

**ARTICLE 6 OF THE AGREEMENT ON THE APPLICATION
OF SANITARY AND PHYTOSANITARY MEASURES**

Communication from Argentina

The following communication, received on 30 November 2005, is being circulated at the request of the delegation of Argentina.

I. INTRODUCTION

1. Argentina is grateful for the opportunity to submit this communication, and as suggested by the Chairperson of the Committee on Sanitary and Phytosanitary Measures, it would like to share with the other Members its practical experience with respect to the recognition of regionalization in the areas of both animal and plant health.

2. In this communication we shall try: (i) to systematize the difficulties that Argentina has had to face, as an exporting Member, in requesting recognition of the regionalization schemes it has implemented and (ii) to examine the nature of those difficulties and suggest certain corrective measures aimed at overcoming them.

3. The principle of regionalization was enshrined in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) for two purposes: (i) to incite Members to improve their sanitary and phytosanitary status; (ii) to facilitate access to foreign markets for agrifood products.

4. In Argentina's view, this duality should be observed both in the work currently being conducted by the SPS Committee and in the work begun by the OIE and the IPPS, as well as in bilateral procedures for the recognition of regionalization.

5. As can be seen in the first review of the operation and implementation of the SPS Agreement¹, which pointed to the delays in the recognition of regionalization, this issue has been the subject of discussion from an early stage. The fact is, that almost 11 years after the signature of the SPS Agreement, the meeting reports and negotiating documents that have been submitted indicate that we are still far from being able to claim any substantive progress in this area.

6. The identification and national recognition of a region with a differential sanitary and phytosanitary status is a process that can involve several years of work and major investments in human and financial resources, which are often scarce. Moreover, once the work has been done, considerable resources are needed for the maintenance of that status as well as for surveillance and for emergency programmes to deal with any outbreaks that may occur. All of this investment can have

¹ G/SPS/12.

its justification in society, which usually feels the effects in terms of domestic trade or the movement of persons, machines, animals, equipment, etc., provided there is a chance for access to markets that had hitherto been closed or subject to complex and often costly restrictions.

7. In short, Argentina considers that:

- Over the past few years, a considerable number of Members have denounced the unnecessary and unjustified delays in recognition of implemented regionalization schemes;
- because of these delays, one of the objectives of regionalization (access to foreign markets for agricultural products) has been undermined, causing serious prejudice to exporting countries (many of which are developing countries);
- as we have tried to demonstrate below, many of these obstructions or delays are due to administrative or procedural problems rather than any disparities of a scientific or sanitary nature (see part II and the Annex with flow chart);
- consequently, without prejudice to the highly important work being conducted by the reference international organizations, the importance and nature of this matter are such that the SPS Committee should take whatever decisions are needed to make the procedures for recognition of regionalization more predictable.

II. PROBLEMS IDENTIFIED²

1. Problems relating to domestic considerations in the importing country

8. The constraints in this respect could be due to a number of circumstances:

- (a) Lack of up-to-date domestic legislation that is compatible with the new international agreements. There are still many countries whose domestic legislation dates back to before 1995 and does not recognize the principle of regionalization;
- (b) lack of domestic legislation establishing the necessary procedures to implement and/or recognize regionalization in a clear and predictable manner;
- (c) lack of human and financial resources needed to progress with the concrete implementation of the principle of regionalization;
- (d) confused and imprecise definition of the appropriate level of protection (ALOP) resulting in application of the "zero risk" approach, although the idea is to adopt the "minimum risk" approach;
- (e) lack of any proper definition of ALOP by the political decision-makers, potentially confusing the situation for the technicians who have to examine the relevant documentation and who, suspecting a lack of political will, are liable to prolong the procedure.

² The Annex to this Communication contains a flow chart with the different critical points identified by Argentina, an exporting Member par excellence. As can be seen, many of these difficulties are essentially administrative or procedural.

2. Problems relating to the bilateral relationship between the importer and the exporter

9. This category covers the constraints relating to concrete cases of requests for recognition of a region with differential status between two Members.

- (a) If the pest/disease is not present in the importing country, there may be a lack of understanding of its biology which will inevitably give rise to doubts on the part of officials concerning the surveillance and monitoring systems, their efficiency, the identification of the pest/disease, the laboratory analyses and their results, the possibility of identifying areas with differential status, etc.
- (b) This inadequate understanding of the biology of the pest/disease could lead to a lack of proper training among officials called upon to analyse the information and make policy recommendations to the decision makers as to whether or not to recognize a region.
- (c) Constraints deriving from large numbers of requests for recognition addressed to a single Member.
- (d) Pressures applied to regulatory bodies. Cases of producers going to law in their country in order to prevent the opening-up of the market to products that could cause them economic losses have been proliferating.
- (e) Longer processing time owing to repeated requests for information, long periods during which the different services fail to communicate with each other, repeated inspection visits without any decisions being taken, etc.
- (f) Lack of familiarity with and/or confidence in the health services.

3. Problems relating to international reference standards

10. In order to reflect the distinctions that exist in the international legal framework owing to the different ways in which the OIE and the IPPC operate, we shall divide our comments into two parts.

World Organization for Animal Health

11. In cases of recognition of differential status that has already been recognized by the OIE, delays can derive from:

- (a) Absence of many Members from the meetings and consequent lack of understanding of the procedure for approving recognition, as a result of which such approval is often refused;
- (b) lack of a fast-track procedure for recognizing and OIE recognition;
- (c) Members which, regardless of OIE recognition, decide to go through all of the steps as though the matter had never been considered, causing delays that are clearly unwarranted from a technical point of view.

12. In cases of status that has not been recognized by the OIE:

- (a) Members deciding not to consider the request;

- (b) lack of recognition causing uncertainty and hence leading to undue delays in the time required for recognition.

International Plant Protection Convention

13. The IPPC is currently discussing the adoption of an international standard in this area, and is developing guidelines for the recognition of free areas and areas of low prevalence. At the same time, discussions are being conducted on the advisability and feasibility of developing a system along the same lines as the OIE. However, a number of developing countries – including Argentina – consider that such a system, far from facilitating trade, could constitute an obstacle because of the particular nature and the quantity of plant pests.

14. Meanwhile, countries are addressing the problem of regionalization through horizontal framework standards based, for example, on ISPM No. 4 (establishment of pest-free areas). We can cite all of the problems identified in paragraph 8 and 9 of this document.

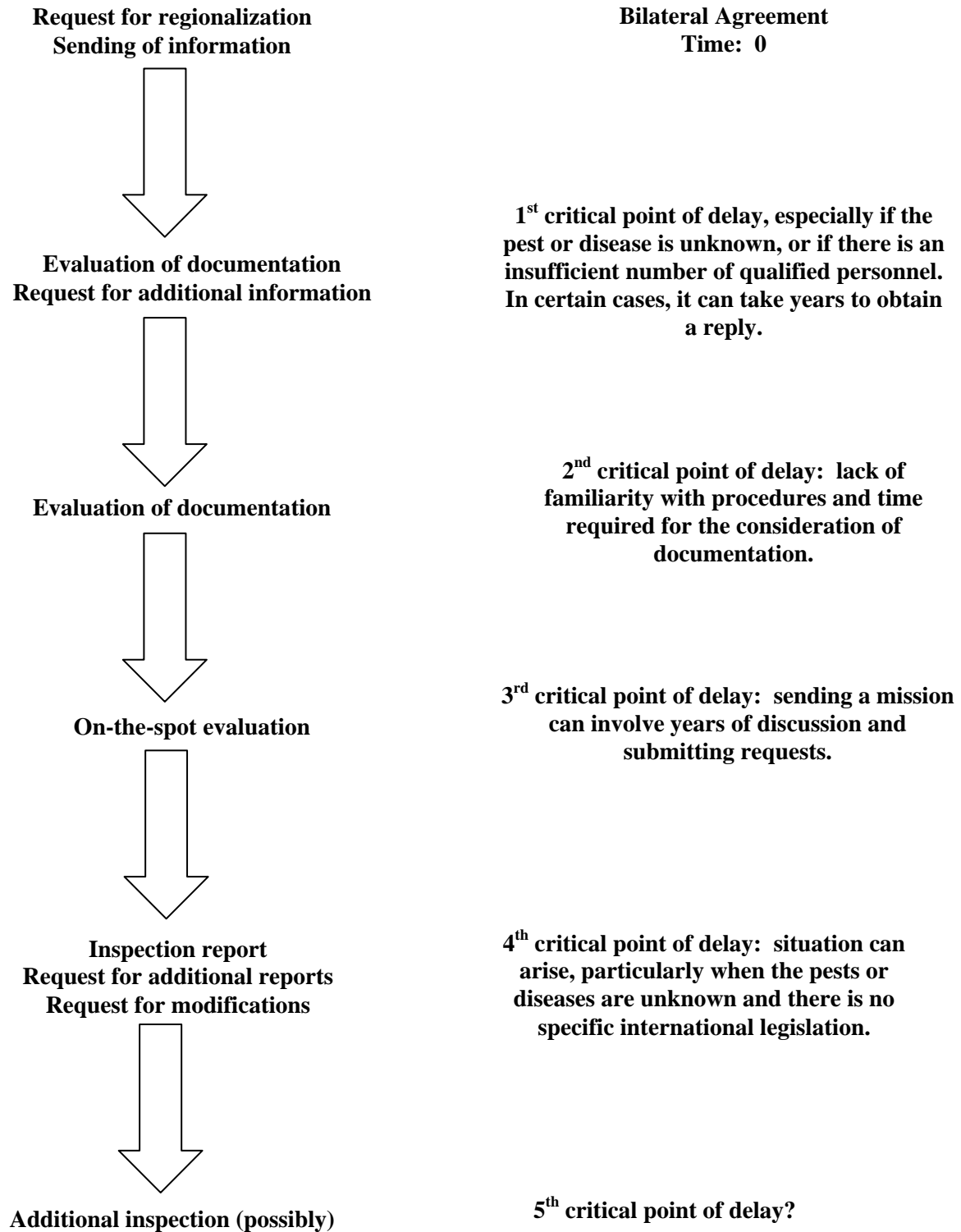
III. FINAL REMARKS

15. In the paragraphs above and in the Annex to this communication, we have attempted to provide a non-exhaustive list of the difficulties that the Argentine health services have encountered in requesting recognition of regionalization.

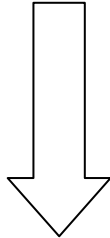
16. To overcome these difficulties, we need to introduce a series of measures to enhance predictability in international trade. These measures include: (i) The development of guidelines in the SPS Committee for the establishment of clear, predictable and precise rules governing procedures for the recognition of regionalization; (ii) the incorporation of these guidelines in the domestic legal systems of Members, and their proper enforcement; (iii) the establishment of cooperation programmes between Members for cases requiring adaptation of legislation or training of technicians.

17. Finally, we note that this issue is of particular importance to the agricultural exporting countries, many of which are developing Members. Consequently, without prejudice to the work being done by the reference international organizations, we would ask the SPS Committee to reach a decision that would speed up the recognition of regionalization.

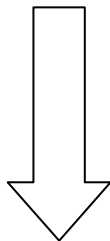
ANNEX



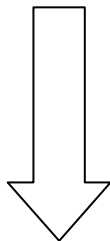
Modification of the national standard
Issuing of a new standard
Public Consultation?
Result of the consultation
Drafting of a final standard
Sanctioning



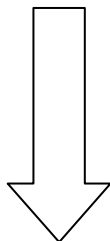
Subsequent authorizations



Registration of plants, exporters, etc.



Inspection visits, approval and certification for market access



OPENING UP OF MARKET???

6th critical point of delay

7th critical point of delay: impossible to know precisely how long this administrative step will take, but in certain cases it could be years.

8th critical point of delay: could be administrative or shared with other administrative units.

9th critical point of delay: this is the beginning of a different process which can be frustrating and of uncertain outcome.

10th critical point of delay: uncertain outcome.

5, 10, 15 YEARS???????
