

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

Japanese Comments and Proposals

The following communication, received on 16 May 2006, is being circulated at the request of the delegation of Japan.

Japan welcomes the discussion on regionalization that has taken place in the Committee on Sanitary and Phytosanitary Measures (the Committee) to improve the implementation of the SPS Agreement. We would like to submit the following comments on the background paper (G/SPS/GEN/640) and our proposals to increase predictability in the recognition procedure for regionalization.

I. GENERAL COMMENTS

A. WORK OF THE RELEVANT INTERNATIONAL STANDARDS SETTING BODIES (ISSBs)

1. As agreed in the previous meetings of the Committee, international standards on technical issues should be fully discussed by the relevant ISSBs in light of their expertise and terms of reference entrusted by the SPS Agreement.

2. In view of the recent progress made by the OIE and the IPPC, it is obvious that these ISSBs are dealing with issues relating to the implementation of regionalization, including administrative aspects in a positive manner. Recognizing such ongoing efforts, Japan is of the view that the Committee should let the ISSBs complete their work, rather than start developing overarching or overlapping guidelines. Therefore, Japan believes that the Committee's primary responsibility in this area is, as articulated in the Article 12.3 of the Agreement, to closely communicate with the ISSBs to avoid unnecessary duplication.

B. TIME-FRAMES

3. Regarding the time-frames on the steps which involve scientific or technical considerations, Japan thinks that this should be addressed exclusively by the competent ISSBs. The necessary period of examination for each step will differ according to various conditions, such as the nature and prevalence of the disease/pest, the geographical situation and the quality of data provided by exporting countries.

4. With regard to the general time-frame, we think it is difficult to introduce because such a time-frame may impair the delicate balance between importing countries and exporting countries under the SPS Agreement. On the one hand, a short time-frame undermines the right of importing

countries to conduct indispensable processes such as scientific analysis or risk communication with domestic stakeholders, in accordance with the nature of the case; and on the other hand, a long time-frame might be used only as a justification of undue delay. In addition, taking into account various situations among countries, such as a difference in the number of requests to the countries or the regulatory system of the countries, it is difficult to reach an acceptable compromise on this issue.

II. COMMENTS ON SECTION IV OF G/SPS/GEN/640

5. As mentioned above, Japan is of the view that the Committee should refer these issues to the OIE and the IPPC. However, acknowledging that active discussion in the Committee facilitates the improvement in the implementation of the regionalization, Japan submits the following comments on Section IV of G/SPS/GEN/640.

B. SEQUENCE OF STEPS

6. Japan agrees that the sequence of steps described in B to J of Section IV of G/SPS/GEN/640 is a typical flow of work for the recognition of the pest- or disease-free area. However, further elaboration of the details of each step by the Committee is not appropriate because such a detailed guideline will not provide the ISSBs or Members with the flexibility which is important in dealing with various situations.

C. EXPEDITED PROCESS

7. Japan agrees that all of the three suggested elements provided in K of Section IV of G/SPS/GEN/640 ((a) existence of official recognition, (b) recovery of status of previously recognized area and (c) familiarity with the sanitary or phytosanitary service in exporting country)) can significantly contribute to the recognition of the pest- or disease-free area, including the possible omission of some of the procedures. Japan thinks that the importing country should accept expedited procedures when it can be confident that the proposed measures can achieve the appropriate level of protection in the country. Otherwise, expedited procedures undermine the rights of importing countries under the SPS Agreement.

(a) Official recognition

Japan agrees that official recognition is one of the important factors in the consideration of the recognition of the pest- or disease-free area. Japan has harmonized the lists of information requested of exporting countries for the recognition of pest- or disease-free areas with those of the OIE. Japan thinks it is difficult to automatically recognize a pest- or disease-free area solely depending on the official recognition for the following reasons:

Firstly, according to Article 3.3 of the SPS Agreement, a Member may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, as long as there is a scientific justification, or other requirements are met. Automatic recognition based solely on official recognition makes it impossible for Members to adopt sanitary and phytosanitary measures to achieve a higher level of protection even if there is a scientific justification.

Secondly, Japan would like to point out the fact that there is a disclaimer in the official recognition of disease-free status by the OIE, which indicates a probability of inaccuracy. Taking this disclaimer into account, it is difficult for importing countries to automatically accept the official recognition. In addition, when using official

recognition as a basis for the decision on the application of a fast-track procedure, it is important that not only the data submitted to the relevant ISSBs are shared with the Members, but also that details of the discussion in the ISSBs leading to the approval of official recognition are accessible to us.

(b) Recovery

It is Japan's view that the confidence generated through the original recognition procedure can facilitate the process of recognition, and there may be some cases where we can expedite recognition by omitting some elements of the procedure. However, there would be other cases where Japan thinks it inappropriate to apply the fast-track procedure, such as the case where the confidence in the quarantine systems was damaged by the outbreak. Based on the fact that the decisions for applicability require technical considerations, Japan thinks that the use and applicability of the fast-track procedure for recovery cases should be addressed by the relevant ISSBs, rather than introducing a fast-track procedure which is generally applicable to all recovery cases.

(c) Familiarity

Japan agrees that, in most cases, familiarity and confidence generated through similar experiences or successful past records on the quarantine and/or disease control system of an exporting country can facilitate the recognition of the pest- or disease-free area. However, we would like to point out the fact that the nature of familiarity differs on a case-by-case basis and does not always accelerate the decision on recognition.

III. PROPOSALS

8. Based on our view presented above, Japan would like to propose the steps described below, if the Committee discusses the guidelines on regionalization based on Section IV of G/SPS/GEN/640 (following paragraph 28). Japan is convinced that these steps will help enhance transparency, promote predictability and avoid undue delay in the bilateral consultation process.

28.bis(i) The importing Member shall show the whole sequence of steps throughout their recognition process and communicate with the exporting Member in order to gain sufficient understanding of the steps.

28.bis(ii) If the importing Member receives multiple requests from one country or various requests from several countries, and the available resources of the importing Member are limited, the Member needs to prioritize these requests. The importing Member shall, after having bilateral communications with the exporting Members, if deemed necessary by the importing Member, decide¹ and communicate to the relevant countries the priority for recognition.

¹ To prioritize multiple requests, the importing Member should take into account relevant factors including, *inter alia*:

- completeness of available data for scientific analysis
- the priority lists submitted by the exporting Members
- available resources for scientific analysis
- existence of relevant international standards or official recognition
- expected volume of importation estimated from the previous records before interruption of trade (for requests of re-recognition)

28.bis(iii) The importing Member shall present the list of necessary data/information to the exporting Member and, upon request, provide information on the current status of the request to the exporting Member.²

² Based on our experience, in many cases, it takes a long time until all data/information necessary for examination is submitted in spite of the fact that the procedure for recognition can not proceed without sufficient information. Japan thinks that the following can contribute to solving this problem:

- i) Detailed specification of data/information listed should be attached to the request for data/information; and
- ii) The data/information should be provided in the language in which the importing Member can work (official language of the importing Member or English).