

**COMMENTS ON SECRETARIAT'S REPORT "ISSUES IN THE APPLICATION OF  
ARTICLE 6 OF THE AGREEMENT ON THE APPLICATION OF SANITARY  
AND PHYTOSANITARY MEASURES"  
(G/SPS/GEN/640)**

Communication from the Separate Customs Territory  
of Taiwan, Penghu, Kinmen and Matsu

**I. INTRODUCTION**

1. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to express its appreciation to the Secretariat for providing the background document (G/SPS/GEN/640), which summarizes Members' experiences, the contributions of relevant international standard-setting bodies (ISSBs), and typical administrative procedures for recognizing pest- or disease-free status.

2. The issues of implementation of Article 6 of the SPS Agreement (hereafter "regionalization") have been discussed in the SPS Committee for several years. Difficulties experienced by certain developing or least developed Members have been raised. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu also would like to thank Members who have offered their proposals to standardize the recognition procedures and reduce uncertainty on how to apply the provisions of Article 6 of the SPS Agreement.

3. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers, however, that a line must be drawn between the *interpretation* for the purpose of implementation and the *amendment* of Article 6. While the former can be made at this Committee so that Members may be well oriented towards adopting appropriate domestic measures, including laws and regulations concerning the recognition of pest- or disease-free areas and areas of low pest or disease prevalence under Article 6, the latter needs to be considered with great care, so that the balance embedded in the SPS Agreement between the interests and the rights of exporting countries and importing countries would not be impaired. At the present time there is neither a need nor a mandate to amend the SPS Agreement. Therefore, we would like to provide the following comments on the background paper, based on the interpretation of Article 6, and to share our experiences on regionalization from the perspective of an importing Member.

**II. COMMENTS ON G/SPS/GEN/640**

**A. PREDICTABILITY/TIME**

4. An examination of Article 6 of the SPS Agreement reveals that importing Members have the following obligations:

- (i) To ensure that their SPS measures are adapted to the pest or disease status of the area from which the product originated;

- (ii) When assessing the pest or disease status of a region, to consider, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations;
- (iii) To recognize the concept of pest- or disease-free areas and areas of low pest or disease prevalence; and
- (iv) To base the determination of such areas on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of SPS measures.<sup>1</sup>

5. When determining generally the status of pest- or disease-free areas or areas of low pest or disease prevalence, it is necessary for importing Members to consider various factors such as the biological characteristics of the pest or disease, the status of occurrence of pest or disease in a specific area and its surroundings, and particular geographic and climatic conditions, among others. Moreover, for each specific case, importing Members should also evaluate other various factors such as credibility of surveillance, monitoring, emergency control and protection systems, and the ability of the animal and plant quarantine authority of the exporting country to maintain the system in order to prevent the introduction of the pest or disease in question.

6. The prerequisite for this process to run smoothly is that exporting Members must provide the necessary and reliable information and data to importing Members in a timely manner in order for importing Members to examine and evaluate the above-mentioned factors. Thus, the time necessary for examination of the above-mentioned factors does not depend on importing Members alone. The quantity and quality of information and data provided by the exporting Member and the complexity of each case also contribute to the overall time necessary for any careful assessment.

7. Therefore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu is of the opinion that it may not be appropriate or practical to establish in the SPS Committee and relevant ISSBs administrative and technical timeframes for the recognition of pest- and disease-free areas or areas of low pest or disease prevalence.

#### B. WORK OF THE INTERNATIONAL STANDARD-SETTING BODIES

8. Several Members emphasize the importance of implementing Article 6 based on guidelines or recommendations set by ISSBs. Members are also encouraged to discuss this issue and develop some guidance on the application of regionalization decisions at ISSBs.

9. In the implementation of the SPS Agreement, International Standards, Guidelines and Recommendations, as well as ISSBs, play a vital role. No matter whether the Members are taking their SPS measures in conformity with International Standards, Guidelines and Recommendations, or developing a higher level of SPS protection than would be achieved by measures based on International Standards, Guidelines and Recommendations, ISSBs assert a strong influence upon such national decisions. Members recognize that the SPS Agreement seeks to establish a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of SPS measures in order to minimize their negative trade effects, and to further the use of harmonized SPS measures with International Standards, Guidelines and Recommendations, developed by the ISSBs.<sup>2</sup>

10. However, not all Members of the WTO are members of these international organizations. For example, since the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu is not a

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<sup>1</sup> SPS Agreement, Article 6.

<sup>2</sup> SPS Agreement, Preamble.

contracting party to the International Plant Protection Convention (IPPC), there is no direct channel through which we can participate in the discussions of the issue of regionalization and relevant technical drafting sessions for phytosanitary measures. The interests of those Members who for various reasons are in a similar situation would not be considered, and in fact may be impaired by the application of international standards set by the IPPC. As stated in our paper (G/SPS/W161), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to call on the SPS Committee to ensure that the rights and interests of every WTO Member would not be impaired by any international standards developed and adopted without the endorsement of the full WTO Membership, especially by those International Standards, Guidelines and Recommendations which could be deemed as important references for the implementation of the SPS Agreement.

11. If Members are prevented from playing a full part in ISSBs, including in their decision-making process, it would be unreasonable to assume that such Members will be able to fulfill the obligation to harmonize their domestic measures in accordance with international standards the standardization process of which they were unable to participate.

### C. EXPEDITED PROCESS

12. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu notes that the situations listed in paragraph 41 of G/SPS/GEN/640 may accelerate the recognition process of a pest- or disease-free area. However, as mentioned by some Members the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu cannot accept that the pest- or disease-free area recognized by the ISSBs would be automatically recognized by the importing country.<sup>3</sup> The primary reason is that, as stated above, we are not a contracting party to IPPC, and currently cannot participate in any expert working group discussion or other relevant decision-making processes at the IPPC.

13. In addition, the criteria for the recovery of previously recognized pest- or disease-free status of an area due to an outbreak may be complicated. The exporting country should provide the importing country with sufficient information regarding the cause of the outbreak, enforced safeguards to maintain its pest- or disease- free status in that area, etc., to apply for the recovery recognition. Only when the importing country is convinced that there is no longer systemic or other implementation deficiencies in the area in question could recovery status be granted.

### III. CONCLUSIONS

14. In accordance with the views stated above, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to propose the following:

- (i) The SPS Committee's decisions should avoid transgressing the rights of Members under the SPS Agreement, especially by the mandatory incorporation of standards, guidelines or recommendations set by ISSBs in whose activities not all WTO Members can participate;
- (ii) The SPS Committee may recommend a guideline or procedures on regionalization, but should not require Members to complete the recognition process within a certain timeframe as proposed by some Members; and
- (iii) The SPS Committee should continue to encourage bilateral consultations between exporting and importing Members to resolve issues of regionalization.

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<sup>3</sup> Australia (G/SPS/W/191), Japan (G/SPS/W/192), Korea (G/SPS/W/195).