



**FIFTH REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT
ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES**

PEST- AND DISEASE-FREE AREAS – REGIONALIZATION (ARTICLE 6)

Submission by the European Union

The following communication, received on 1 June 2018, is being circulated at the request of the Delegation of the European Union.

1 INTRODUCTION

1.1. As part of the 5th Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), pursuant to the provisions of Article 12.7 of the Agreement, the Secretariat has invited Members to identify issues they wish to be considered during the Review by 1 June 2018.

1.2. The European Union has identified regionalization (pest- and disease-free areas) as an issue that requires the Committee's continuing attention.

1.3. The concept of regionalization is one of the fundamental principles of the SPS Agreement. Article 6 lays down the rules on the application of regionalization when setting SPS measures.

1.4. Regionalization, if established in line with WTO rules and standards of the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC), is an important tool for maintaining safe trade by only restricting trade from areas affected by a disease or pest, whilst avoiding trade disruptions in goods from unaffected areas.

1.5. Recognition of another country's regionalization measures should be based on objective information and should be carried out within a reasonable period of time. Exporting countries must be able to guarantee that their regionalization measures are reliable, "objectively demonstrating" that their pest- and disease-free regions/areas are indeed free, and are "likely to remain free".

1.6. It also requires a high level of trust and confidence in other country's measures and policies on controlling animal and plant diseases to recognize their regionalization measures in order to facilitate trade. This mutual exercise should ideally be carried out in peace time, in order to be prepared when an outbreak happens. According to the EU's experience, the recognition of trade partner's regionalization measures is often not in line with the above mentioned international principles, which may result in non-justified trade restrictions.

1.7. Managing and controlling highly contagious animal and plant disease outbreaks is a costly exercise in itself, however the main economic damage is often inflicted by the excessive trade restrictions imposed by importing countries both in terms of geographical and temporal scale.

1.8. On 16 May 2008, the SPS Committee adopted "Guidelines to further the practical implementation of Article 6 of the Agreement on the Application of Sanitary and Phytosanitary measures" published in document G/SPS/48.

1.9. The Guidelines, while not creating legal obligations, are intended to provide assistance to Members in the practical implementation of Article 6 by improving transparency, exchange of information, predictability, confidence and credibility between importing and exporting countries. In principle, they should become reference of best practice among Members and should be followed by all Members.

1.10. Point 3 of the Guidelines requires that they should be periodically reviewed and revised as necessary by the Committee in light of the experience gained through the implementation of the SPS Agreement and the use of these Guidelines themselves.

1.11. The Guidelines have not been reviewed since their adoption in 2008. Given the importance of the concept of regionalization and the usefulness of having all Members follow the Guidelines, the European Union considers worthwhile to look at them during the 5th Review of the SPS Agreement, in order to assess how effective they really are, to what extent they are followed and, if needed, to identify areas which could be improved.

1.12. Before doing so, however, attention should be paid to the on-going activities of the OIE setting up an observatory and surveying its Members' practices by a questionnaire with regard to the implementation of its standards. The European Union is aware that in the recently circulated OIE questionnaire specific attention is paid to regionalization (zoning) and to the use of international standards when negotiating market access. The European Union is also aware of activities of the IPPC regarding fruit flies, and its plans to develop a manual for the recognition procedure for pest-free areas.

1.13. Recent dispute settlement cases underlined the obligation of WTO Members to apply the concept of regionalization and seek to minimize the trade impact of a disease outbreak in an exporting country.

2 PROPOSAL

2.1. The European Union is of the view that any further work of the SPS Committee on regionalization should build on the on-going work of the international standard setting bodies, and on WTO jurisprudence. Accordingly, and within the framework of the 5th Review, the European Union would like to submit the following specific proposals for action by the SPS Committee:

- a. To invite the OIE to share with the SPS Committee the outcome of its on-going work in relation to regionalization and trade facilitation;
 - b. To invite the IPPC to conduct a similar survey, and to share information about its on-going activities and about any experience it may have about the implementation of its standards in relation to pest-free areas;
 - c. With the assistance of the WTO Secretariat and Legal Service, to look at recent WTO jurisprudence on regionalization both in the Animal Health and Plant Health domains;
 - d. To examine the Guidelines on Article 6 (G/SPS/48) in order to assess their effectiveness, to what extent they are actually followed by Members and, if needed, identify areas which could be improved.
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