

**ISSUES IN THE APPLICATION OF ARTICLE 6 OF THE SPS AGREEMENT**

Communication from Australia

The following communication, dated 18 May 2005, is being circulated at the request of the Delegation of Australia.

**I. BACKGROUND**

1. At the 35<sup>th</sup> meeting of the Committee on Sanitary and Phytosanitary Measures (SPS Committee) in March 2006, the Secretariat circulated a background document (G/SPS/GEN/640) which summarizes Members' experiences and outlines a number of key issues in the implementation of Article 6 (pest- and disease-free areas) of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

2. The background document is a very useful summary reference document which will facilitate ongoing discussions about Members' experiences and challenges in implementing Article 6 and the role of the International Standard Setting Bodies (ISSBs). As a contribution to making the background document as useful as possible, Australia offers some comments on that document set out below.

3. Members have emphasized the important role and ongoing work of the ISSBs in the area of technical and administrative guidelines in implementing regionalization. Australia supports the view that solutions to problems raised by Members should be fully consistent with the ongoing work of the ISSBs, which includes recommendations on the recognition of pest- and disease-free and low prevalence areas. Australia considers that the ISSBs are the most suitably qualified bodies to develop guidance on the application of regionalization decisions. Any guidelines adopted by the SPS Committee should therefore be fully aligned with the work of the ISSBs in this area so as to avoid unnecessary duplication and confusion.

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

**A. MEMBERS' EXPERIENCES**

4. The Secretariat's very helpful summation of Members' experiences has drawn Australia's attention to a particular emphasis of some points on animal health aspects. This understandably reflects the collection of experiences which Members have offered in the past as examples for Committee discussion, and also the substantial work on compartmentalisation and zoning which has been completed by the World Organization for Animal Health (OIE). Following are some additional observations regarding plant health aspects, for information.

- Eradication: In paragraph 10, the last sentence outlines some activities which could be included in eradication programmes for plant pests. Australia's experience has been that in addition to those activities listed, other activities can include destruction of host plants, disinfestations and communication.
- Control and emergency preparedness: In paragraph 11, the second sentence makes reference to containing an outbreak with strict controls on trade and "animal" movement. Australia's experience has been that control of movement can also be relevant for plant health management (e.g., controlling movement of plants and plant hosts).
- Public-private cooperation: Paragraph 13 highlights the importance of cooperation with the private sector. Australia has found this to be very important for both animal and plant health. One component of Australia's approach to managing and reducing the risks posed by exotic pests and diseases has been to develop closer industry and government partnerships. This includes through the development of cost sharing agreements for some issues and review (or development) of industry specific biosecurity plans. These pre-emptive planning processes improve the capacity to maintain domestic and international trade, negotiate access to new overseas markets and reduce the social and economic costs of disease and pest incursions on both growers and the wider community.
- Predictability/Time: In paragraph 14, the last sentence summarizes some observations from an importing Member perspective. An additional aspect which can be relevant is that assessment of a request for recognition of zonal freedom (or low pest/disease prevalence) is usually part of a broader import risk assessment addressing a range of pests/diseases. Also the time taken to complete certain steps in the assessment process may vary on a case-by-case basis, depending on the complexity and technical aspects of the situation being evaluated.

B. TYPICAL STEPS FOR ADMINISTRATIVE PROCEDURES – SECTION IV

5. Australia shares the concerns raised by a number of Members at the March 2006 meeting of the SPS Committee. In particular:

- (i) Paragraph 26 does not acknowledge situations where particular pests or diseases have never been detected in the territory of a Member and refers only to situations in which pests or diseases have been eradicated; and
- (ii) Regionalization is part of the overall process of developing an SPS measure, and is not a stand alone activity. The development of such measures is typically preceded by, or forms part of, an overall assessment of risk, subject to the rules of the SPS Agreement and relevant guidance from international organizations.

6. To address these concerns, Australia offers the following alternative text for paragraph 26:

"For the exporting country, the administrative process for achieving bilateral recognition is typically preceded by obtaining a particular sanitary or phytosanitary status within part or all of its territory; both in situations where particular pests or diseases have never been detected in the territory of a Member and in situations where there have been significant changes in pest or disease prevalence.

For the importing country, the administrative process for achieving bilateral recognition is typically preceded by, or forms part of, an overall assessment of risk for the pest or disease in question, which is subject to the provisions of SPS Agreement, especially Articles 5 and 6."

7. Paragraph 27 (Step A) currently states that after a country achieves a particular sanitary or phytosanitary status, it may seek recognition by the competent ISSB. While ISSB recognition may assist in expediting the bilateral recognition process (as outlined in paragraph 41(a) – Step K), under the provisions of the SPS Agreement, it does not abrogate the right of an importing Member to conduct its own assessment on a case-by-case basis. Therefore, as Members noted at the March 2006 meeting, paragraph 27 is incorrect insofar as it implies ISSB recognition is a precondition for proceeding to the next step of the process (i.e., bilateral recognition).

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