

**THE IMPLEMENTATION OF ARTICLE 6 OF THE AGREEMENT ON THE
APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES
(REGIONALIZATION)**

Communication from the Republic of Korea

The following communication, received on 29 May 2006, is being circulated at the request of the Delegation of the Republic of Korea.

I. BACKGROUND

1. The Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement") stipulates the roles of Members, the SPS Committee and relevant international organizations for the development, adoption and implementation of SPS measures and the interrelations among them. Paragraph 3 of Article 12, in particular, clearly specifies how the SPS Committee shall maintain its relationship and cooperate with those relevant international organizations:

12.3 The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

2. Paragraph 1 of Article 6 of the SPS Agreement states that "[I]n assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *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".

3. In light of the relevant provisions of the SPS Agreement, it is important for the SPS Committee as well as Members, in applying the concept of regionalization in accordance with Article 6 of the SPS Agreement, to rely upon the activities and standards of the relevant international organizations. On the other hand, it is also necessary to ensure that Members' rights as specified in other provisions of the SPS Agreement are not infringed upon.

II. UNDERSTANDING OF THE SECRETARIAT'S BACKGROUND DOCUMENT

4. The Secretariat circulated a background document on regionalization (G/SPS/GEN/640). The document illustrates typical steps of administrative procedures for recognition of pest -or disease- free areas or areas of low prevalence by summarizing Member countries' experiences relating to the application of the regionalization principle, discussions within the SPS Committee and several proposals by Members.

5. According to Section IV of the document G/SPS/GEN/640, administrative procedures for recognition of regionalization consist of ten general steps which are sequential in order and one expedited step. However, it can be pointed out that, at the 35th SPS Committee meeting, some Members maintained that Step A, which requires an exporting Member to request recognition by an International Standard Setting Body (ISSB), should not be considered as a prerequisite for the next steps. Taking this into consideration, there are, in fact, only nine, not ten, steps from Step B to Step J for administrative procedures for recognition.

6. It is also noteworthy that the nine steps from Step B to Step J are similar to the procedures already adopted by the OIE¹ and those procedures now being considered by the IPPC.² It means that the procedures which are now under consideration with regard to Article 6.1 of the SPS Agreement have already been prepared or, at least, are being discussed in other relevant organizations.

7. The OIE defines the concept of zoning (equivalent to the word "regionalization") in both the International Terrestrial Animal Health Code and the International Aquatic Animal Health Code, and recommends basic elements to be considered and the procedures to be taken in establishing and recognizing disease free zones. In particular, Article 1.3.5.5 of the Terrestrial Animal Health Code recommends the sequence of steps to be taken in defining a compartment or a zone in the bilateral trade. We can also see that those steps are similar to the administrative procedures suggested in Section IV of G/SPS/GEN/640. In addition, the OIE sets different technical standards for major animal diseases such as FMD, Classical Swine Fever and Avian Influenza regarding the establishment and recognition of a free zone or a free compartment.

8. Meanwhile, the IPPC has developed guidelines for the establishment of pest -or disease- free areas, free production sites and areas of low pest or disease prevalence, and has been discussing standard procedures for recognition of the free areas or production sites. At the seventh Interim Commission on Phytosanitary Measures (ICPM) in April 2005, agreement was reached to urgently develop a concept standard on "Guidelines for the recognition of the establishment of pest free areas and areas of low pest prevalence". Based on this, terms of reference (TOR) for a working group to develop the guidance were established at the first CPM meeting held in April 2006.

9. Against this backdrop, a number of Members including Korea, have maintained that development by the SPS Committee of a separate administrative procedure overlaps, to a significant degree, with discussions, and the results thereof, of other relevant international organizations. It should be highlighted that the limited resources of the SPS Committee could better be used for other important areas.

10. Regarding the expedited process in paragraph 41 of the background document, Korea is of the view that it is extremely difficult to implement this provision if an importing Member does not have sufficient information on the epidemiological characteristics and disease or pest control systems of the concerned region. In practice, only the Members who have previous experiences in risk assessment of

¹ Article 1.3.5.5, International Terrestrial Animal Health Code (2005).

² Draft standard: Guidelines for the recognition of the establishment of pest free areas and areas of low pest prevalence.

the concerned area can determine whether to apply the expedited process or not. Accordingly, any example of the expedited process, in our opinion, should not be indicated, and an importing Member should be able to deal with this issue on a case by case basis considering experiences of risk assessment, etc. In particular, regarding paragraph 41(a), Korea believes that although the risk information or data used, as well as the result of assessments made by the relevant international organizations for recognizing the establishment of pest -or disease- free areas and areas of low prevalence, can be helpful for an importing Member, they do not provide a foundation for skipping necessary risk assessment procedures as well as certain evaluations of contents.

III. HOW TO ADDRESS REGIONALIZATION-RELATED ISSUES THAT MEMBERS ARE INTERESTED IN?

11. Some Members have put on the table several proposals supporting the view that it is necessary for the SPS Committee to develop administrative procedures with regard to recognition of regionalization. Among those opinions, the following are those with the most conflicting views among Members:

- Whether time limits shall be set or not for the recognition of regionalization; or
- Whether importing Members shall accept the free area or area of low prevalence approved by the relevant international organizations.

12. As the risk assessment procedures and the evaluation factors for the recognition of the establishment of pest -or disease- free areas and areas of low pest or disease prevalence are very complicated and require scientific and technical consideration, Korea believes that it is not reasonable to set time limits for such a complicated work.

- Given that animal diseases and plant pests have totally different epidemiological as well as ecological characteristics, and that each Member has a different level of protection, it is not possible to set the average time limit that can be applied to all cases.
- The OIE and IPPC do not consider setting specified time limits for such procedures, acknowledging that various factors can affect the speed of the assessment.
- As all the Members differ in level of capabilities and resources for recognition of regionalization, a uniform timescale will not be implemented by many Members.
- From the importing country's point of view, setting a kind of physical target, especially in the form of a time limit, will adversely affect the risk assessment work as it is an infringement of the risk assessor's own responsibilities and expertise. Especially, importing Members who are frequently requested by many countries to permit importation are required to put a lot of human resources with expertise, as well as financial resources, into meeting the time limits. It is an excessive burden on importing Members.

13. As for some Members' argument that the pest -or disease- free area approved by international organizations shall be automatically accepted by importing Members, Korea is of the opinion that this runs squarely against the right of Members under the SPS Agreement to implement SPS measures to achieve an appropriate level of protection.

14. Lastly, Korea believes that the following issues also should be duly considered in discussing recognition of regionalization, although the Secretariat's document does not mention these.

- Whatever the decision of the SPS Committee on recognition of regionalization may be, it should not infringe upon the rights and responsibilities of Members under the SPS Agreement and the other WTO Agreements.
 - The issue of recognition of regionalization should be dealt with between importing and exporting Members on a bilateral basis. Therefore the roles and responsibilities of the Members concerned should be balanced. From our experiences, whether risk assessment is predictably conducted or not depends largely on the fact of whether exporting countries submit the necessary information and data in a timely and sincere manner or not.
 - As many Members are not familiar with one of the official languages of the WTO, they need to spend considerable time and expenses to translate the information and data for risk assessment. This also needs to be considered.
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