TBT notifications from APEC economies have increased 6.94% yearly from the founding of the WTO and the TBT Agreement's entry into force in 1995 up until 2019.

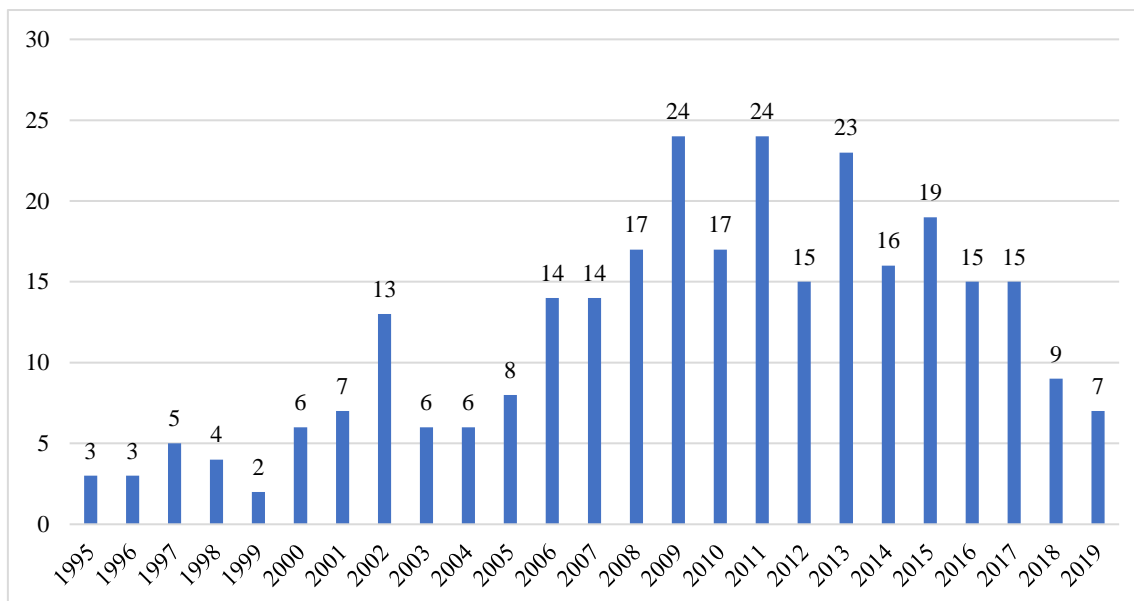
**Figure 2. Regular TBT Notifications from APEC Economies**



Despite an increase in the number of TBT notifications, the quality of information provided represents a concern for producers and exporters. According to *ABAC's Study on Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions (2016)*, businesses expressed that they consider TBT measures as the most challenging NTMs due to a perceived lack of transparency. In particular, the study highlights business concerns with access to information related to technical requirements and product classification for better compliance. Respondents also expressed that information available in a single language could be a barrier to comply with the technical requirements, even though Article 10.9 of TBT Agreement allows Members to notify in one of three official languages. Moreover, the *APEC's Bogor Goals Progress Report (2018)* describes how several technical measures described by businesses as trade-restrictive and non-transparent have been raised as specific trade concerns (STCs) on the floor of the WTO TBT Committee.

Challenges related to transparency also feature in the findings of the *Study of APEC Economies' TBT and SPS Specific Trade Concerns: An Analysis from the APEC Cross Cutting Principles on Non-Tariff Measures (2020)*. Figure 3 shows that from 1995, the number of TBT STCs presented to an APEC economy has increased annually in 14.54% until 2019 (WTO I-TIP). According to the research, the predominant type of STC expressed by Members concerned the lack of transparency related to technical measures. Furthermore, in cases where technical measures were notified, Members raising or supporting a transparency-related STC often requested more detailed information regarding the scope of the measure, its technical requirements, and related timelines. In 77.00% of cases where an APEC economy was subject to a TBT STC, the WTO member that raised or supported the STC was another APEC economy.

**Figure 3. Number of STCs (APEC Economies subject to STCs)**



This study evaluates the completeness and clearness of the information provided by APEC Members in their TBT notifications in accordance with the WTO TBT Guidelines. It seeks to identify key items from the TBT notification format that should be improved in terms of information quality. Additionally, this study collects information about the private sector perspective regarding the degree of transparency of TBT notifications. The results of this study will serve as a tool to draft best practices on improving the completeness and clearness of information in APEC economies' TBT notifications, according to the provisions established in the TBT Agreement.

## 2. RESEARCH METHODOLOGY

This study is based on the methodology applied in the previous *Study of APEC Economies' Sanitary and Phytosanitary (SPS) Notifications on Quality and Completeness of Information (2019)*. This study was part of Peru's initiative *Proposal on Promoting Transparency Through the Improvement of Sanitary and Phytosanitary Notifications*, which aimed to continue APEC's work on a set of recommendations to improve the quality and integrity of WTO SPS notifications. The objective of this study was to evaluate, using random samples, the quality and completeness of the information provided by APEC economies in WTO SPS notifications, in accordance with WTO guidelines. In that sense, this study developed a set of questionnaires to (1) evaluate the quality of information in APEC economies' TBT notifications; and (2) assess private sector perceptions on this matter.

### 2.1. WTO TBT NOTIFICATIONS

From the 4,507 WTO TBT regular notifications between 2015-2019, this study randomly selected a total of 355 notifications. This is a representative sample which provides a 95% confidence level. Table 1 shows the process of the determination of sample size.

**Table 1. Process of the determination of sample size.**

Confidence level	95%
Confidence interval	5%

Total number of notifications	4,507
Sample size	355

The sample was randomly selected and distributed proportionally based on the percentage of notifications from each APEC economy during the aforementioned period. Regular notifications also include both (i) “technical regulations,” and (ii) “conformity assessment procedures” under urgent circumstances notified according to Articles 2.10.1 and 5.7.1, respectively. Regular TBT notifications are evaluated according to the questionnaire developed in Appendix 2 – Annex 2.

The purpose of this tool is to evaluate whether the information provided by economies in each item of the TBT notification is presented in accordance with the WTO Coherent Use of Notifications Formats (G/TBT/1/Rev.14). Given that any addendum or corrigendum should be read in conjunction with the original notification, the addendum or corrigendum (if any) derived from the selected notifications is evaluated using the questionnaires developed in Appendix 2, Annex 3 and 4, respectively. Given that a revision replaces an existing notification, documents are evaluated using the questionnaire in Appendix 2, Annex 2 in cases where regular notifications include revisions.

## **2.2. PRIVATE SECTOR EXPERIENCES**

Private sector experiences on TBT notifications have been evaluated using the questionnaire developed in Appendix 2, Annex 5.

ABAC Peru circulated and disseminated the private sector questionnaires among ABAC members. Private sector responses were received through APEC’s CTI. In total, 74 questionnaires were answered and considered for this study.

## **2.3. OBJECTIVE OF THE STUDY**

This study is part of Peru’s initiative Promoting Transparency of TBT WTO Notifications: Improving Completeness and Clearness of Information” (2020/CTI2/IS06), which can be found in Appendix 1.

This self-funded study aims to evaluate the completeness and clearness of the information provided by APEC Members, in accordance with the WTO TBT Guidelines on Transparency. It seeks to raise awareness and increase understanding of:

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



## **2.4. SCOPE OF THE STUDY**

The study considered regular TBT notifications, including urgent notifications, and their respective addenda and corrigenda, if any, furnished by APEC economies between 2015 and 2019.

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

## **3. RESULTS OF NOTIFICATIONS' ANALYSIS**

### **3.1. TBT NOTIFICATIONS**

The analysis of the results is based on the TBT Committee decisions and recommendations on the *Coherent Use of Notification Formats (G/TBT/1/Rev.14)* and *WTO TBT Enquiry Point Guide (2018)*.

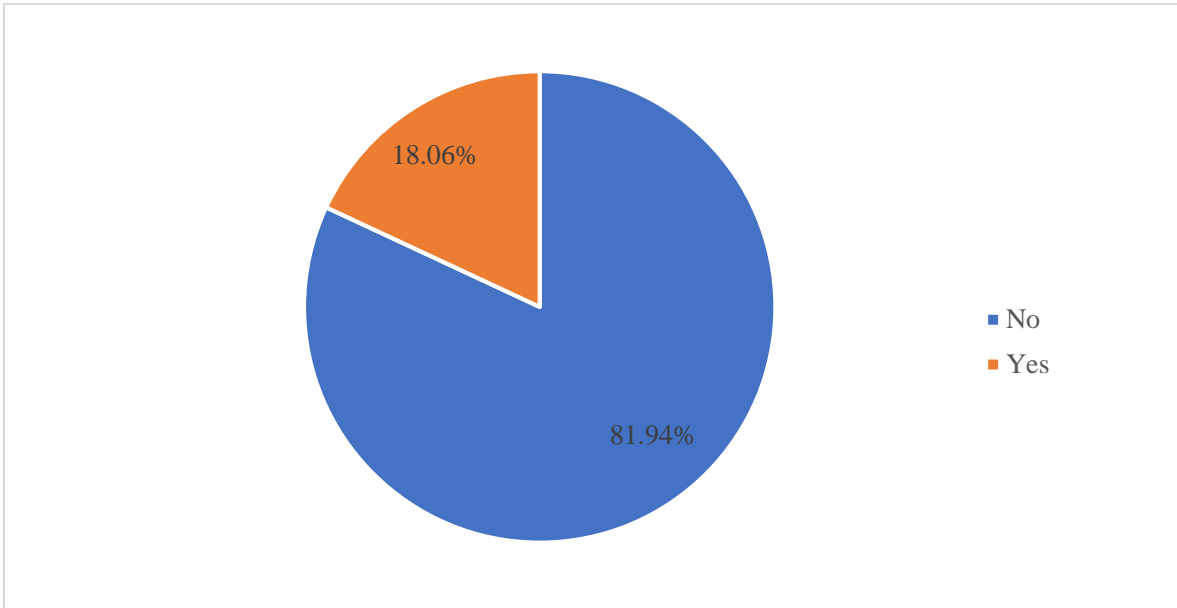
#### **3.1.1. ITEM 1: NOTIFYING MEMBER**

For this item, the WTO TBT notification format identifies the following parties as Members to which notification obligations are applicable:

*“Government, including the competent authorities of the European Union, which has acceded to the Agreement and which is making the notification; if applicable, name of local government involved Articles 3.2 and 7.2).”*

From this statement, the TBT Agreement and its notifying obligations are applicable to all APEC economies, which have one National Notification Authority. Additionally, Members are also required to notify about technical regulations or conformity assessment procedures of local governments on the level directly below that of the central government. If applicable, the TBT notification format provides a category (box 1) for Members to indicate the name of local government involved. As Figure 4 shows, only 18.06% of the sample notifications involved a local government.

#### **Figure 4. Involvement of Local Government in Sampled APEC TBT Notifications**



### 3.1.2. ITEM 2: AGENCY RESPONSIBLE

For this item, the WTO TBT notification format requests the notifying Member to identify the:

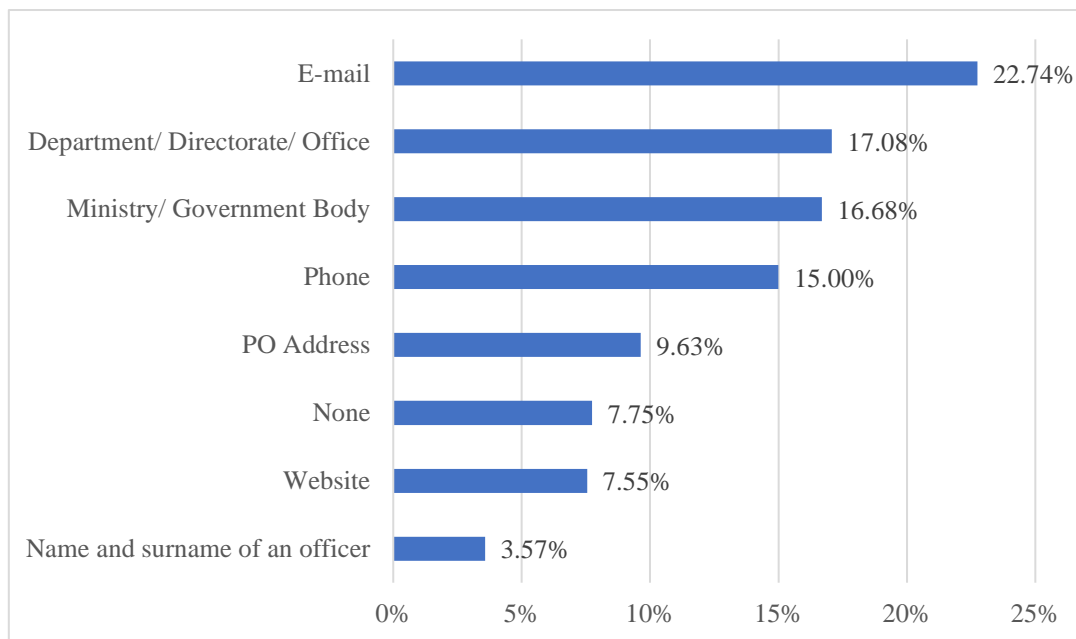
*“Body elaborating a proposal for or promulgating a technical regulation or procedures for assessment of conformity. The authority or agency designated to handle comments regarding the specific notification shall be indicated if different from above.”*

About 95% of the sample notifications comply with the request to indicate the responsible body of their TBT notifications. However, in some cases, the notifying Member has not identified the specific agency responsible for elaborating the notification.

In addition, Members provided information on contact points in varying degrees of specificity: 22.74% of the sample notifications include an e-mail for handling comments, 17.08% indicate the Department, Directorate or Office of the responsible agency, and 16.68% of the notifications indicate the corresponding Ministry or Government Body.

Figure 5 provides further granularity on the information Members provided on contact points from the sample TBT notifications.

**Figure 5. Contact Point Information in Sampled APEC TBT Notifications**



### 3.1.3. ITEM 3: NOTIFIED UNDER

The WTO notification format recommends that Members notify any technical measure according to the following relevant provisions of the TBT Agreement:

*“Article 2.9.2: proposed technical regulation by central government body;*

*Article 2.10.1: technical regulation adopted for urgent problems by central government body; Article 3.2: proposed technical regulation or technical regulation adopted for urgent problems by local government (on the level directly below that of the central government);*

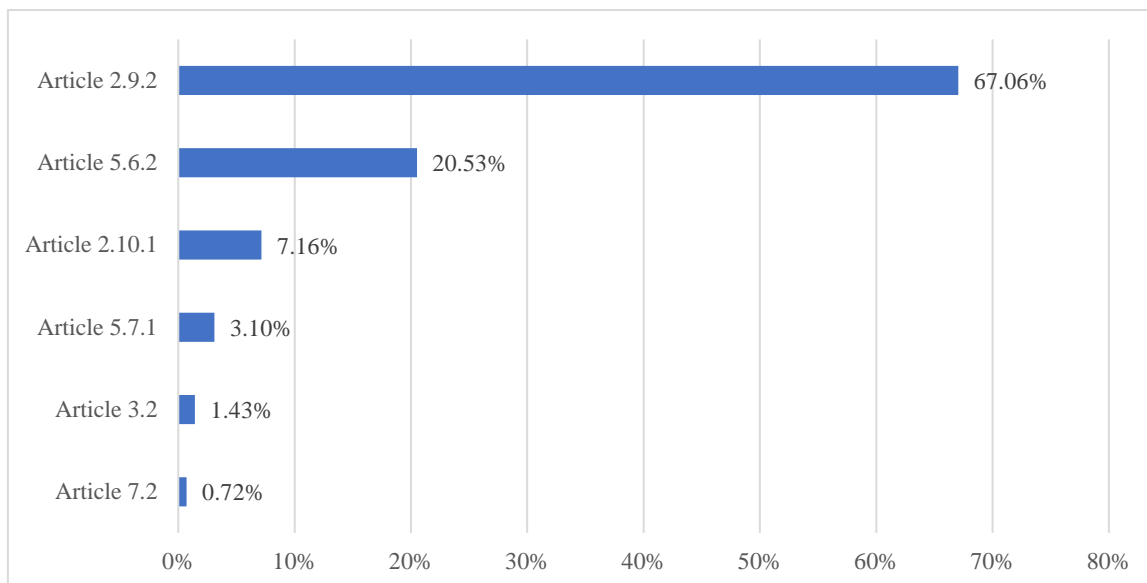
*Article 5.6.2: proposed procedures for assessment of conformity by central government body;*

*Article 5.7.1: conformity assessment procedure adopted for urgent problems by central government body;*

*Article 7.2: proposed procedure for assessment of conformity or conformity assessment procedure adopted for urgent problems by local government (on the level directly below that of the central government)”.*

An assessment of the total sample notifications shows that the members mostly notify their measures under Article 2.9.2 (67.06%) and 5.6.2 (20.53%) of the TBT Agreement (See Figure 6). In other words, most of the sample notifications are related to technical regulations and conformity assessment procedures established by central government bodies.

**Figure 6. Relevant TBT Agreement Provision Cited in Sampled APEC TBT Notifications**



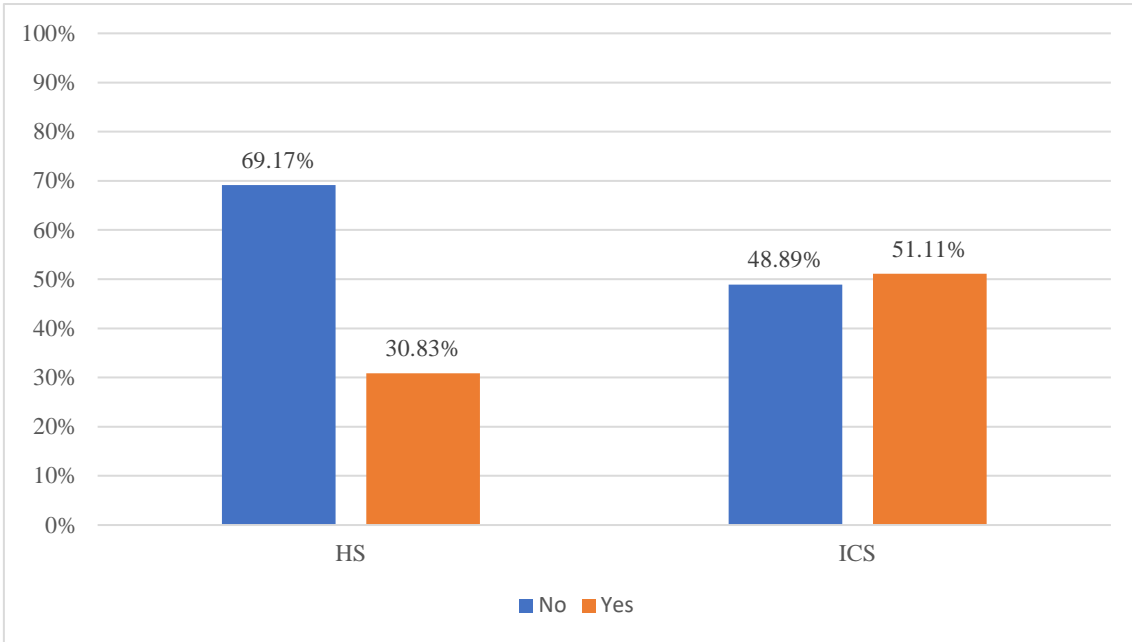
#### 3.1.4. ITEM 4: PRODUCTS COVERED

The WTO notification format recommends that Members include the following information concerning the products covered in the notification:

*“HS or CCCN (chapter or heading and number) where applicable. National tariff heading if different from HS or CCCN. ICS numbers may be provided in addition, where applicable. A clear description is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided”.*

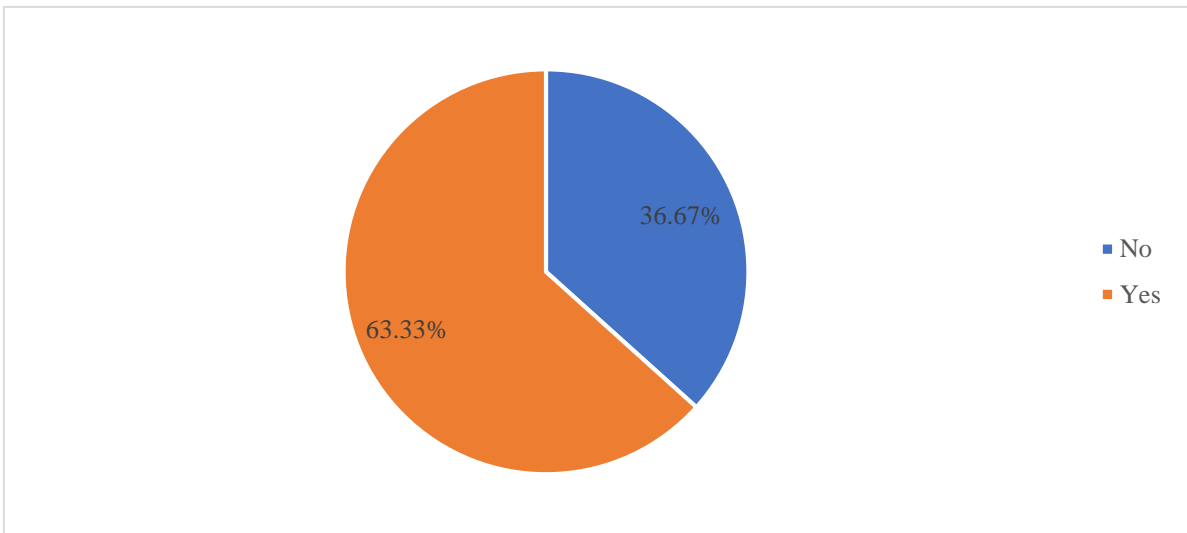
In this study, around 30.83% of APEC members’ regular notifications show the affected tariff item number (also called tariff line or HS), and 51.11% APEC members provide the International Classification of Standards (ICS) number (see Figure 7). These results demonstrate that APEC members are in alignment with the more general practice across WTO membership: in the *WTO TBT Enquiry Point Guide: Making Transparency Work* (2018), the WTO states that members normally either use Harmonized System (HS) codes, International Classification for Standards (ICS) codes or free text.

**Figure 7. Comparative between the inclusion of HS and ICS in Sampled APEC TBT Notifications.**

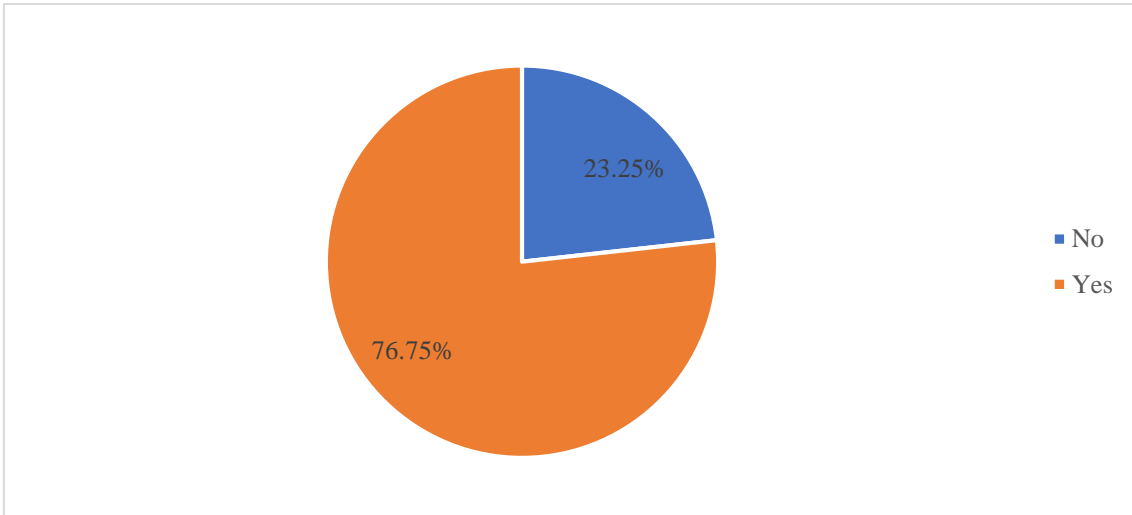


Of the total TBT notifications analyzed in this study, 63.33% include a description of the products covered by the notified measure (see Figure 8). Most of those descriptions (76.75%) have been determined as “clear” since they do not contain abbreviations and follow the recommendations made by the WTO TBT Committee (see Figure 9).

**Figure 8. Inclusion of a description of the products covered in Sampled APEC TBT Notifications**



**Figure 9. Clearness of Provided Product Descriptions in Sampled APEC TBT Notifications**



In summary, the analyzed sample of TBT notifications shows that APEC economies tend to be aligned with WTO TBT Committee recommendations regarding the clearness of the description of products. Nevertheless, there is still room for improvement.

**Table 2. Evaluation of item 4 of Sampled APEC TBT notifications**

Elements required within the item	Level of accomplishment	Average weight	Total
Tariff item number(s) (HS) mentioned	30.83%	33.33%	10.28%
Description of the products	63.33%	33.33%	21.11%
Clearness of description	77.00%	33.34%	25.67%
<b>Evaluation of item 4</b>			<b>57.06%</b>

### 3.1.5. ITEM 5: TITLE, TRANSLATIONS

The WTO notification format requires that Members specify the following information:

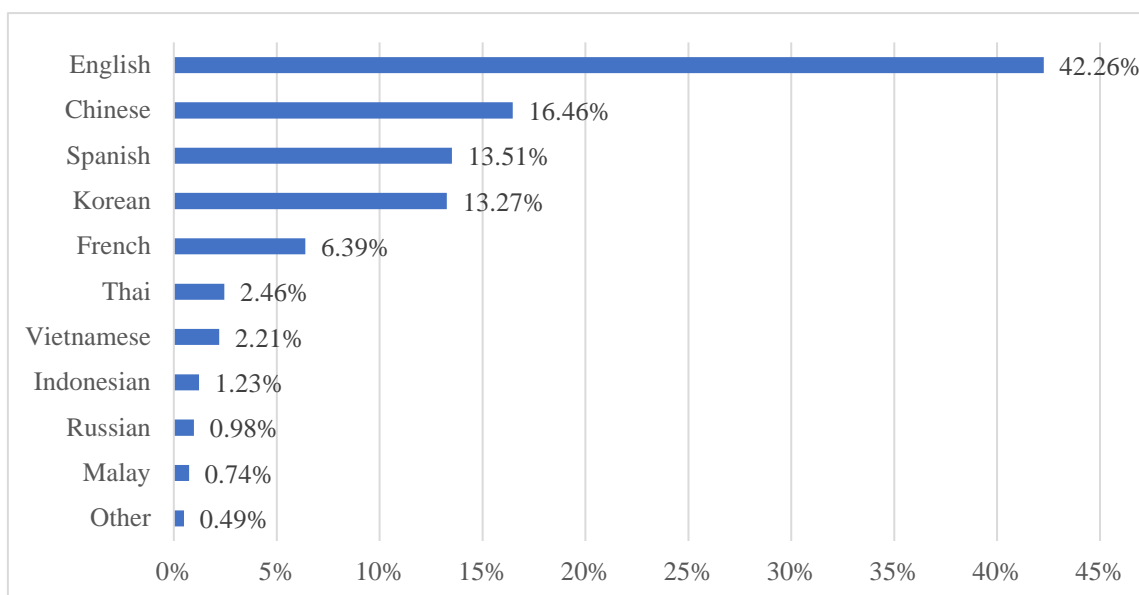
*“Title of the proposed or adopted technical regulation or procedure for the assessment of conformity that is notified. Number of pages in the notified document. The language(s) in which notified documents are available. If a translation of the document is planned, this should be indicated. If a translated summary is available, this too should be indicated.”*

In this study, 94.71% of analyzed notifications include the title of the notified measure, as well as the number of pages of the notified document.

Additionally, all analyzed notifications have been submitted in one of the three official WTO languages: English, Spanish and French. However, the actual text of the notified measure itself may be drafted in a different language (see Figure10). In this study, 42.26% of measures described in the TBT notifications are in English, followed by Chinese (16.46%) and Spanish (13.51%). As the TBT Agreement does not require it, most of the

notifications (92.50%) do not indicate whether translations of the notified documents are available.

**Figure 10. Language of the Sampled APEC Notified Technical Measures**



In conclusion, Members can improve upon their completion of item 5 when submitting a WTO TBT notification. If the language of the technical measure is not in one of the three official WTO languages (English, Spanish, French), APEC economies have the opportunity to include a link for translation to provide a better understanding of their regulations.

**Table 3. Evaluation of item 5 of TBT notifications**

Elements required within the item	Level of accomplishment	Average weight	Total
Title	94.44%	25.00%	23.61%
Number of pages	96.11%	25.00%	24.03%
Language	100.00%	25.00%	25.00%
Inclusion of a link for translation	7.50%	25.00%	1.88%
<b>Evaluation of item 5</b>			<b>72.64%</b>

### 3.1.6. ITEM 6: DESCRIPTION OF CONTENT

The WTO requires that Members include the following when notifying technical measures:

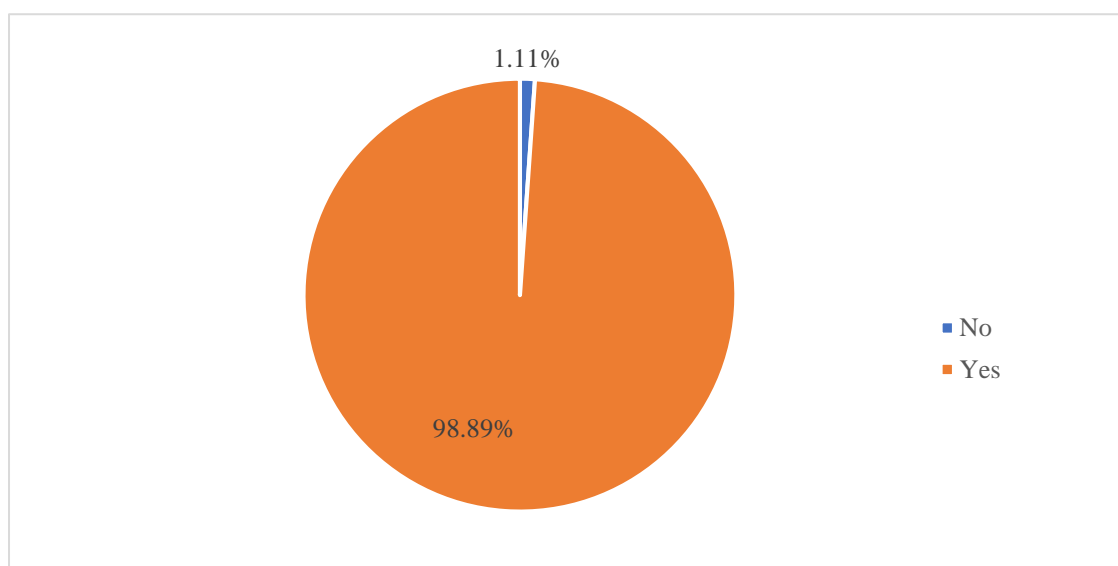
*“An abstract of the proposed or adopted technical regulation or procedures for assessment of conformity clearly indicating its content. A clear comprehensible description stating the main features of the proposed or adopted technical regulation or procedures for assessment of conformity is important for an*

*understanding of the notification by delegations and translators. Abbreviations should be avoided.”*

This section contains critical information for Members in completing their WTO notifications, since it directs Members to describe the objective of the measure to be notified, its probable effects on trade, and its specific features. With insufficient or very general information, stakeholders encounter difficulties in understanding the scope of the notified measure. The description of the content is another of the items for which APEC economies have the opportunity to improve substantially.

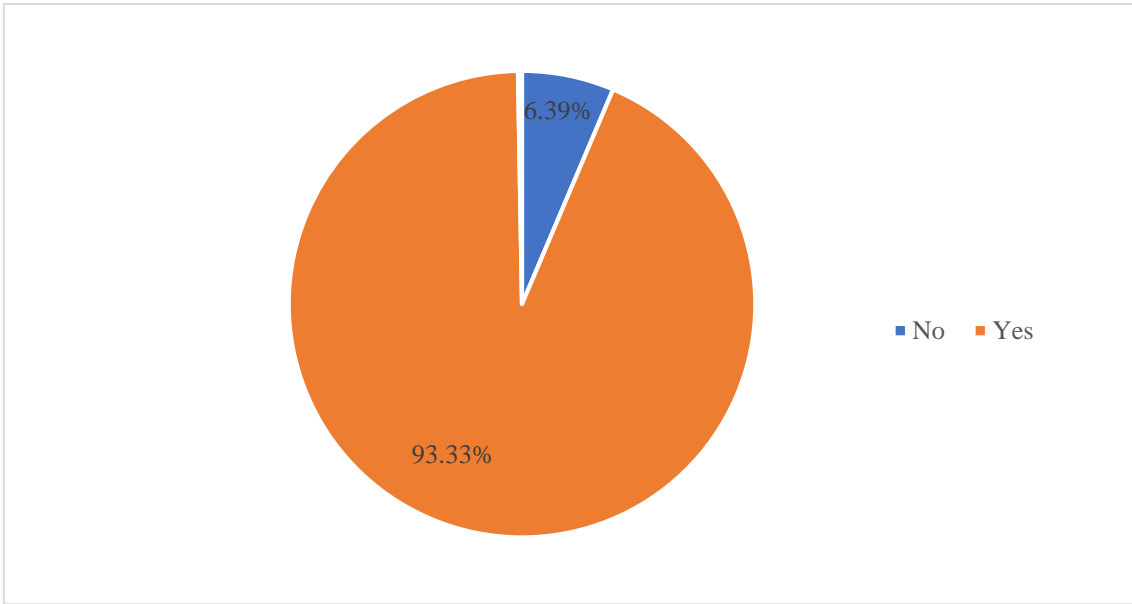
The results of the study show that 98.89% of the sample notifications contain a description or abstract of the proposed regulations (see Figure 11). In addition, the study finds that 93.33% of notifications with descriptions can be considered clear (see Figure 12). 62.22% of those notification do not contain abbreviations (see Figure 13).

**Figure 11. Inclusion of any description or abstract of Sampled APEC TBT Notifications**

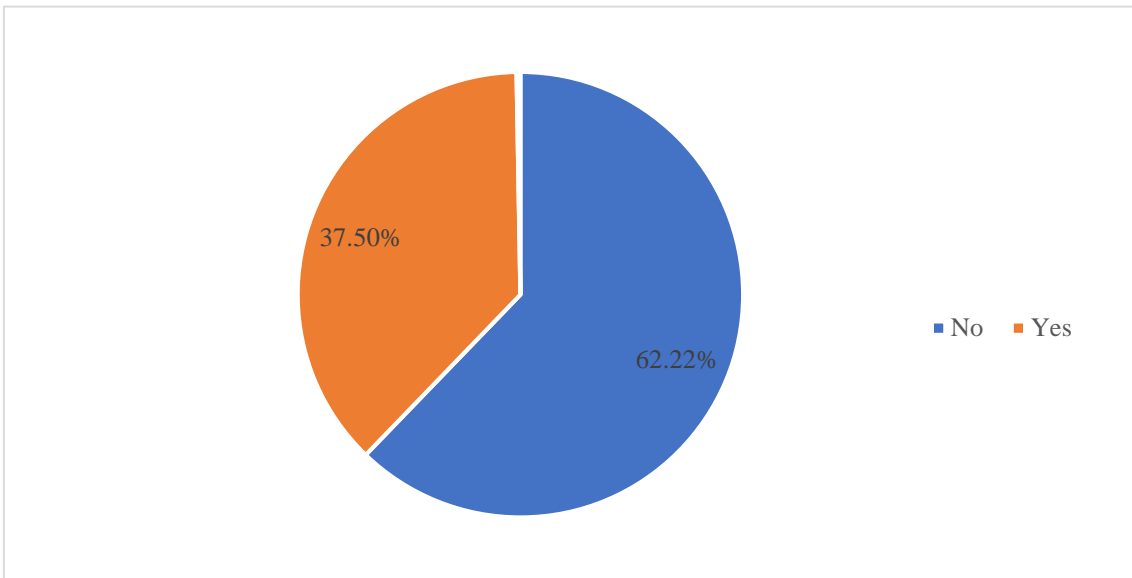


**Figure 12. Clearness of Provided Description in Sampled APEC TBT Notification**





**Figure 13. Sampled APEC TBT Notifications with Descriptions Including Abbreviations**



Considering these results, this study recommends that improvement to APEC notifications can be made by inclusion of more detailed and explicit descriptions of the possible trade effects of the notified measures. Also, APEC economies should avoid the use of abbreviations in this item in accordance with the *WTO TBT Enquiry Point Guide (2018)*.

**Table 4. Evaluation of Item 6 in TBT Notification Format**

Elements required within the item	Level of accomplishment	Average weight	Total
Description	98.89%	33.33%	32.96%

Clearness of description	93.33%	33.33%	31.11%
Avoid abbreviations	62.22%	33.34%	20.74%
<b>Evaluation of item 6</b>			84.81%

### 3.1.7. ITEM 7: OBJECTIVE AND RATIONALE

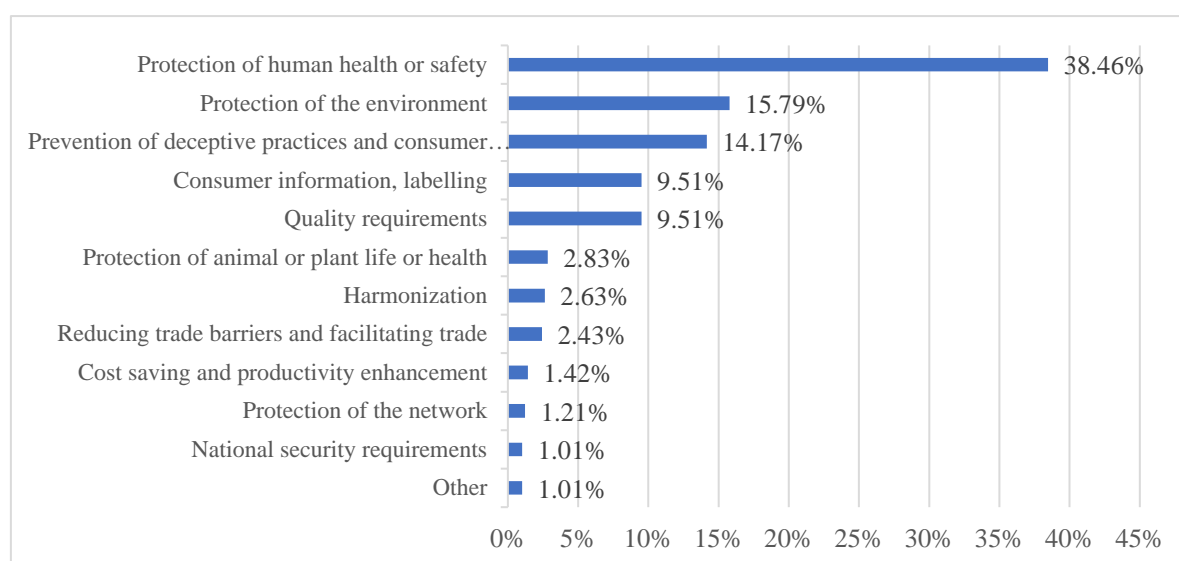
The WTO recommends that Members fill this section with the following information:

*“For instance: Prevention of deceptive practices and consumer protection, Protection of human health or safety, Protection of human health or safety, Quality requirements, Protection of the environment, Consumer information, labelling, Reducing trade barriers and facilitating trade, Harmonization, Protection of animal or plant life or health, Cost saving and productivity enhancement, National security requirements and Other”*

As the WTO states, it is important that Members clearly explain the objective and rationale of the notified measure to ensure understanding by other Members. Under TBT Article 2.5, Members may also request that the notifying Member provide the justification underlying the notified measure. Many notified technical regulations and conformity assessment procedures have more than one legitimate objective; in this case, Members should indicate all relevant legitimate objectives upon notification.

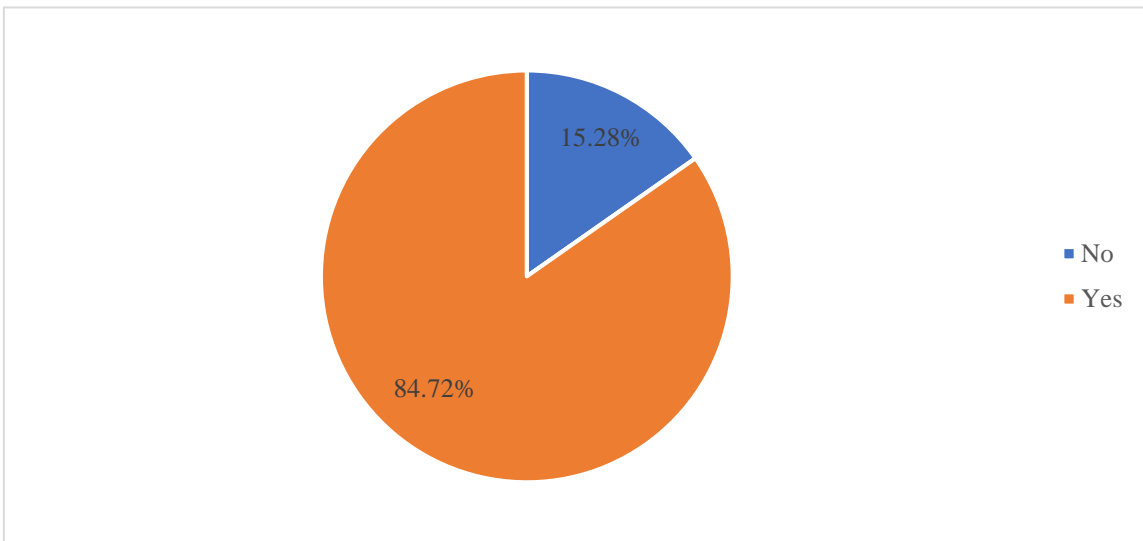
This study finds that APEC economies fulfill the requirements of this section in their TBT notifications. From the study sample, the most cited objectives are protection of human health or safety (38.46%), protection of the environment (15.79%) and prevention of deceptive practices and consumer protection (14.17%) (see Figure 14).

**Figure 14. Most legitimate objectives indicated in Sampled APEC TBT Notifications**



In addition, the study has identified that 84.72% of the notified measures from APEC economies include legitimate objectives with descriptions facilitating the understanding of the proposed regulation (see Figure 15).

**Figure 15. The description facilitates the understanding of the proposed regulation in Sampled APEC TBT Notifications**



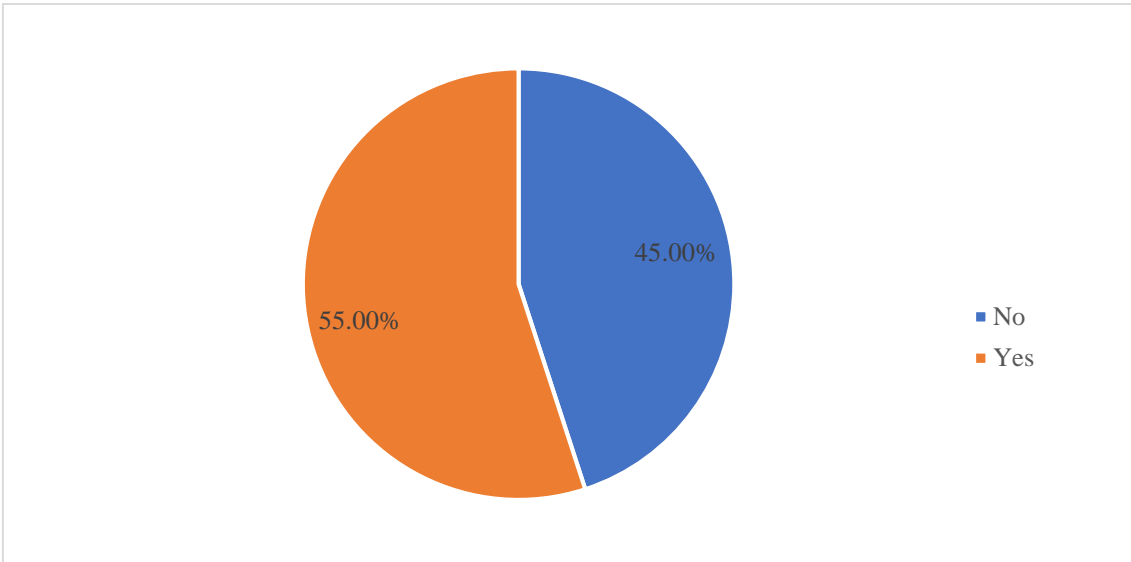
### **3.1.8. ITEM 8: RELEVANT DOCUMENTS**

The WTO recommends that Members include the following in their TBT notifications:

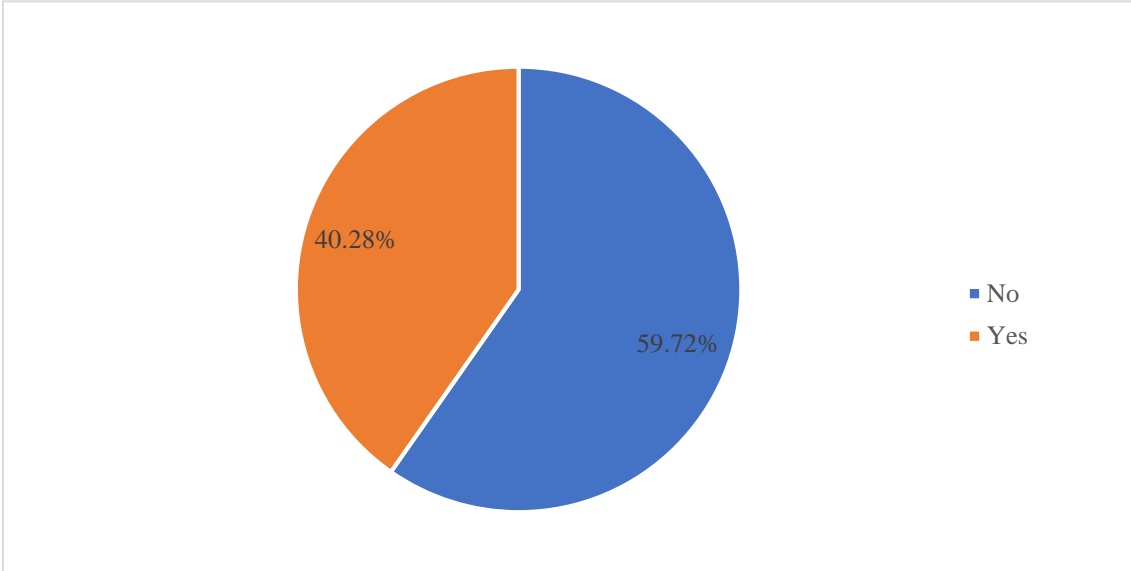
*“(1) Publication where notice appears, including date and reference number; (2) Proposal and basic document (with specific reference number or other identification) to which proposal refers; (3) Publication in which proposal will appear when adopted; (4) Whenever practicable, give reference to relevant international standard. If it is necessary to charge for documents supplied, this fact should be indicated.”*

This study identified that 55.00% of the notifications contain information about the publication where the notified measure appears (see Figure 16). However, from total of the sampled notifications, it has been identified that do not include a specified date (59.72%) or a reference number (51.67%) (see Figure 17 and 18). In addition, 49.72% of total sampled notifications contain information about the proposal and basic document (with specific reference number or other identification) to which the proposal refers (see Figure 19). Also, 31.67% of total sampled notifications contain information about the publication where the proposal will appear once adopted (see Figure 20).

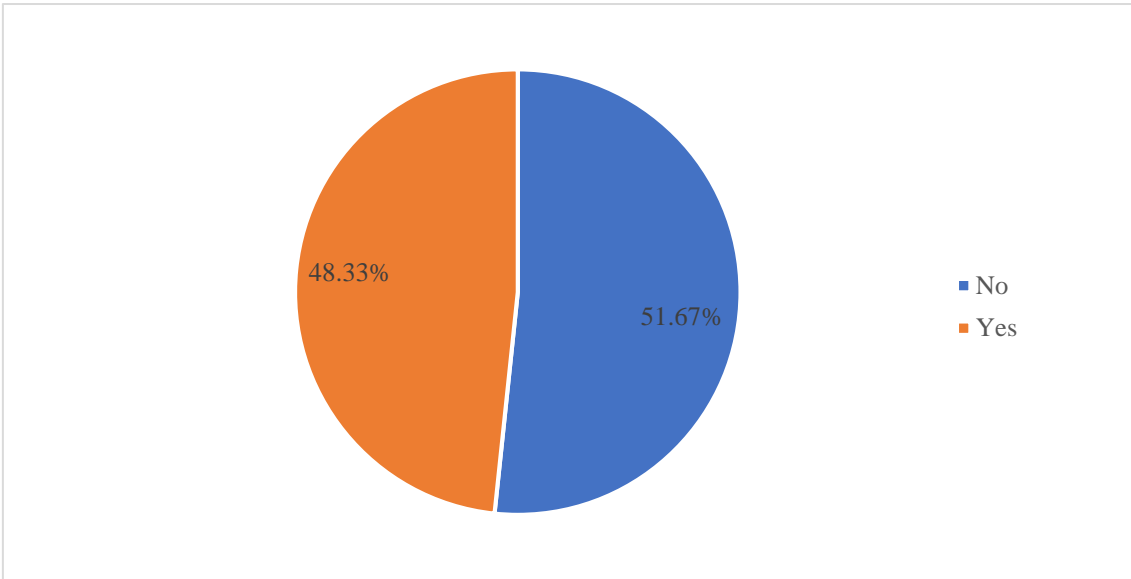
**Figure 16. Inclusion of information about the publication where notice appears in Sampled APEC TBT Notifications**



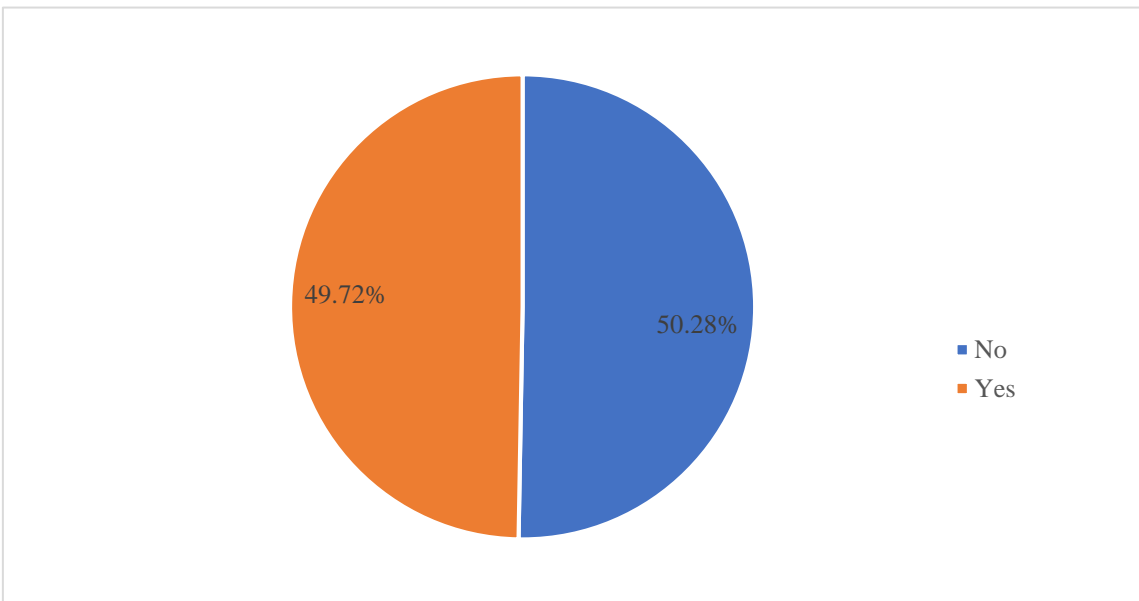
**Figure 17. Inclusion of the date in Sampled APEC TBT Notifications**



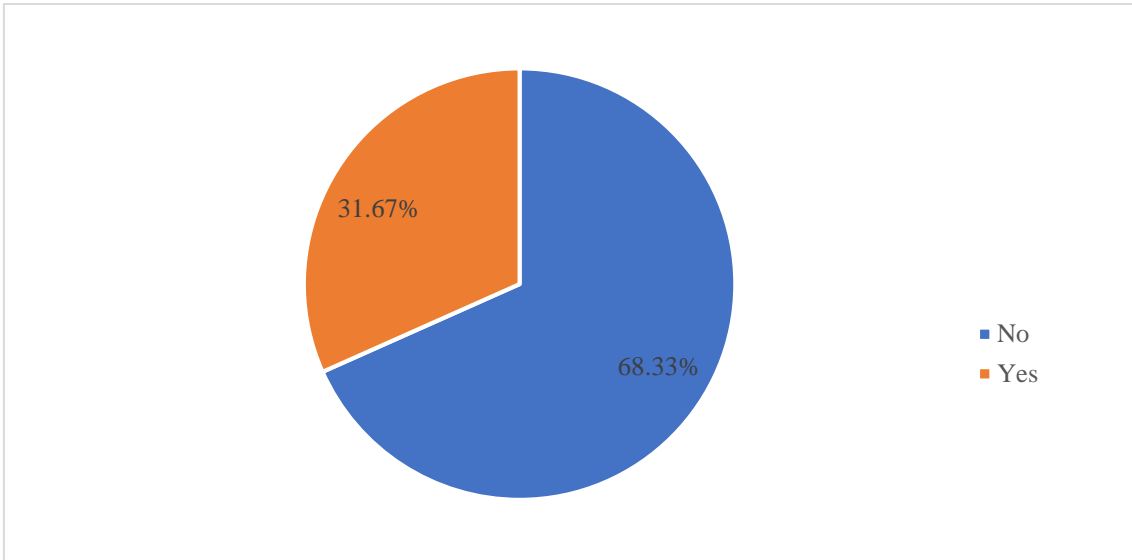
**Figure 18. Inclusion of the reference number in Sampled APEC TBT Notifications**



**Figure 19. Inclusion of information about the proposal and basic document to which the proposal refers in Sampled APEC TBT Notifications**



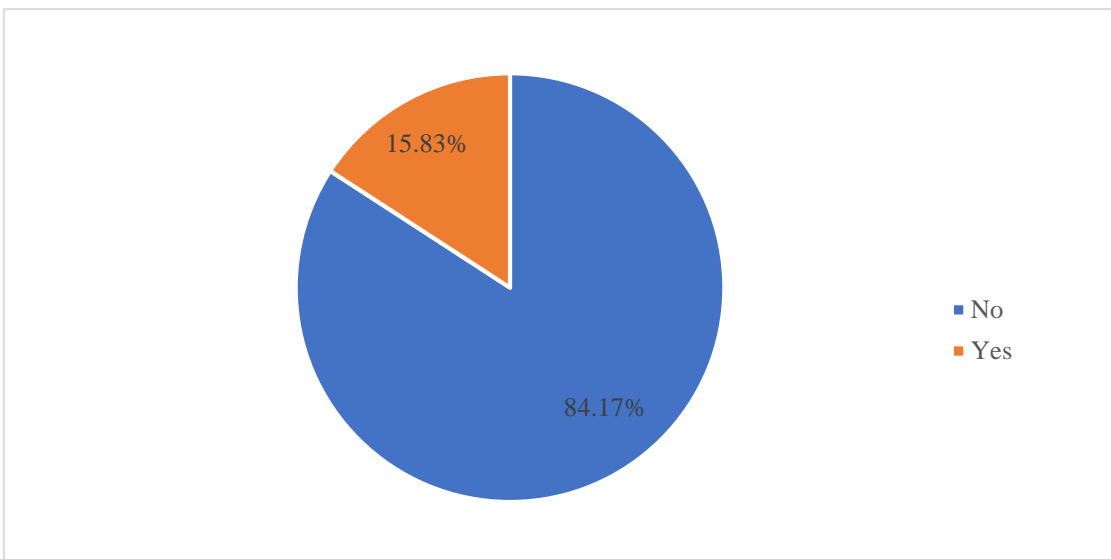
**Figure 20. Inclusion of information about the publication where the proposal will appear once adopted in Sampled APEC TBT Notifications**



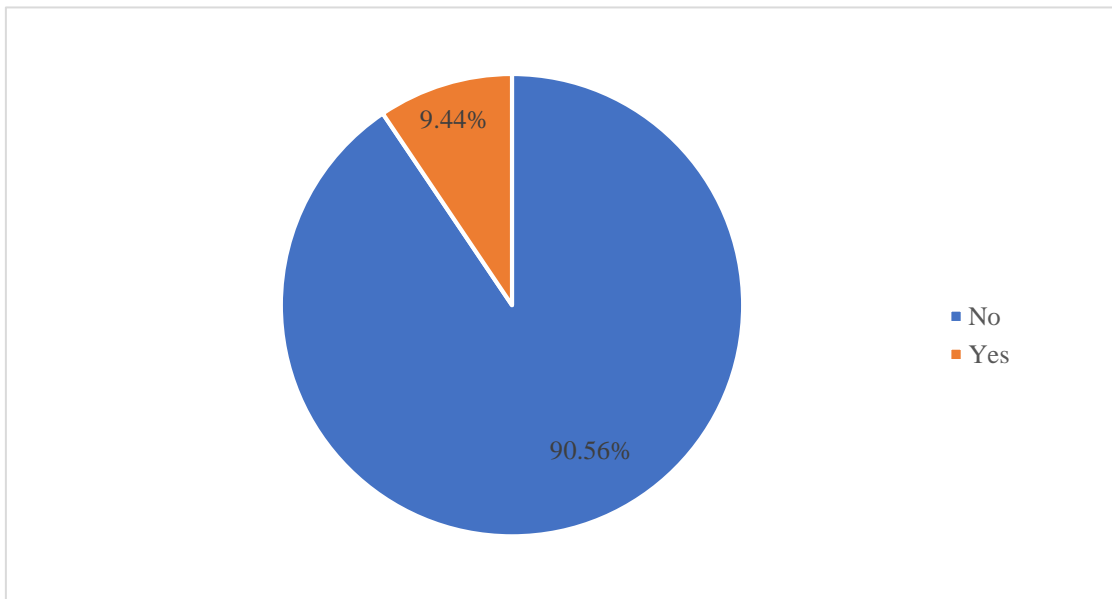
The TBT Committee’s recommendations, as stated in *WTO TBT Enquiry Point Guide: Making Transparency Work (2018)*, go further regarding international standards. When notifying technical measures, Members are encouraged, whenever possible and on a voluntary basis, to indicate whether a relevant international standard for the technical regulation or conformity assessment procedures notified exists, and, if appropriate, to provide information about deviations.

In this study, results show that 84.17% of sampled notifications do not contain a reference to relevant international standards (see Figure 21). Also, 90.56% of the sampled TBT notifications do not identify whether the notified regulation conforms to the relevant international standard (see Figure 22). Members generally did not provide additional information regarding how and why the notified regulation deviates from the international standard (98.47%) (see Figure 23); however, 60.00% of the notifications included clear information about deviations from international standards (see Figure 24).

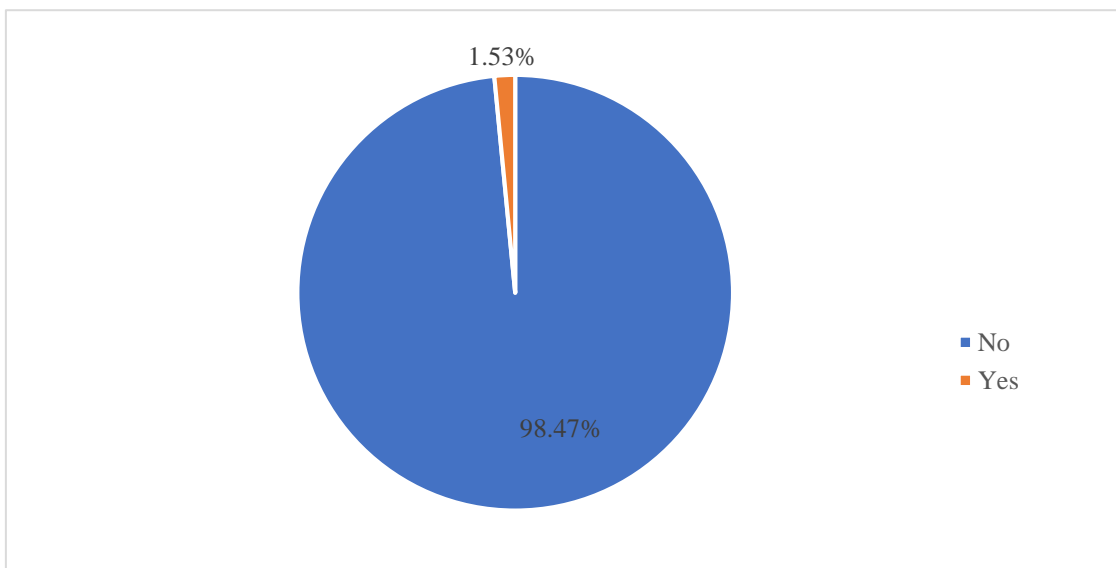
**Figure 21. Inclusion of a reference to relevant international standards in Sampled APEC TBT Notifications**



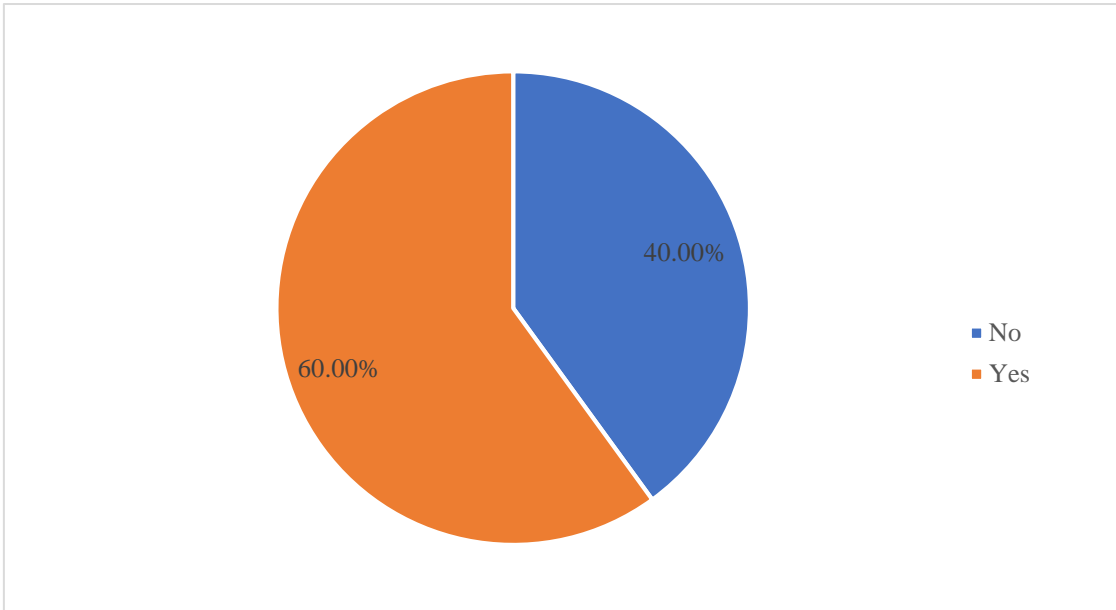
**Figure 22. The proposed regulation conforms to the relevant international standard in Sampled APEC TBT Notifications**



**Figure 23. Additional information regarding how and why the proposed regulation deviates from the international standard in Sampled APEC TBT Notifications**

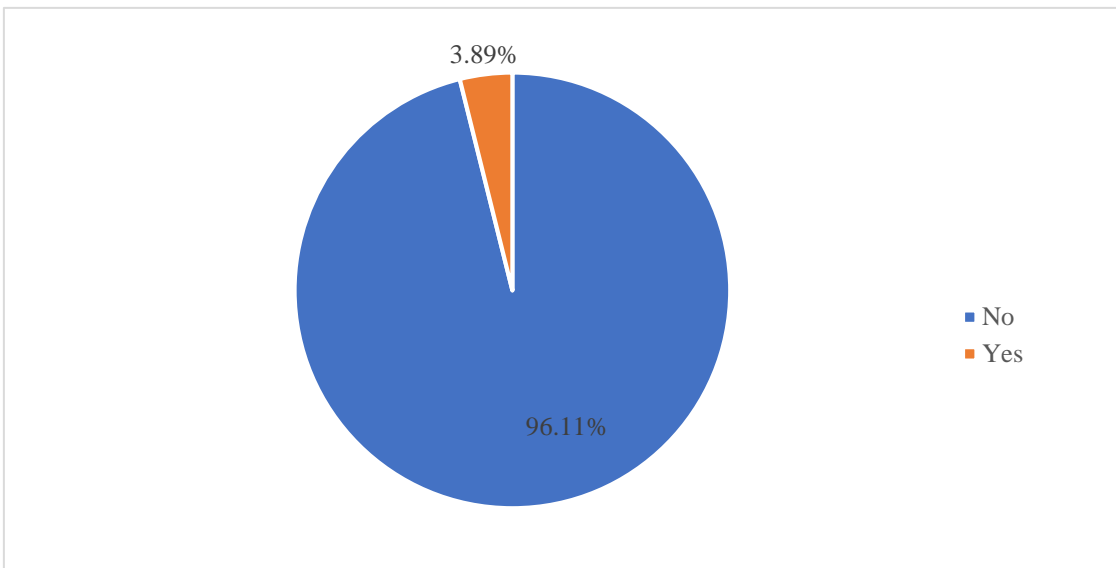


**Figure 24. Clearness to understand the deviation from international standards in Sampled APEC TBT Notifications**



Moreover, in *WTO TBT Enquiry Point Guide: Making Transparency Work (2018)*, the TBT Committee encourages Members to provide access, on a voluntary basis and depending on their individual situations, to assessments such as Regulatory Impact Assessments (RIA), to increase transparency of regulatory processes. This type of assessment can provide information on the potential costs and benefits of the notified measure, including impact on consumers, industry, and trading partners. Also, this assessment promotes transparency as it includes a process of public consultation with stakeholders. Despite the WTO recommendation, 96.11% of sampled TBT notifications do not provide access to assessments such as RIA (see Figure 25).

**Figure 25. Access to assessment such as regulatory impact assessment (RIA) in Sampled APEC TBT Notifications**



In summary, Members can improve upon the information provided in Item 8 of the WTO TBT notifications by including appropriate reference of the international standard;



clarifying whether the proposed regulation is in accordance with the identified international standard; and providing access to impact-driven assessments for interested Members.

**Table 5. Evaluation of item 8 of TBT notifications.**

Elements required within the item	Level of accomplishment	Average weight	Total
Publication where notice appears	55.00%	20.00%	11.00%
Proposal and basic document to which the proposal refers	49.72%	20.00%	9.94%
Publication in which the proposal will appear when adopted	31.67%	20.00%	6.33%
Appropriate reference of the international standard	15.83%	20.00%	3.17%
Conformance with international standard	9.44%	20.00%	1.89%
<b>Evaluation of item 8</b>			32.33%

### **3.1.9. ITEM 9: PROPOSED DATES OF ADOPTION AND ENTRY INTO FORCE**

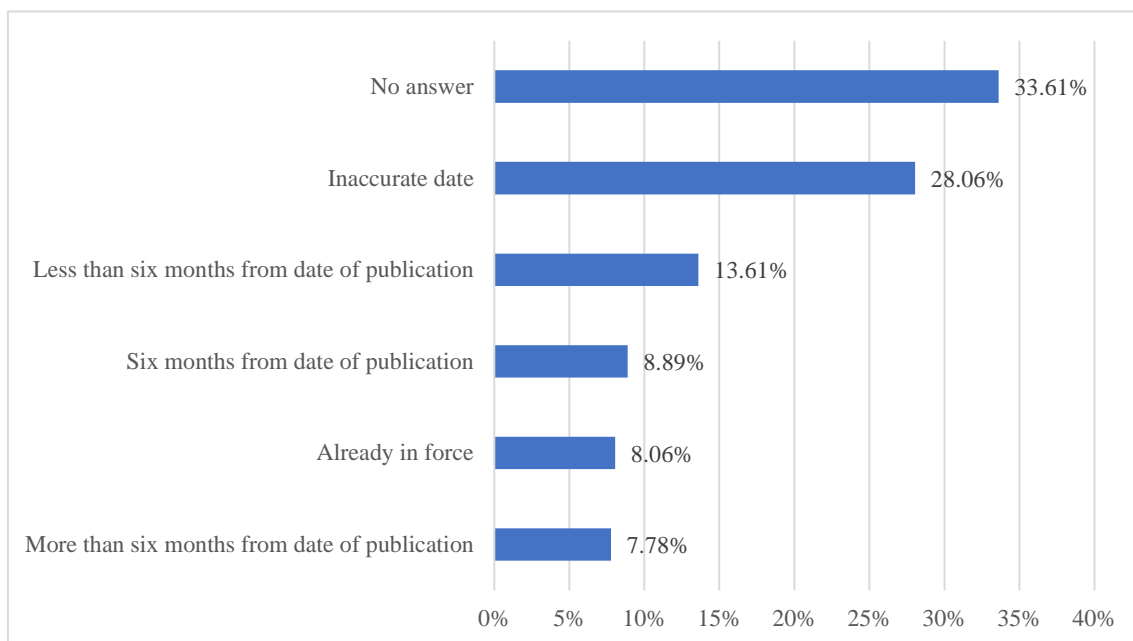
According to WTO TBT Committee, Members should include the following information in item 9 of their TBT notifications:

*“The date when the technical regulation or procedures for assessment of conformity is expected to be adopted, and the date from which the requirements in the technical regulation or procedures for assessment of conformity are proposed or decided to enter into force, taking into consideration the provisions of Article 2.12.”*

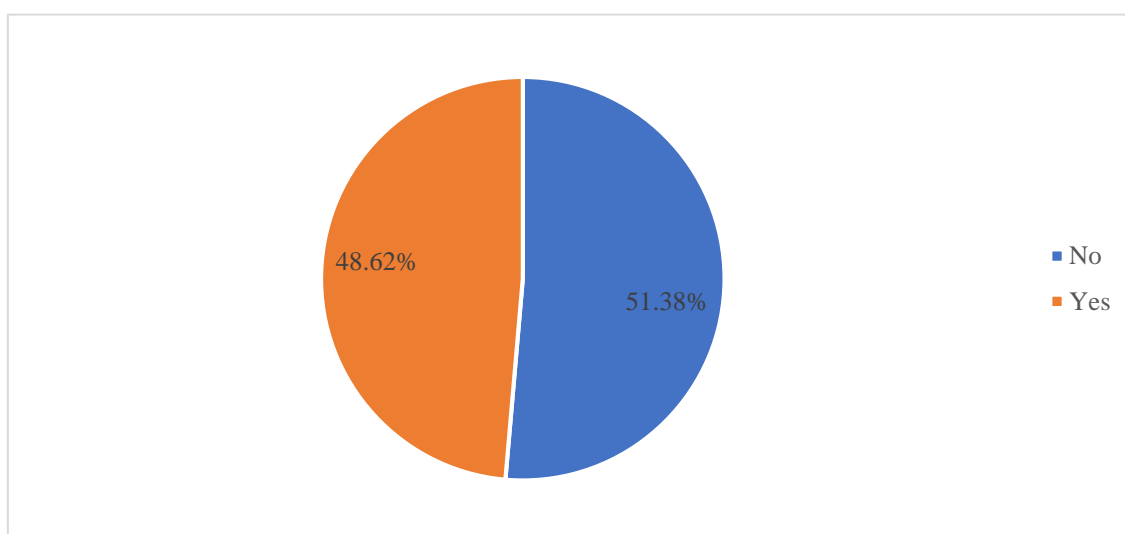
Regarding proposed date of entry into force, 33.61% of the sampled TBT notifications do not include any answer, 28.06% indicate an inaccurate date, and 13.61% indicate a date that is fewer than six months from date of publication. According to the Decisions and Recommendations adopted by the WTO TBT Committee, the phrase "reasonable interval" in Article 2.12 shall be understood as a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued. This study shows that APEC economies are not always aligned with the WTO recommendations regarding the timeframe for the entry into force of the measure. On the other hand, the study found that, 8.89% of the sampled TBT notifications have a proposed date of entry into force within six months from the of publication, 8.06% were notified while already being in force, and only 7.78% of the notifications enter into force more than six months from the date of publication (see Figure 26).

In addition, 51.38% of the sampled notifications do not specify the exact date, while 48.62% do show this information (see Figure 27).

**Figure 26. Inclusion of the proposed date of entry into force in Sampled APEC TBT Notifications**



**Figure 27. Inclusion of the date in Sampled APEC TBT Notifications**



These results demonstrate that APEC economies do not mostly specify, or inaccurately do, the expected dates to adopt a regulation and to publish it. The lack of information regarding timelines for adoption can generate uncertainty for exporters of the affected economies, who cannot adequately adapt their products to the notified TBT measures.

**Table 6. Evaluation of item 9 of TBT notifications**

Elements required within the item	Level of accomplishment	Average weight	Total
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Date when the technical regulation or conformity assessment procedure is expected to be adopted	20.83%	50.00%	10.42%
Date from which it is proposed that the requirements will enter into force	66.39%	50.00%	33.20%
<b>Evaluation of item 9</b>			43.61%

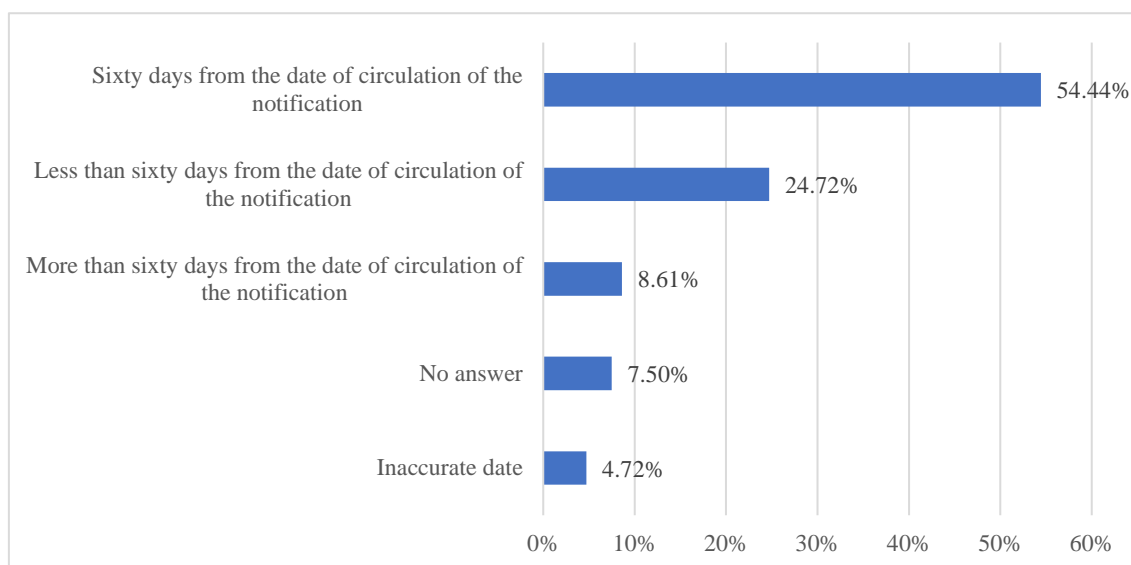
### 3.1.10. ITEM 10: FINAL DATE FOR COMMENTS

For final date for comments, WTO TBT Committee recommends that Members should give at least a period of 60 days from notification according to the following:

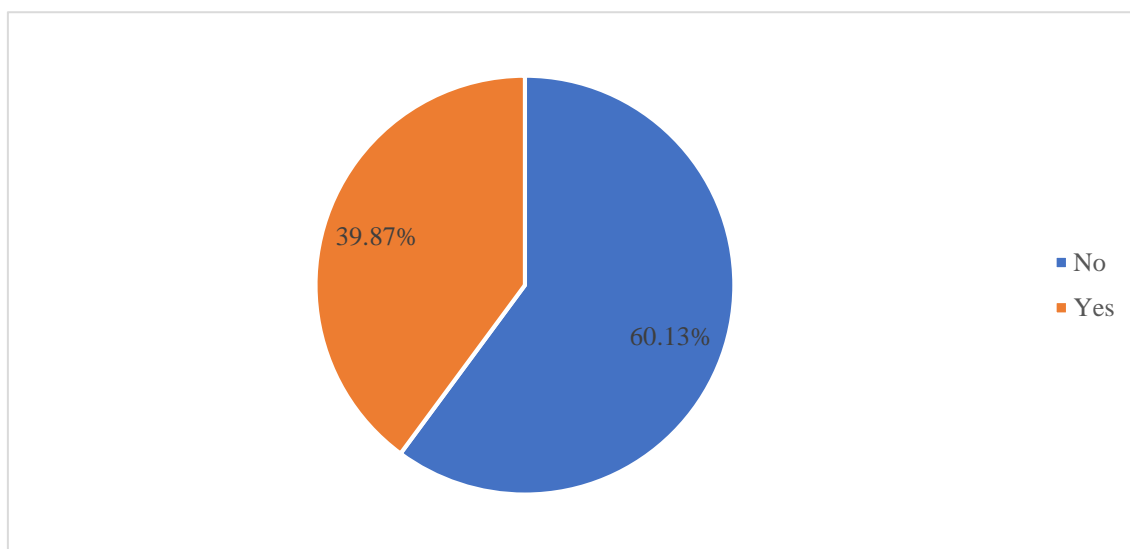
*“The date by which Members may submit comments in accordance with Articles 2.9.4, 2.10.3, 3.1 (in relation to 2.9.4 and 2.10.3), 5.6.4, 5.7.3 and 7.1 (in relation to 5.6.4 and 5.7.3) of the Agreement. A specific date should be indicated. The Committee has recommended a normal time limit for comments on notifications of 60 days. Any Member which is able to provide a time limit beyond 60 days is encouraged to do so. Members are encouraged to advise of any extension to the final date for comments.”*

Results from this study show that 7.50% of the sampled notifications do not provide any information related to the final date for comments and 4.72% show an inaccurate date. However, 54.44% of the sampled notifications refers to 60 days from the date of circulation of the notification and 24.72% less than sixty days from the date of circulation of the notification (see Figure 28). Nevertheless, 60.13% of the sampled notifications that provide any information related to the final date for comments do not specify the date (see Figure 29).

**Figure 28. Inclusion of final date for comments in Sampled APEC TBT Notifications**



**Figure 29. Specification of the date in Sampled APEC TBT Notifications**



These results demonstrate that APEC economies do not mostly specify, or inaccurately do, the expected date for comments which might affect all the main stakeholders.

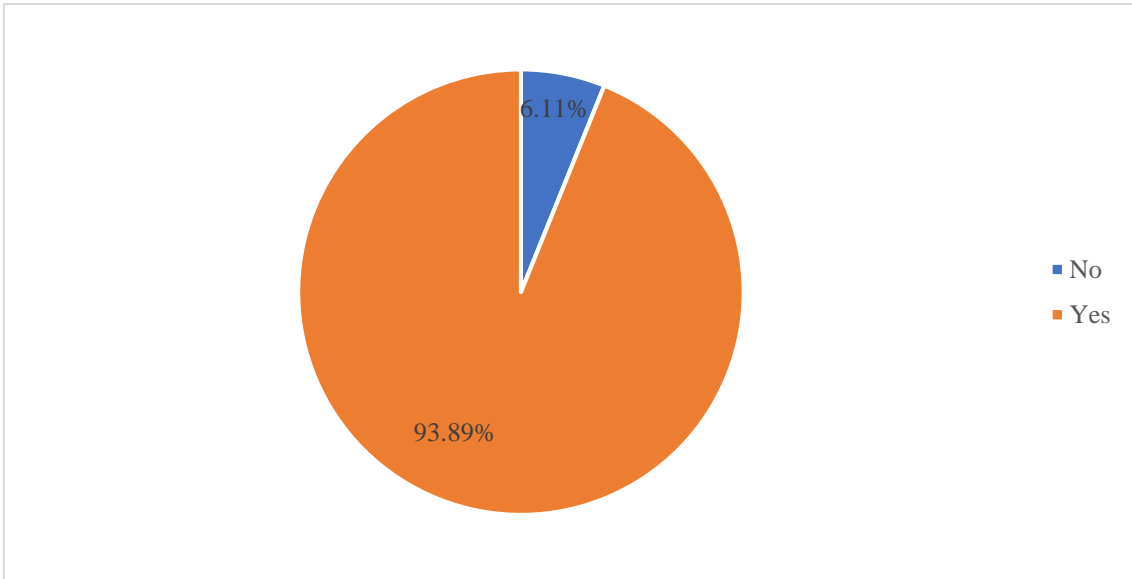
### **3.1.11. ITEM 11: TEXTS AVAILABLE FROM THE NATIONAL ENQUIRY POINT**

The WTO recommends that Members adhere to the following instructions when notifying a technical measure:

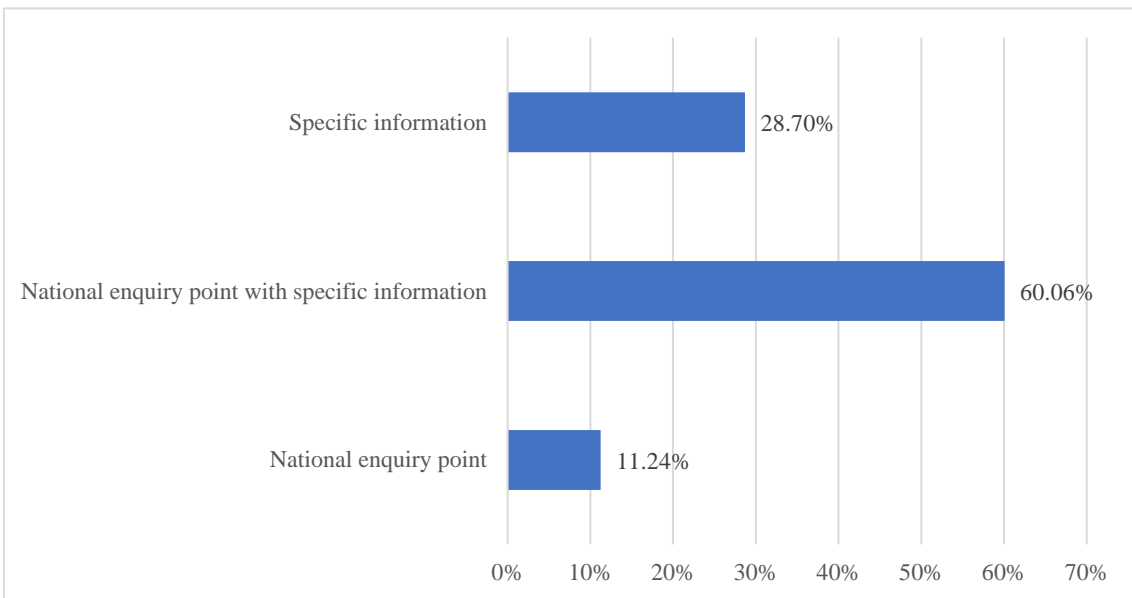
*“If available from national enquiry point, put a cross in the box provided. If available from another body, give its address, e-mail, telex and telefax number. If available in a web-site, provide the web-site address. Such indications should not in any way discharge the relevant enquiry point of its responsibilities under the provisions of Article 10 of the Agreement.”*

It should be noted that 93.89% of the sampled notifications present information in the section “text available from” (see Figure 30). In addition, regarding to the items that are included in box 11, 26.70% of sampled notifications include specific information such as contact person, e-mail, telephone, postal address and website address in accordance with the *WTO TBT Enquiry Point Guide (2018)*. Also, 60.06% of sample notifications include the national enquiry point with specific information, and 11.24% include only information on the national enquiry point (see Figure 31).

**Figure 30. Presentation of the information in the section “text available from” in Sampled APEC TBT Notifications**

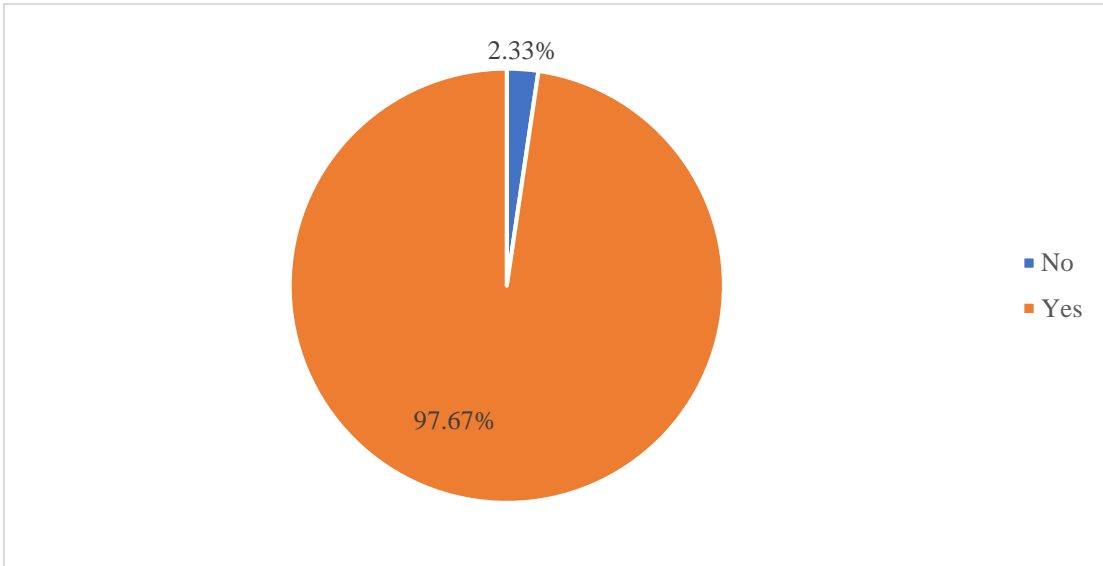


**Figure 31. Inclusion of items in Box 11 in Sampled APEC TBT Notifications**

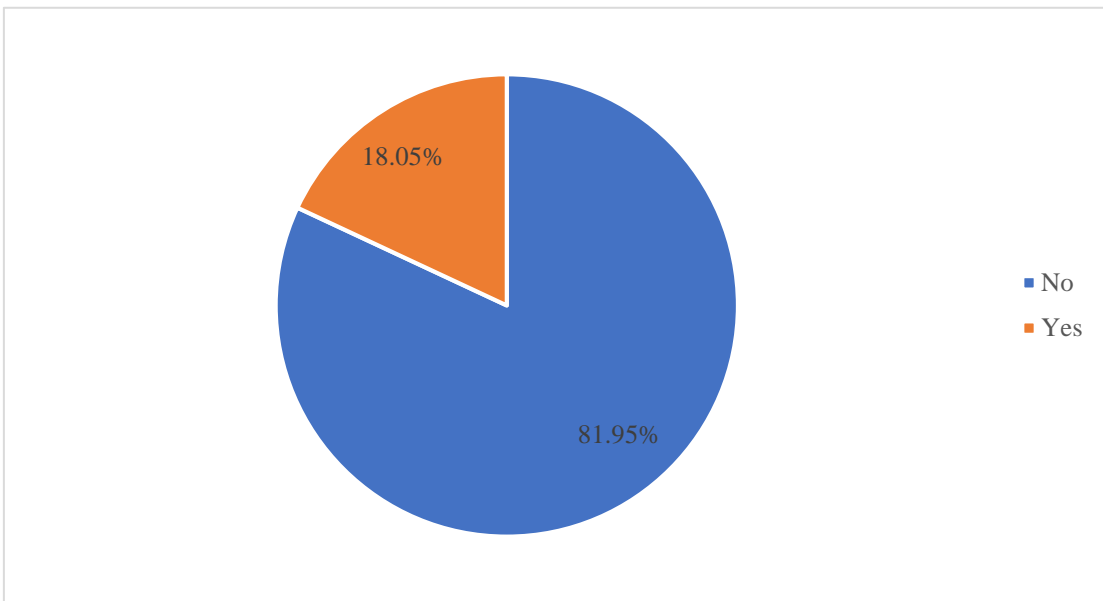


Finally, almost 97.67% of the sampled notifications include a web link that in most of the cases (81.95%) is not a copy from another section (see Figure 32 and 33).

**Figure 32. Inclusion of a web link in Sampled APEC TBT Notifications**



**Figure 33. Copied information from another section of the notification in Sampled APEC TBT Notifications**



The results show that APEC economies mostly comply with the information that should be provided in item 11 of notification form.

**Table 7. Evaluation of item 11 of TBT notifications**

Elements required within the item	Level of accomplishment	Average weight	Total
Text available form	93.89%	50.00%	46.95%
Web link	97.67%	50.00%	48.84%

Evaluation of item 11	95.78%
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### 3.2. ADDENDA

The WTO TBT Committee makes the following recommendation to enhance the coherent use of the addendum notification format:

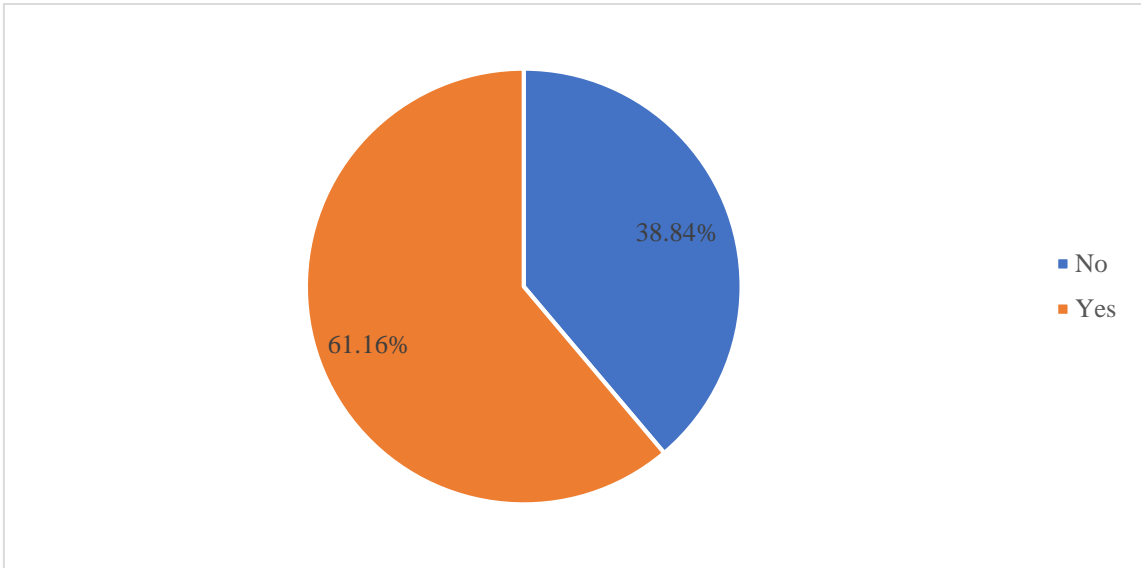
*“Members should use an addendum to notify additional information related to a notification of the text of a notified measure, including if:*

- *The comment period has been changed (e.g. extended or re-opened);*
- *The notified measure is adopted, published, or enters into force, especially in cases where relevant dates have not been provided in the original notification or have been changed. Members are encouraged to indicate how the final text of the measure can be obtained, including website address;*
- *The notified measure is withdrawn or revoked. If replaced with a new measure, where possible, the symbol of the corresponding new notification should be indicated;*
- *The content or scope of a notified measure is partially changed or amended.*
- *In this case, Members should consider opening a new comment period;*
- *Interpretive guidance is issued; and*
- *Any other useful and relevant additional information directly related to a notification or notified measure has been made available that does not qualify as a corrigenda, revision or supplement.”*

Within the sample of the 355 notifications sampled in the study, 121 contained notifications on addenda which were analyzed. In this context, 34.08% of the total of regular notifications had at least one addendum.

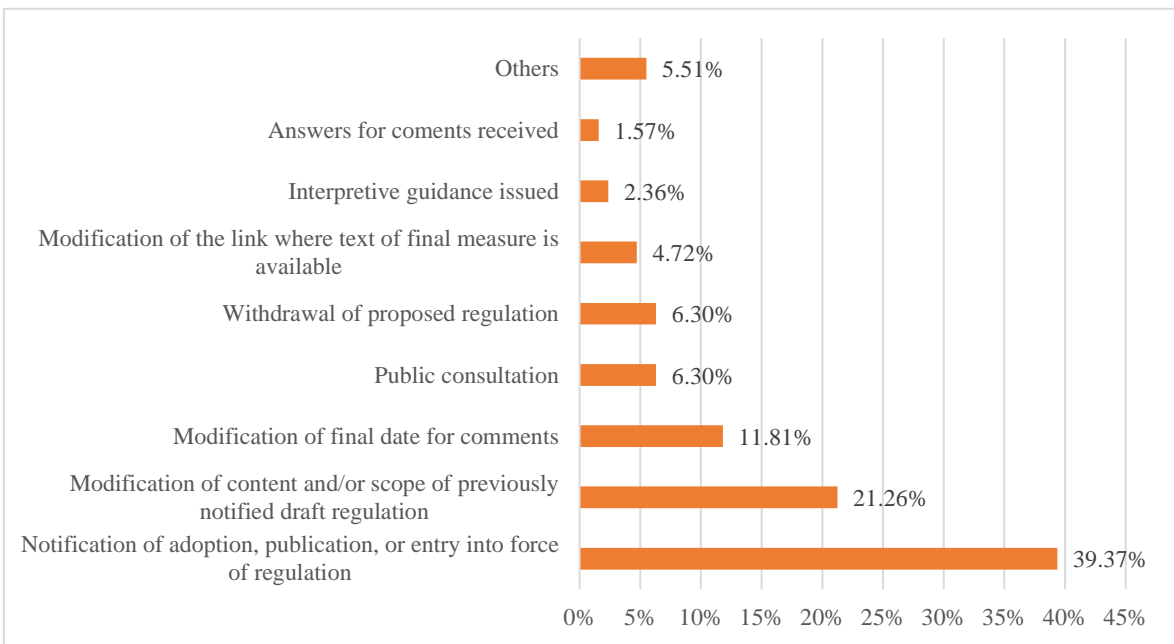
Most of the addenda (84.30%) include a title outlining the TBT measure or referred product. However, 38.84% of addenda do not summarize information related to the initial notification, including the date and objective (see Figure 34).

**Figure 34. Recap of what was notified, when and what it was about in the in Sampled APEC TBT Addendum**



In this study, 39.37% of the analyzed addenda included as their main objective “*notify the adoption, publication, or entry into force of a regulation*” (see Figure 35). This indicator suggests a slight improvement to the lack of certainty of item 09 (Proposed date of adoption and of publication, 43.61%) and a reinforcement of the compliance with item 10 (Proposed date of entry into force, 92.50%).

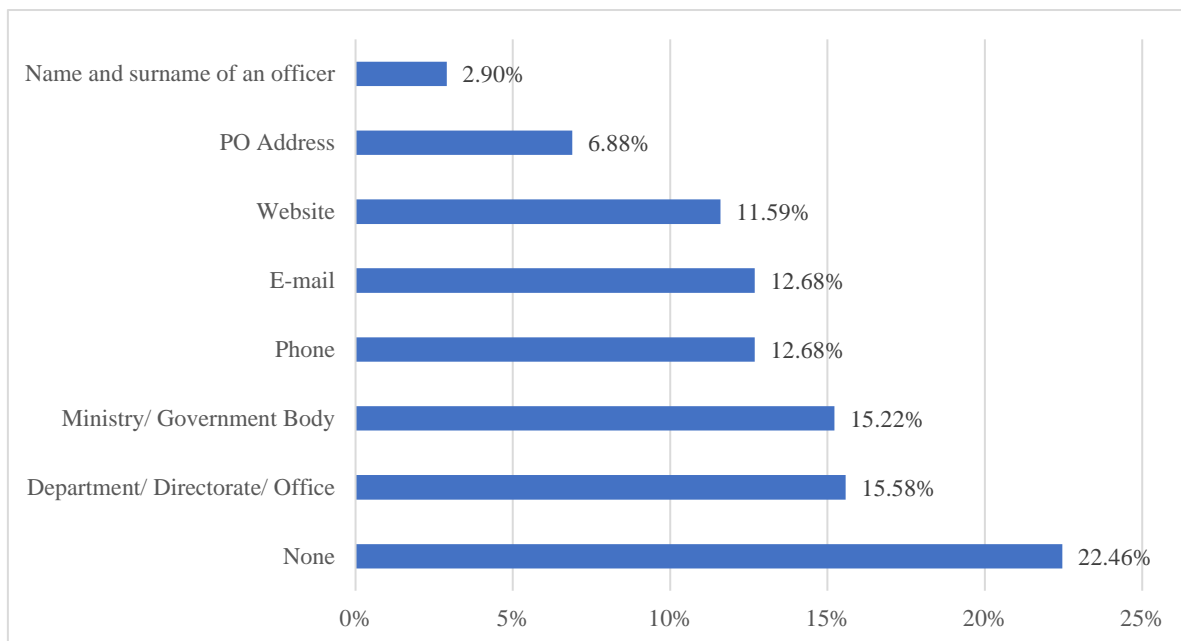
**Figure 35. Circumstances under the Sampled APEC TBT Addendum is notified**



Finally, 22.46% of the analyzed addenda did not contain detailed information on a contact point for the authority designated to handle comments (see Figure 36). However, this information is available in the WTO’s TBT Information Management System (TBT IMS).

**Figure 36. Specific information of contact point in in Sampled APEC TBT Addendum**





### 3.3. CORRIGENDA

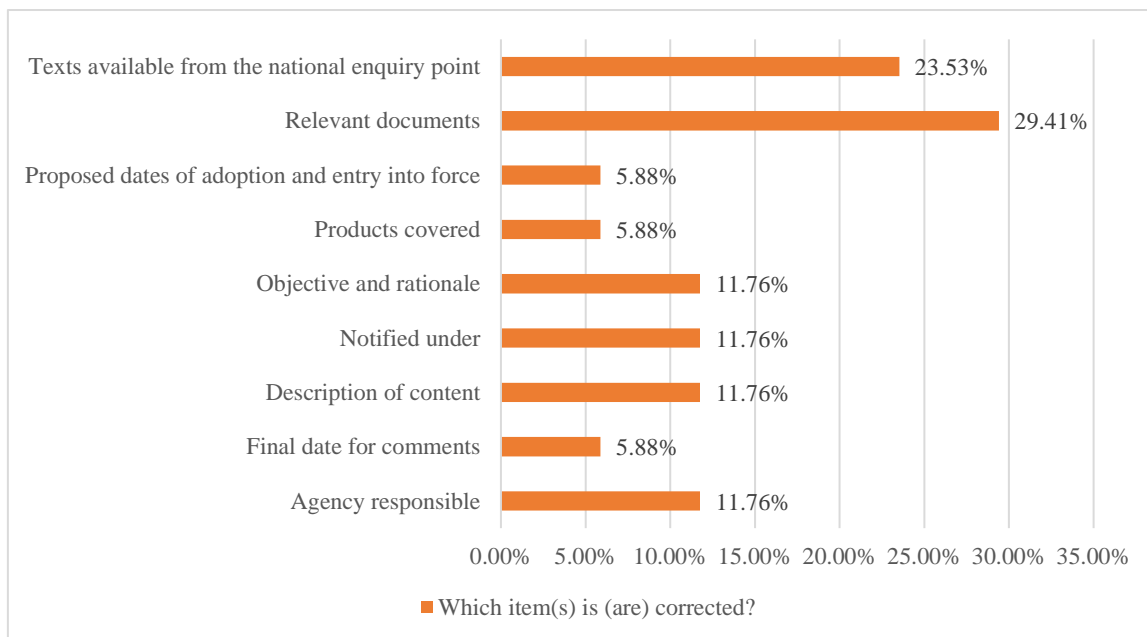
According to WTO TBT Committee, Members should use a corrigendum to correct minor administrative or clerical errors that do not affect the meaning of the content in:

- *“a notification or subsequent related addendum or revision; and*
- *the text of the notified measure.”*

Within the sample of 355 notifications of this study, all 17 corrigenda were analyzed. Nearly 52.94% of the corrigenda include a title outlining the TBT measure or product to it refers, and 82.35% of the corrigenda include information related to the rectification of errors from the original notification and most of the times (76.47%).

It is important to highlight that, of the sampled notifications, the most amended items in TBT notifications were “Relevant documents” (29.41%) and “Texts available from the national enquiry point” (23.53%) (see Figure 37).

**Figure 37. Items corrected in Sampled APEC TBT notifications**



Finally, 58.82% of the corrigenda do not specify the agency or authority where Members can access the text or connect with a contact point.

### 3.4. GENERAL EVALUATION OF TBT NOTIFICATIONS

The overall evaluation of the notifications shows that 79.88% of sampled notifications provide an acceptable level of compatibility with WTO recommendations. However, analysis of key items necessary to understand the notified measures present less positive results. Filtering out items 1, 2, 3 and 7 (which are always notified), the average level of compatibility decreases to 68.39%. This average percentage gives a general picture of the level of transparency of sampled APEC notifications. For a deeper understanding, it is important to compare each item to identify which areas can improve upon the provided quality of information.

**Table 8. General evaluation of WTO recommendations in TBT notifications from APEC economies**

ITEM	DESCRIPTION	COMPATIBILITY
1	Notifying member	100.00%
2	Agency responsible	100.00%
3	Notified under	100.00%
4	Products covered	57.06%
5	Title and translations	72.64%
6	Description of content	84.81%
7	Objective and rationale	100.00%
8	Relevant documents	32.33%
9	Proposed dates of adoption and entry into force	43.61%
10	Final date for comments	92.50%
11	Text available from the national enquiry point	95.78%

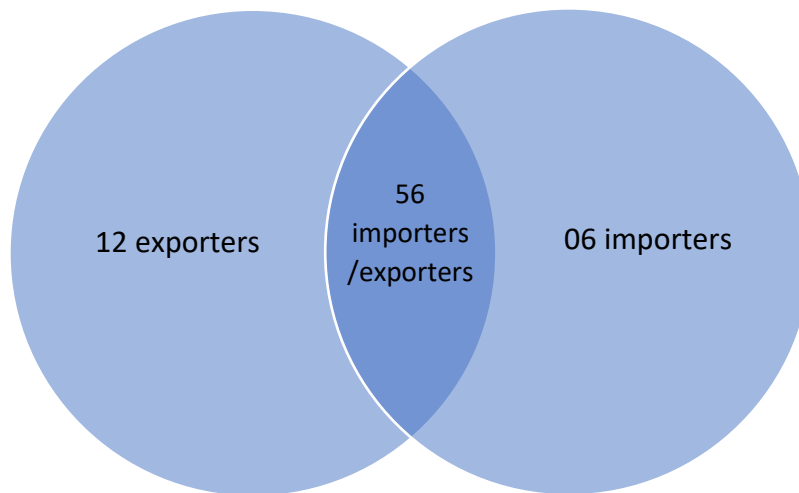
Based on this study, Table 8 features the main items which APEC economies need to improve upon: products covered, relevant documents and proposed dates of adoption and entry into force. These results are consistent with the proposals and concerns expressed by the WTO TBT Committee.

Given these results, APEC economies should focus on improving the quality of information presented in items 4 (products covered), 8 (relevant documents) and 9 (proposed dates of adoption and entry into force). These items include vital information necessary for stakeholders to obtain a better understanding of notified regulations and their applicability to exporters.

#### 4. PRIVATE SECTOR EXPERIENCES

In this study, 74 enterprises from 12 economies answered the private sector questionnaire. Of these enterprises, 56 (75.68%) are importers and exporters, while 12 (16.22%) are solely exporters, and 6 (08.11%) are solely importers (see Figure 38).

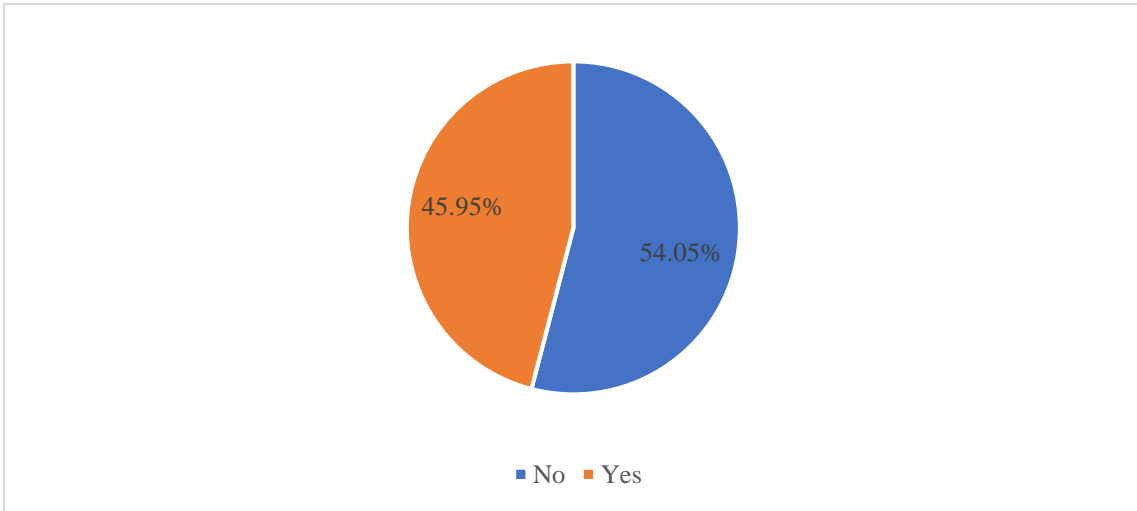
**Figure 38. Enterprises that answered the questionnaire**



#### 4.1. KNOWLEDGE AND USE OF WTO TBT NOTIFICATION SYSTEM

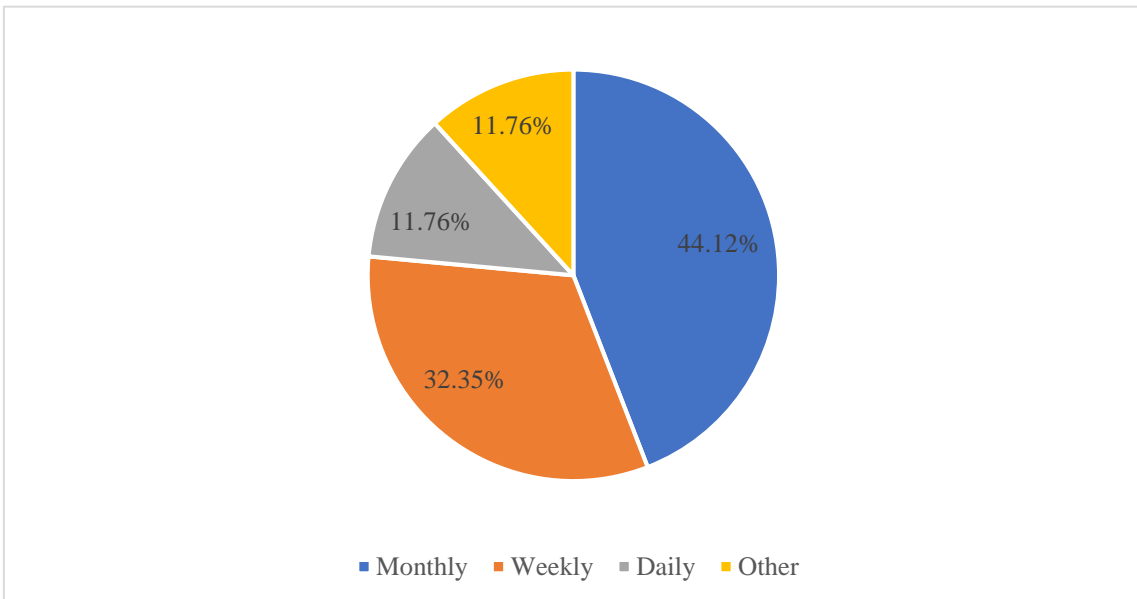
The majority of private sector respondents (54.05%) confirm that they are unaware of the WTO TBT notification system (see Figure 39).

**Figure 39. Percentage of Private Sector Respondents Aware of WTO TBT Notification System**



Of the enterprises familiar with the WTO TBT notification system, about 44% utilize and consult the WTO TBT notifications on a monthly basis. In 32.35% of the cases analyzed, respondents indicated that the consultations of TBT notifications in sources provided by WTO is checked “weekly”. Finally, only 11% of enterprises check TBT notifications on a “daily” basis (see Figure 40).

**Figure 40. Frequency of Consultation of the TBT Notifications from Sources Provided by WTO**

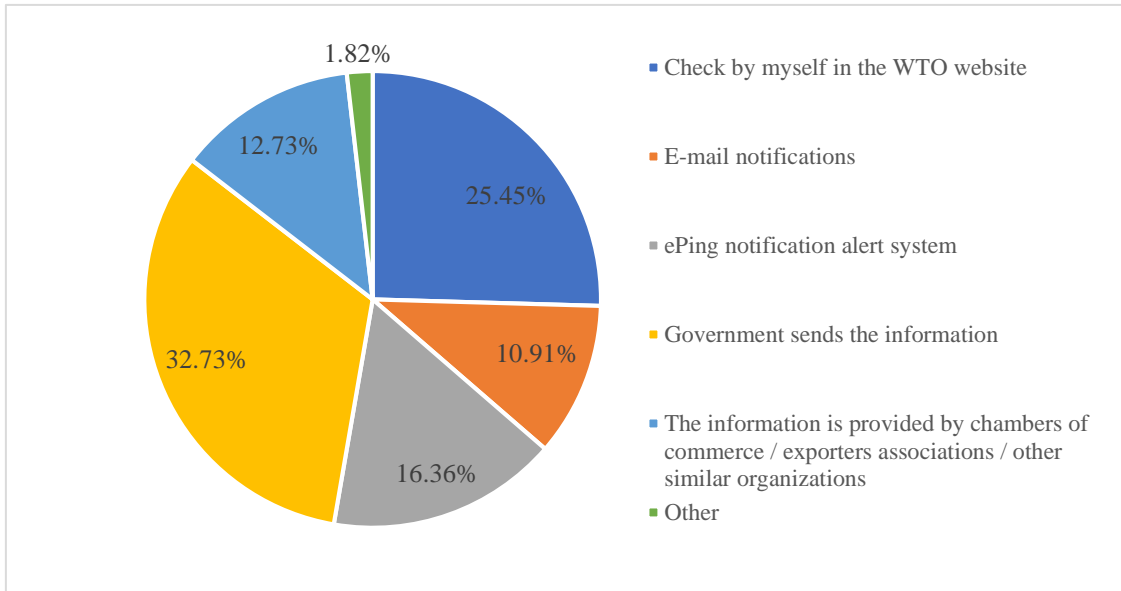


#### **4.2. SOURCE OF INFORMATION TO OBTAIN WTO TBT NOTIFICATIONS**

Governments play a key role in disseminating WTO TBT notifications. Of the surveyed APEC private sector respondents, 32.73% receive TBT notifications from their governmental authorities, as shown in Figure 41.

Also, it is important to mention that about 25.75% of APEC private sector respondents still prefer to search for notifications on the WTO website rather than using the ePing system; only 16.36% of the surveyed respondents check the ePing system (see Figure 41).

**Figure 41. APEC Private sector sources of information to obtain WTO TBT notifications**



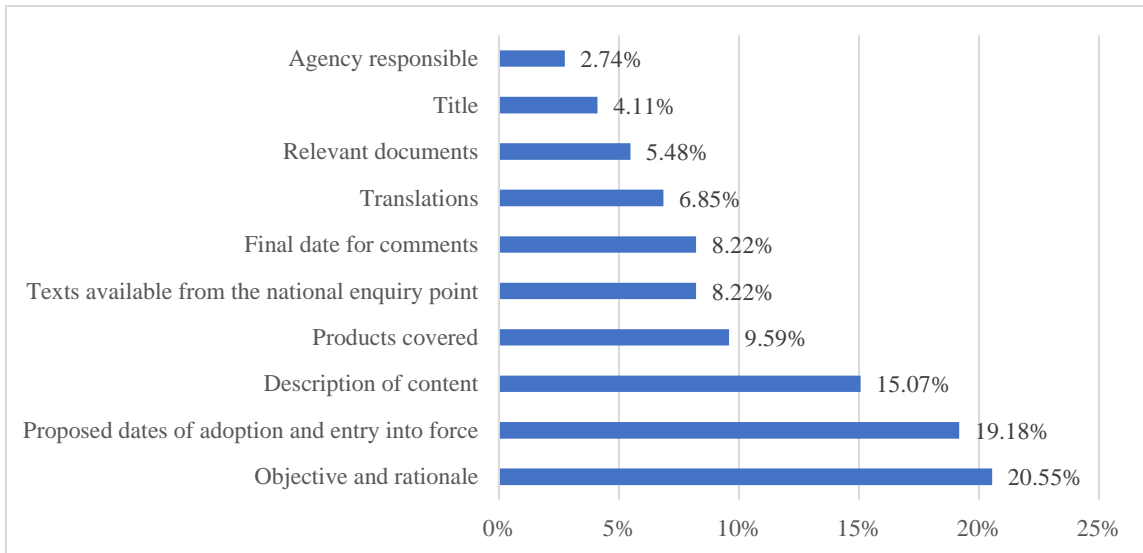
#### 4.3. PERCEPTION OF IMPORTANCE OF ITEMS IN WTO TBT NOTIFICATIONS

All 11 items of a WTO TBT notification are important to understand the measure which the notifying WTO Member plans to adopt. From a private sector perspective, at least four items are most crucial in a notification. These items are shown in Figure 42.

The most important items are:

- *Item 7 Objective and rationale,*
- *Item 9 Proposed dates of adoption and entry into force,*
- *Item 6 Description of content and*
- *Item 4 Products covered.*

**Figure 42. APEC Private sector perception of most important WTO TBT notifications' items**

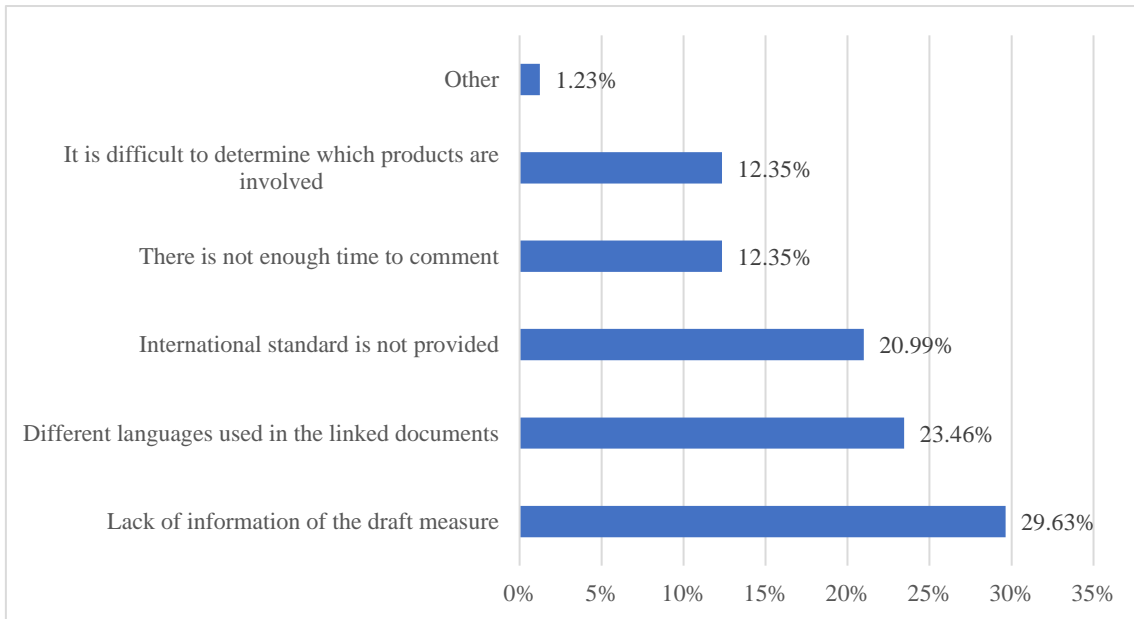


#### **4.4. PERCEPTION OF MAJOR CHALLENGES AND TRANSPARENCY**

The study's APEC private sector respondents have identified three major challenges regarding the information provided in WTO TBT notifications:

1. TBT notifications sometimes omit detailed information about the measure, such as product description, relevant documents, translations, among others.
2. Under the TBT Agreement, WTO Members are not obligated to provide translations of the text of the notified measures, but it is recommended by the WTO TBT Committee to do so. In that sense, the variety of languages used in the linked documents pose challenges when economies do not translate their regulation.
3. For the private sector it is difficult to clearly identify the international standards involved in a TBT notification; in some cases, this information is neither provided nor mentioned in Members' notifications.

**Figure 43. Major challenges concerning WTO TBT notifications, as identified by APEC private sector respondents**



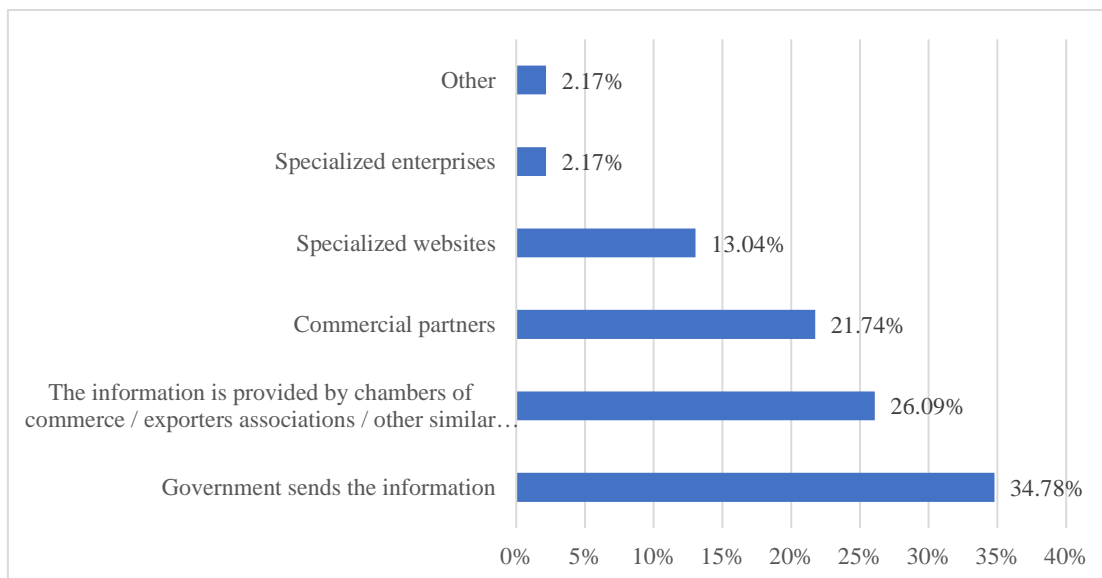
It is important to note that the surveyed APEC private sector respondents identified challenges with commenting on notifications due to (1) the insufficient comment periods provided and (2) difficulty in clearly identifying which products are involved in a TBT notification. These challenges echo those mentioned by government officials in the above section 3.1.6. Item 6: Description of Content.

#### **4.5. ALTERNATIVE CHANNELS OF INFORMATION FOR TBT MEASURES**

In this study, 54.05% of APEC private sector respondents indicated that they were not aware of the WTO's TBT notification system (see 5.1. Knowledge and Use of WTO TBT Notification System). This study has also found that, in some cases, economies do not necessarily notify all new TBT measures to the WTO, and that enterprises tend to use other channels of information. Also, the surveyed respondents considered the chambers of commerce or similar organizations as the second main source of TBT information.

Given these observations, government agencies should continue to serve as key players in providing enterprises with updates and notifications made by other Members.

**Figure 44. APEC Private sector sources of information on TBT measures**



#### **4.6. ALIGNMENT BETWEEN WTO TBT NOTIFICATIONS' EVALUATION AND PRIVATE SECTOR PERCEPTION**

Regarding the evaluation of TBT notifications, this study's results demonstrate that, in general, there is an acceptable level of compatibility with WTO recommendations by APEC economies. However, as the experiences from private sector show, there is still room for improvement.

According to the study's private sector respondents, item 4 "Products Covered" is one of the most important sections in notification formats. Given that there is a compatibility of 57.06% among APEC economies, this study has identified a need for providing clearer information. Providing clear and detailed information in item 4 is thus vital towards ensuring that interested Members can fully understand the scope of the notified measure. Consistent with WTO recommendations, Members are encouraged to specify the HS codes and, where applicable, ICS codes in addition to HS codes. In the framework of WTO TBT Committee, Members have presented proposals on a standardized use of this item to ensure clearer descriptions of product coverage of TBT measures.

In addition, the private sector respondents indicated that they consider item 9 "proposed dates of adoption and entry into force" as very relevant. This information allows stakeholders to know when the proposed regulation is going to be applicable and to adapt their products to the new requirements. However, the evaluation of sampled TBT notifications shows a low level of compatibility with this item. This data points to a potential concern: the current information provided on dates of adoption/entry into force may lack the specificity necessary to avoid uncertainty for producers and exporters, who need timelines to adapt their products to the notified technical measures.

Furthermore, private sector respondents expressed concern regarding item 5 "Title and translations." Since the TBT Agreement does not include a specific obligation to translate the proposed TBT measure, economies do not tend to translate the text of the notified regulations. The need for accessible translations of notified measures is consistent with initiatives presented in the WTO Committee which have encouraged Members to provide translations in one of the three WTO official languages (English, French, Spanish).



Finally, APEC private sector respondents identified a specific concern regarding item 8 “Relevant documents.” They highlighted difficulty with identifying the international standards related to the TBT notification. In some cases, Members have not provided this information. Despite the TBT Committee’s encouragement to do so, no obligation exists within the TBT Agreement requiring that Members identify relevant international standards in the notification. Having this information in TBT notifications could help stakeholders to have a better understanding of the new requirements and if the measure is aligned or not with international standards.

The study’s evaluation of TBT notifications thus aligns with the challenges described by the sampled APEC’s private sector respondents. The study recommends that APEC economies focus on improving the quality of information on items 4, 5, 8 and 9 of TBT notifications formats and follow TBT Committee recommendations on those sections.

## **5. CONCLUSIONS**

The first objective of this study is to raise awareness and increase understanding of Members’ compliance with the TBT notification process in accordance with the Coherent Use of Notifications Formats (G/TBT/1/Rev.14). The global result of regular notifications seems to be an acceptable level of compatibility by APEC Economies with WTO recommendations.

This study shows that APEC economies can improve upon their responses to specific items when completing their TBT notifications, in accordance with WTO’s TBT Guidelines on Transparency. The items to be improved in the TBT notifications are the following:

- products covered,
- translations,
- international standards and
- proposed dates of adoption.

Furthermore, private sector experiences support this finding. Additionally, this study has identified that APEC economies do not tend to use the tariff item numbers properly. The description of the products affected by the proposed TBT measure need to be more detailed. Regarding translations, private sector respondents expressed their concern about how APEC economies do not usually translate their TBT measures, preventing deeper engagement from interested stakeholders. In addition, respondents noted difficulty in identifying the relevant international standard related to the measure described in TBT notifications, as well as the existence of any alignment with international standards. Finally, there is a need for notifying Members to provide specific proposed dates of adoption when making TBT notifications. Doing so will assist exporters in adapting their products to new requirements in a timely manner.

In closing, this study recommends that APEC economies work on fully implementing WTO TBT guidelines on transparency to improve the quality of information submitted in TBT notifications. It is important that APEC economies support initiatives and proposals in the WTO TBT Committee regarding the improvement and standardization of information in TBT notifications.

## **6. APPENDIX 1: PERU'S PROPOSAL ON PROMOTING TRANSPARENCY OF TBT WTO NOTIFICATIONS: IMPROVING COMPLETENESS AND CLARNESS OF INFORMATION (2020/CTI2/IS06)**

### **Self-funded Initiative on Promoting Transparency of TBT WTO Notifications: Improving Completeness and Clearness of Information Proposed by Peru**

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

#### **I. Background**

There is a proliferation of Non-Tariff Measures (NTMs) in the Asia-Pacific region. They are increasingly used both in quantity, and complexity. In APEC, Sanitary and Phytosanitary Measures (SPS), and Technical Barriers to Trade (TBT) are by far the most employed NTMs, according to the World Trade Organization Integrated Trade Intelligence Portal (I-TIP)<sup>1</sup>. A range of these are legitimate under the terms of the TBT Agreement, but many are not properly notified.

This lack of information and transparency is a disadvantage to businesses across the APEC region, especially to micro, small, and medium enterprises (MSMEs), that perceive NTMs as a source of increasing concern as some of these measures can easily turn into non-tariff barriers (NTBs). In fact, in the APEC study *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region*<sup>2</sup> (2016), it is stated that, from the business perspective, SPS and TBT impose overly strict and complicated requirements, and several procedural obstacles. In addition, MSMEs find a lack of transparency and poor dissemination of information about the requirements and how to comply with these.

Moreover, according to the APEC Business Advisory Council's (ABAC) study, *Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions*<sup>3</sup> (2016), TBT measures are the most burdensome in comparison with other NTMs since they have the greatest negative impact in terms of time and cost. Inconsistency, lack of transparency, and sudden changes were the biggest problems highlighted by businesses, mostly regarding labelling, testing protocols and product classification. Since information on regulations affecting trade should be accessible to

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

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

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

facilitate trade, those factors not only increase transaction costs, but also make it difficult for MSMEs to make efficient business decisions in order to export their products.

WTO Members are required to notify technical requirements and conformity assessment procedures in accordance with Articles 2.9 and 5.6 of the WTO Agreement on Technical Barriers to Trade. In this regard, the number of TBT notifications has been increasing every year since 2015. For instance, in 2019, 2074 new measures were notified to the TBT Committee. This implies a growth of 8.91% in comparison with the previous year.

Furthermore, there is an increasing number of Specific Trade Concerns (STC) regarding TBT measures as well. As the *WTO TBT Enquiry Point Guide*<sup>4</sup> (2018) states, there is a correlation of 44% between TBT notifications and TBT STCs. Furthermore, according to the TBT Information Management System, the main types of concerns among Members that raised STCs in the Committee are regarding further information or clarification of a TBT measure (17.52%), unnecessary barrier to trade (15.83%) and transparency (14.74%).

These figures show that, even though WTO Members are complying with notifying technical requirements and conformity assessment procedures, the completeness of information on current TBT notifications does not seem to satisfy business' needs, and APEC economies are not strangers to this situation.

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

## II. Objectives

In line with the implementation of Osaka Action Agenda which states that “*APEC economies will achieve free and open trade in the Asia-Pacific region by ensuring the transparency of APEC economies' respective non-tariff measures*”<sup>5</sup>, this initiative calls upon APEC members to identify best practices and capacity building opportunities to improve the quality and completeness of WTO's TBT notifications, within the scope of the current TBT Agreement. This proposal directly contributes to CTI's work of promoting free and open trade as it would facilitate trade and predictability of regulations for government officials and private sector. In addition, this proposal would also complement the current work made by WTO TBT Committee. Moreover, these best practices could provide valuable tools for future trade agreements and could lead to progress on the concept of FTAAP.

In accordance with the Coherent Use of Notifications Formats (G/TBT/1/Rev.14), Peru's proposal includes a self-funded study to evaluate, quantitatively, a representative sample

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<sup>4</sup> **World Trade Organization (WTO)**. (2018). *WTO TBT Enquiry Point Guide: making transparency work*. Retrieved from: [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf)

<sup>5</sup> 1995/AMM/030

of TBT notifications from APEC economies between 2015 and 2019. This analysis will take into account the work already undertaken as part of the WTO TBT Committee's 7<sup>th</sup> and 8<sup>th</sup> Triennial Review processes. This analysis would be complemented with a Public – Private Dialogue (PPD), in order to discuss the findings of the study and to collect contributions from other stakeholders. As a result of these activities, it is expected to identify the major challenges that both, public and private sector, must face in the instances where proposed technical regulations or conformity assessment procedures are not properly explained or notified. The intended activities would be the basis to develop best practices that could complement WTO guidelines<sup>6</sup> (G/TBT/1/Rev.14). The best practices would be used to explore capacity building opportunities to improve WTO notifications by APEC economies.

### III. Proposed Timeline

1. **July 2020**, present the initiative for discussion and intersessional comments. The initiative will also be shared among MAG and SCSC members for intersessional comments.
2. **At CTI3 2020**, APEC economies to endorse the initiative.
3. **November 2020**, Peru to develop and present the proposed methodologies to evaluate (1) a representative sample of WTO's TBT notifications from APEC economies and (2) private sector experiences in using these notifications.
4. **January – May 2021**, Peru will conduct the study.
5. **At CTI2 2021**, Peru will circulate the draft study among CTI, MAG and SCSC members for intersessional comments.
6. **By CTI3 2021**, CTI members to endorse the study.
7. **During 2021**, Peru will propose an APEC project for a Public – Private Dialogue (PPD) to discuss on the results of the study and on possible best practices to improve TBT notifications in the APEC region.
8. **At the margins of SOM1 2022**, hold the PPD.
9. **By mid-April 2022**, Peru to circulate a draft of possible best practices on TBT notifications among CTI, MAG and SCSC members for intersessional comments and discussion.
10. **At CTI3 2022**, CTI to endorse best practices.
11. **During 2023**, economies to report the improvements applied to TBT notifications, explore options for capacity building

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<sup>6</sup> **World Trade Organization (WTO)**. (2019). Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995. Retrieved from: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/1R14.pdf>

## 7. APPENDIX 2: TERMS OF REFERENCE

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

Proposed by Peru

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

#### **IV. Background**

There is a proliferation of Non-Tariff Measures (NTMs) in the Asia-Pacific region and they are becoming more complex. In APEC, Sanitary and Phytosanitary Measures (SPS), and Technical Barriers to Trade (TBT) are by far the most employed NTMs, according to the World Trade Organization Integrated Trade Intelligence Portal (I-TIP)<sup>7</sup>. While a range of these are legitimate under the terms of the TBT Agreement many notifications may not be properly filled.

This incompleteness of information and lack of transparency generates concerns to businesses across the APEC region, especially to micro, small, and medium enterprises (MSMEs), since they are more exposed to NTMs that could turn into non-tariff barriers (NTBs). In this regard, the APEC study *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region*<sup>8</sup> (2016), states that, from the business perspective, SPS and TBT impose overly strict and complicated requirements, and several procedural obstacles. In addition, MSMEs find especially troublesome the lack of transparency and poor dissemination of information about the requirements and how to comply.

Moreover, according to the APEC Business Advisory Council's (ABAC) study, *Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions*<sup>9</sup> (2016), TBT measures are the most burdensomeness in comparison with other NTMs since they have the greatest negative impact in terms of time and cost. Inconsistency, lack of transparency, and sudden changes were the biggest problems highlighted by businesses, mostly regarding labelling, testing protocols and product classification. Since information on regulations affecting trade should be accessible to facilitate trade, those factors do not only increase transaction costs, but also

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<sup>7</sup> **World Trade Organization Integrated Trade Intelligence Portal (I-TIP)**. (2020). Retrieved from <http://i-tip.wto.org/goods/Default.aspx>

<sup>8</sup> **Asia – Pacific Economic Cooperation (APEC)**. (2016). *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region*. Retrieved from <https://apec.org/Publications/2016/06/Non-Tariff-Measures-Affecting-Small-and-Medium-Enterprises-in-the-Asia-Pacific-Region>

<sup>9</sup> **APEC Business Advisory Council (ABAC)**. (2016). *Non-tariff Barriers in Agriculture and Food Trade in APEC*. California: Marshall School of Business. Retrieved from <http://info.marshall.usc.edu/academic/gpp/abac/Documents/Full%20Report%20-%20ABAC%20USC%20Marshall%20-%20Non-Tariff%20Barriers%20in%20Agriculture%20and%20Food%20Trade.pdf>

make it difficult for MSMEs to make efficient business decisions in order to export their products.

WTO Members are required to notify technical regulations and conformity assessment procedures in accordance the WTO Agreement on Technical Barriers to Trade. In this regard, the number of TBT notifications has been constantly increasing every year since 2015. For instance, in 2019, 2074 new measures were notified to the TBT Committee. This is a growth of 8.91% in comparison to the previous year<sup>10</sup>.

Furthermore, there is an increasing number of Specific Trade Concerns (STC) regarding TBT measures as well. As *WTO TBT Enquiry Point Guide*<sup>11</sup> (2018) states, there is a correlation of 44% between TBT notifications and TBT STCs. Moreover, according to the TBT Information Management System, the main types of concerns among Members that raised STCs in the Committee are related to the need of further information or clarification of a TBT measure (17.52%), unnecessary barrier to trade (15.83%) and transparency (14.74%).

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

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

## V. Objectives of the study

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

It seeks to raise awareness and increase understanding of:

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

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<sup>10</sup> **Technical Barriers to Trade Information Management System.** (2021) (<http://tbtims.wto.org/>).

<sup>11</sup> **World Trade Organization (WTO).** (2018). *WTO TBT Enquiry Point Guide: making transparency work.* Retrieved from: [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf)

## **VI. Methodology**

### **Scope of the study**

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

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

### **First part of the analysis – WTO TBT Notifications**

**TBT regular notifications:** Considering that the number of WTO TBT regular notifications between 2015-2019 have been 4 507, a total of 355 notifications will be randomly selected for the study. The technical details of the determination of the sample are detailed in Annex 1. This a representative sample which provides 95% confidence level. The sample will be randomly selected and distributed proportionally based on the percentage of notifications from each APEC economy during the aforementioned period. It should be noted that regular notifications also include both (i) “*technical regulations*”, and (ii) “*conformity assessment procedures*” under urgent circumstances notified according to Articles 2.10.1 and 5.7.1, respectively. Regular TBT notifications will be evaluated according to the questionnaire developed in Annex 2.

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

### **Second part of the analysis – Private sector experiences**

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

## **VII. Project Management/Administration**

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

## **VIII. Tentative Timeline**

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



## **IX. Annexes**

### **Annex 1. Determination of Sample Size**

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

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

## Annex 2. Evaluation Tool for TBT Regular Notifications

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

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

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

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

### Annex 3. Evaluation Tool for TBT Addendum

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

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

#### Annex 4. Evaluation Tool for TBT Corrigendum

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

## Annex 5. Private Sector Evaluation Tool for TBT Notifications

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



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

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