

**COMMENTS ON THE BACKGROUND DOCUMENT ON ISSUES IN
THE APPLICATION OF ARTICLE 6 OF THE SPS AGREEMENT
(G/SPS/GEN/640)**

Communication from the European Communities

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

Preamble

1. The European Communities wishes to thank the WTO Secretariat for the document which provides a very good overview of the state of play of the SPS Committee's discussions on Article 6 of the SPS Agreement (hereafter "regionalization").
2. As requested by the SPS Committee Chairman at the March SPS Committee meeting, the European Communities hereby provides preliminary comments to G/SPS/GEN/640. At this moment further discussions on this topic are taking place in the relevant IPPC and OIE committees in May and it is therefore difficult to forecast the outcome of these discussions. Certainly these discussions will have a repercussion on the current work within the SPS Committee. As work is proceeding at technical level, the SPS Committee should take these conclusions into account at its June meeting and some of the EC comments therefore may not be relevant at that stage.
3. Although the International Standard Setting Bodies (ISSBs) have recently begun to give elaborated consideration to the issue of regionalization from a specific technical perspective, the European Communities shares the opinion of several other WTO Members that the SPS Committee itself is best placed to address and provide administrative guidance on how to apply the provisions of Article 6 of the SPS Agreement.
4. From the available technical guidance provided by the ISSBs so far one can deduce what such an administrative process should look like. It is a matter of applying the existing procedures and transposing them to situations where guidance has not yet been established. Above all, regionalization is an exercise between two trading partners and hence it should be adapted to the particular situation in which trade of a specific product is to take place. As the animal disease and pest status may vary over time, it is important to bear in mind that general guidance as to be provided by the SPS Committee should be general and flexible, but with the clear intention to facilitate trade between two partners, as well as to enhance transparency on the procedure to be followed.

The problems

Establishment of pest- or disease-free areas (or areas of low pest or disease prevalence)

5. This is mainly a national/internal issue. It is up to the national/local authorities to put in place measures in order to either re-establish the previous pest- or disease-free situation, or either to establish such status within an endemically infected area. The concept for both is the same. In this case the technical guidelines from the ISSBs are very helpful as they can assist in providing an outline of what steps need to be fulfilled to obtain pest- or disease-free status for each specific pest or disease, if necessary. In the phytosanitary area, two distinct standards exist: ISPM 4 for pest-free areas and ISPM 22 for areas of low pest prevalence.

Recognition of pest- or disease-free status (see Figure 1)

6. The establishment by the national authority of pest- or disease-free status (or of low pest prevalence) however is the initial step and only part of the requirements for final recognition by the importing party. Multiple other factors also play a role in this process, e.g. reliability of the competent authorities; veterinary/phytosanitary structures in place to maintain the status, including monitoring and verification. An example of such requirements has been provided in a previous EC submission on the subject (annexed to G/SPS/GEN/588) and is also addressed under Section B of the G/SPS/GEN/640. It is often because these other factors are not fulfilled, or sufficient proof cannot be provided of their implementation, that recognition by the importing party cannot be granted. Here the ISSBs can play a role as they can officially declare a disease- or pest-free status. Although this may be very limited and cannot be extended to cover all cases, where it is available it can provide extra guarantees that facilitate the work of potential importing parties. In the plant health area, however, we are far from an international recognition by an official international body such as IPPC. Moreover, the ISSBs can only consider the initial step outlined in the previous paragraph without sufficiently taking into account the other factors highlighted. Therefore, the ultimate decision to recognize remains with the importing Member and very much depends on the trust in the competent authority of the exporting Member. This trust builds on the veterinary/phytosanitary system in place and previous experience with the exporting Member. Consequently, the recognition process varies from one case to another, hence the need for predictability and transparency.

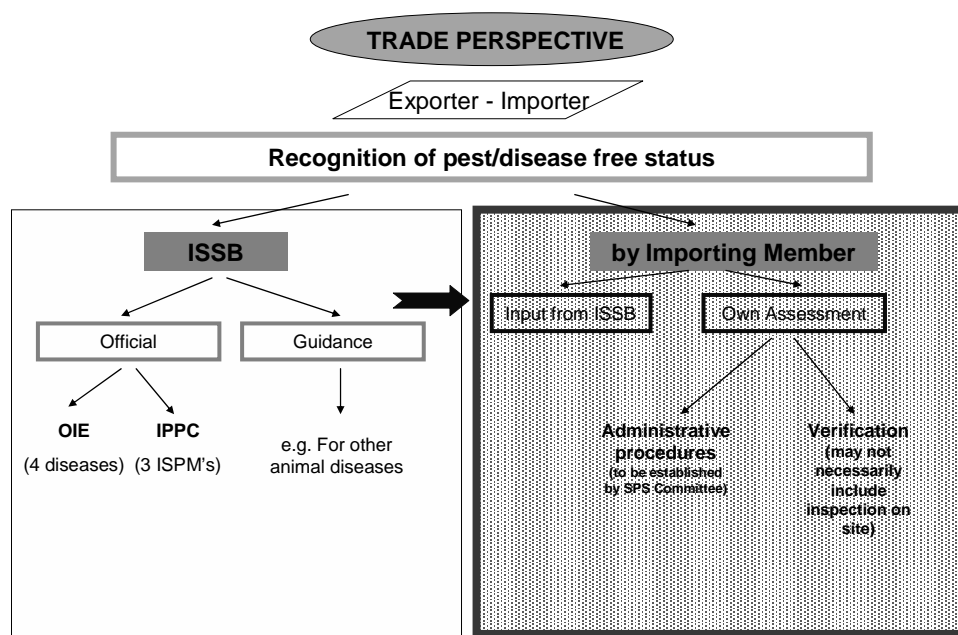


Fig.1

Predictability

7. Following from what precedes, there is a need for an exporting party to know where it stands in the recognition process and whether it is worthwhile to make these costly efforts. This level of predictability means that there is some general indication of what is to be expected in terms of time. Such indication needs to remain flexible and cannot be binding as several factors may interfere, hence the difficulty in fixing timelines. However it should be possible to indicate timelines roughly between the importing and exporting party at the initial phase of the recognition process, which go further than just outlining the process itself. Maintaining a good level of information exchange among all parties involved will automatically increase the level of transparency. Several factors are outlined as possible causes for unpredictability in G/SPS/GEN/640, but clear communication between the parties should be able to overcome these.

8. For an exporter, it is evident that regaining recognition of its pest- or disease-free status cannot happen soon enough, both to safeguard the internal health situation and to resume exports. As an importer, the situation differs as one wants to ensure that any imports cannot harm the internal disease/pest status. Normally the process will take longer than the exporter would like, as the importer would like to verify things thoroughly.

9. The European Communities is in favour of establishing timeframes for the purpose of the parties committing themselves to provide feedback within a certain timeframe. The commitment is hence on the timeframe, and not on the positive answer to the recognition of regionalization in itself. The European Communities is convinced that in this way a better level of predictability, and hence transparency, is achieved.

10. The European Communities is not in favour of establishing strict timeframes, which it considers not feasible in practice, but "a reasonable timeframe", the terminology used in OIE, should be applied. This would imply that the period to apply regionalization must be quicker than regaining free status of the region or country under the OIE guidelines for the particular disease in question, unless an explicit question is raised. If timeframes go beyond the ones provided for in the

international standards, there is no reason to do the regionalization exercise as there is no gain, assuming, of course, that the ISSBs timeframes are respected in the first place, which is not always the case! Another important guidance could be the timeframes normally applied within the exporting country to declare an area free again. The overall idea, however, should be to gain time vis-à-vis the officially established OIE timeframes. OIE is encouraged to continue to work on establishing technical guidance on other diseases and, as far as possible, facilitate official recognition for additional diseases than the four diseases for which an official OIE recognition is granted at present.

Transparency

11. There is need for transparency at several levels because this leads to a higher level of predictability. An exporting Member needs to be transparent about the system that it has in place in order to improve trust with the importing Member. On the other hand, the importer must also be transparent on its requirements for recognition. Through dialogue, all procedures and requirements need to be clarified at a very early stage in the importer-exporter relationship. If this is not the case, then the potential exporter cannot know whether it is worth making the investment to establish free zones in an endemic area, or whether it is worth continuing the discussion on potential trade from a free area. A typical example of non-transparency is the ever-lasting repetition of sending new questionnaires, without any guarantee on if and when this will be followed by the next step.

12. Whether this information should be shared with the SPS Committee is a different issue, and may not necessarily lead to higher transparency, unless there is lack of it, but this is already dealt with under the agenda item of "specific trade concerns".

13. The European Communities puts up-to-date information on its website concerning the disease-status of its member States. In addition, the chronology of facts during an epizootic is also available on the website, e.g. see avian influenza.

14. In the case of trade, full transparency is established with the exporting party and this party knows at all times at which step in the recognition process it stands.

15. The European Communities is in favour of issuing an additional notification of recognition of regionalization through the SPS notification authority, recognizing, however, that this would add to the already heavy burden of overload of notifications. As the SPS Committee will have established administrative guidelines, it will be clear to any other party which modus operandi has been applied and there may be no need to outline this in detail. On the other hand, another possibility to enhance transparency is a short statement during the SPS Committee meetings. The lack of recognition of regionalization has already often been the subject of a specific trade concern.

SPS Committee versus ISSBs

16. As a matter of transparency and to enhance streamlining of procedures, the European Communities supports the view that the SPS Committee should draw up administrative guidelines outlining the different steps in a regionalization recognition process. The technical guidelines relating to each individual disease/pest should be dealt with in the respective sister organizations.

17. As follows from Figure 1, recognition by the OIE as having achieved free status in a particular disease does not necessarily enhance the ability of WTO Members to gain bilateral recognition. It is one of the components that may facilitate the bilateral recognition. It is also only at this stage of bilateral recognition that the SPS Committee should interfere and agree on administrative guidelines (see shaded area in Figure 1).

18. The OIE provides recommended steps for zoning and the determination of recognition (or not) should be notified within a reasonable period of time.

19. In the IPPC, however, three standards already exist that address regionalization. In addition, a draft standard "guidelines for the recognition of the establishment of pest-free areas and areas of low pest prevalence" is currently being discussed. In this procedure an outline of the different steps is provided but there is no mention of specified timelines other than the phrase "the contracting parties should proceed with the recognition process without undue delay". For the IPPC it is not yet clear whether the international recognition of pest-free areas is a feasible and sustainable system, legally, technically and economically. In the absence of such certainty, however, regionalization should still be applied and one cannot wait until such international recognition is available in order to trade.

20. In the absence of full clarity and recognition by the ISSBs so far, it is up to the SPS Committee to establish such administrative guidelines in order to facilitate trade. Wherever such international recognition exists, it should be taken into account as one of the factors that may enhance trust in the competent authorities and hence facilitate recognition of regionalization. Even if the issue of timeframes is not (yet) fully determined in the ISSBs, they have identified the need to do so. Therefore such predictability must also be addressed in the SPS Committee as the recognition process by the importing party comprises the work of the ISSBs.

Comments on "Typical steps for administrative procedures for recognition: summary of proposals" (Chapter IV of G/SPS/GEN/640)

21. In order to illustrate the different steps in the recognition process at the level of the importing member in a concise manner, a decision tree is a valuable tool.

22. Following from Figure 1, the European Communities does not agree with Step A being the beginning of the process, as it is incorporated in the following steps. Hence paragraph 28 should start with the formal request for the recognition of a pest- or disease-free area, or an area of low pest or disease prevalence, initiating the bilateral process of recognition. Within this process, specific attention should be paid to the official recognition by the ISSBs, reference to which is made in paragraph 31.

23. The European Communities agrees with Steps B through J. The European Communities also subscribes to the necessity of Step K (expedited process), as this is a very important factor in the discussion of predictability. The European Communities thinks that the outline of the steps is a very good basis for further discussion in the Committee on administrative guidelines.
