

**COMMENTS ON THE 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)**

Submission by the United States

The following communication, received on 6 June 2006, is being circulated at the request of the Delegation of the United States.

A. INTRODUCTION

1. In response to the Secretariat's background document on the application of Article 6 (G/SPS/GEN/640), the United States has prepared this paper to consider how the Committee might bridge remaining differences of view among Members, and what future work the Committee could undertake to make further progress in this area.

2. This paper reflects upon the status of the Committee's discussions of regionalization as presented in the Secretariat's document and expands upon the provisional procedure for monitoring the use of international standards, first adopted by the Committee in October 1997, and then extended through July 2006. When the Committee adopted a modification to the procedure in November 2004, it left open the possibility of expanding the monitoring function as part of the next review:

"In particular, the Committee may wish to consider developing standard formats for the supply of information under paragraphs 6-8 [of G/SPS/11], and using those standards, guidelines or recommendations which have been identified as having a major impact on international trade and are of widespread concern to Members (paragraph 8 refers) as the basis for a pilot project to obtain additional information as to how Members are dealing with the standards, guidelines or recommendations of concern."¹

3. The existing mechanism for monitoring the process of international harmonization and use of international standards, guidelines or recommendations has been effectively used to advance the Committee's consideration of Article 6. Under the auspices of the Committee's existing mechanism, the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC) have undertaken work activities that, upon completion, will provide the Committee with a greater means of bridging the current gaps among Members regarding enhanced implementation of Article 6.

4. The United States proposes that, as part of their evaluation of extending or modifying the current procedure for monitoring harmonization, Members may wish to also consider whether

¹ G/SPS/11/Rev.1.

concerns about the implementation of Article 6 could be the subject of a pilot project under the existing mechanism. This proposal is without prejudice to any other Member's proposals related to this topic including, but not limited to, enhanced notification procedures or development of administrative procedures and normative timeframes.

5. The United States believes that it may be useful for the Committee to have a focused consultation with the OIE and IPPC representatives to help in the development of any such proposal.

B. THE CURRENT PROCEDURE TO MONITOR THE PROCESS OF INTERNATIONAL HARMONIZATION AND THE COMMITTEE'S DISCUSSIONS OF ARTICLE 6

6. In October 2004, the Committee adopted modifications to the provisional procedure to monitor the use of international standards until July 2006.²

7. The monitoring procedure is limited to standards, guidelines or recommendations developed by the OIE, IPPC and Codex where their application (or absence of application) has a major trade impact on the movement of goods.

8. The procedure calls on Members to submit, at least 10 days in advance of each regular meeting of the Committee, concrete examples of what they consider to be problems with a significant trade impact which they believe are related to the use or non-use of relevant international standards, guidelines or recommendations, utilizing a proposed format that has been widely used.³ In their submissions, Members should describe the nature of each of these trade problems and note whether it is the result of:

- (a) the non-use of an appropriate existing international standard, guideline or recommendation; or
- (b) the non-existence or inappropriateness of an existing international standard, guideline or recommendation, i.e. that it is out-dated, technically flawed, etc.

9. At the Committee's October 2004 meeting, New Zealand presented its paper (G/SPS/W/151) requesting that the Committee invite the OIE and IPPC to examine the specific matters Members had raised regarding Article 6 with respect to the relevant international standards, guidelines or recommendations. New Zealand identified a number of specific issues for the OIE and IPPC to examine, including:

- (a) whether it would be appropriate for them to develop and include administrative procedures on the recognition of pest- or disease-free areas or areas of low pest prevalence within their international standards, recommendations or guidelines;
- (b) the technical feasibility of ascribing defined time-limits to the consideration of regionalization requests under existing international standards, recommendations or guidelines;
- (c) the issue of recognizing pest- or disease-free status by the relevant international standard-setting bodies:
 - (i) the process for Member acceptance of OIE recognition of disease-free status;

² G/SPS/11/Rev.1.

³ G/SPS/W/87.

- (ii) whether OIE recognition constitutes determination in the context of Article 6.2 of the SPS Agreement; and
- (iii) whether under the IPPC, it is feasible to provide recognition of pest- or disease-free status for a limited number of pests or diseases which have a significant impact on international trade of Members.⁴

10. The OIE and IPPC have been highly engaged in supporting the work of this Committee in monitoring international harmonization and the use of international standards in general, and particularly so with regard to our discussions on Article 6, as is noted in the Secretariat's paper. It is hoped that the Committee, in its annual report on the monitoring procedure, will recognize the importance of these bodies' extensive involvement in advancing the Committee's work in this area.

11. As the Secretariat indicates in its paper, there is no consensus among Members regarding the role that the Committee should play in formulating guidelines for the implementation of Article 6. The United States has expressed the view that developing such guidelines is the work of the OIE and the IPPC, which have the necessary technical and scientific expertise. Moreover, the United States has supported the position that no clear, functional separation between administrative and technical processes for making a recognition decision exists, and therefore any proposals focusing exclusively on an administrative process would be incomplete.

12. By contrast, the OIE and the IPPC have made considerable progress in identifying criteria and processes for recognition of pest -and disease free- areas. At the 2005 OIE General Session, member countries adopted a revised chapter of the Terrestrial Animal Health Code on zoning and compartmentalization, which include the general principles for defining a zone or compartment and some general steps to consider when establishing a zone or compartment. It is recognized, however, that the precise sequence of steps to define either a zone or a compartment is determined bilaterally between the importing country and the exporting country. A further refinement of these procedures will be considered at the General Session in 2006. A number of these additions can be viewed as "administrative", encompassing the process of requesting recognition, information exchange, evaluation, notification "within a reasonable period of time", dispute resolution and formal agreements between parties.

13. The IPPC is developing a standard that will outline the main criteria for the recognition of pest-free areas and areas of low pest prevalence, describing the process that should be followed by the importing and exporting countries for recognition of such areas and providing guidance on the activities required to ensure there is not undue delay in the process, while maintaining the importing country's appropriate level of protection. This has been circulated to IPPC Members for their review and comment and may be ready for adoption by the IPPC in May 2007.

C. A PILOT PROJECT TO EVALUATE MEMBERS' APPLICATION OF INTERNATIONAL STANDARDS RELATED TO PEST AND DISEASE FREE AREAS

14. The Committee's discussions of Article 6 could advance by building upon the progress that has already been made and will continue to be made toward developing guidelines for recognition of pest -and disease free- areas by the OIE and IPPC. A pilot project conducted under an extension of the provisional procedure for monitoring the process of international harmonization could serve to gather and evaluate information about Members' use of these guidelines as previously envisioned by the Committee.

⁴ G/SPS/W/151.

15. Under the pilot project, interested Members would voluntarily submit a comparison of their criteria and processes for regionalization with the criteria and processes developed by the IPPC and OIE.

16. The pilot project could include, but not be limited to, the following components:

- Initiation would either occur following adoption by the OIE and IPPC of guidelines on the recognition of disease or pest freedom, or immediately utilizing existing draft standards that have been developed but not yet adopted by the OIE and IPPC.
- Interested Members would notify the Committee of their interest in participating in the pilot project, thereby allowing for a dialogue that is both manageable and sufficiently in-depth.
- Interested Members would prepare a document comparing their criteria and processes for recognition of pest -and disease free- areas with the OIE and IPPC guidelines.
- Interested Members who submit a comparison document would present their document at a Committee meeting as part of the discussion on monitoring the use of international standards.
- The representatives of the OIE and IPPC would be asked to comment on the comparisons.
- At the conclusion of the pilot project, the Committee would evaluate its effectiveness in addressing Members' concerns regarding the implementation of Article 6, and consider how the Committee might bridge any remaining differences of view among Members.

D. CONCLUSION

17. The existing procedure to monitor the process of international harmonization has been very helpful in the Committee's examination of the implementation of Article 6. A pilot project to look specifically at Members' use of the guidelines now being developed will further advance understanding of practical problems experienced by Members. This pilot project would complement Members' submissions regarding their experiences with regionalization under the relevant agenda item for the Committee's meetings. In addition, it will provide useful information for the OIE and IPPC for future modifications of their standards.
