

**IMPLEMENTATION OF ARTICLE 6 OF THE SPS AGREEMENT
(REGIONALIZATION)**

Communication from Canada

The following communication, received on 14 December 2005, is being circulated at the request of the Delegation of Canada.

1. Adaptation of sanitary or phytosanitary measures to regional conditions is of key importance and potential benefit to both importing and exporting countries. Article 6 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) encourages Members to ensure that sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary conditions of the area from which a consignment originates and for which it is destined.
2. The implementation of Article 6 has been an agenda item of the SPS Committee at every meeting since the Twenty-Sixth Session in April 2003, and has also been the subject of informal meetings at each session. Concerns have been raised over the lack of, or delays in, recognition by importing countries of regional conditions in exporting countries.
3. In March 2004, Canada put forward a proposed draft decision regarding the implementation of Article 6 of the SPS Agreement (G/SPS/W/145). This draft decision recognized the need for guidelines related to Article 6 and encouraged the relevant International Standard Setting Bodies (ISSBs) to establish such guidelines and regularly to inform the Committee regarding their activities in this area. The proposal also called on Members periodically to inform the SPS Committee of their experiences regarding the implementation of Article 6, with a view to developing best practices. Ideally, these experiences would include the perspectives of both importers and exporters.
4. Implementation of Article 6 was also identified as a priority area for the Committee as part of the Second Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (G/SPS/36). The report of the Review included recommendations that the Committee develop a proposal for a decision on the effective application of Article 6; that Members provide information on their experiences in the implementation of Article 6; and that observer organizations, and in particular the ISSBs, inform the Committee of their activities relevant to the issue.

A. CANADA'S EXPERIENCE IN THE IMPLEMENTATION OF ARTICLE 6

5. Delays in recognition of regional disease conditions are problematic from both an exporting and importing perspective. Canada has experiences from both perspectives, and two recent examples are recounted below.

Avian Influenza

6. Canada has experienced challenges in dealing with some trading partners following the outbreak in British Columbia, Canada, of highly pathogenic avian influenza in domestic poultry in 2004.

7. Canadian authorities established zoning to define infected and disease-free areas. The OIE Terrestrial Animal Health Code Chapter 2.7.12 on Avian Influenza defines avian influenza in its notifiable form (NAI) and takes into account regional considerations by specifying an internationally accepted standard for determining the NAI status of a country, a zone or a compartment.

8. During this outbreak, many trading partners followed OIE guidelines, appropriately recognizing the sanitary safety of international trade in poultry products originating from outside of the controlled zone. However, a number of countries did not recognize differences in Canada's regional status for the disease. Many countries, including some seeking development of guidelines related to Article 6 by the SPS Committee, continued to maintain such measures (some regional, others national in scope) for more than six months after Canada was declared NAI-free.

9. Recently, some trading partners contravened OIE Guidelines in a more exceptional manner by banning domestic poultry imports from regions of Canada where non-NAI low pathogenic avian influenza had been detected in migratory wild birds as part of routine surveillance.

10. Canada believes that restrictions on poultry imports adopted in response to avian influenza, in particular import bans on poultry that do not distinguish between infected and non-infected regions and are not based on a scientific risk assessment, serve as a deterrent to countries to make the appropriate investments in surveillance and discourage transparency in disease reporting. Such restrictions are neither conducive to global security nor prosperity.

Foot and Mouth Disease

11. Following the outbreak of Foot and Mouth Disease (FMD) in 2001 in the United Kingdom, France, the Netherlands and Ireland, the Canadian Food Inspection Agency (CFIA) temporarily suspended import permits and entry of FMD-susceptible products from all EU countries. Live ruminant animals and pigs, embryos, semen, meat and other animal products, such as unpasteurized milk and cheese products were affected by the suspension. Processed dairy products were permitted subject to defined treatment (e.g., heat or pH adjustment). Enhanced import measures for milk, regulated milk products and dairy products from EC countries were also implemented.

12. Following a review of requested information received from the Commission in May 2001 concerning the FMD situation in all EC member States and the control measures taken, Canada modified its enhanced measures related to FMD for importations from the European Communities. In May 2001, Canada lifted the enhanced measures restricting the import of animals and animal products, under specified conditions, for 10 EC member States that had not had confirmed cases of FMD, and conducted a scientific assessment relevant to five EC countries that had experienced cases of FMD. While that assessment was being completed, the suspension of importations of FMD susceptible animals and animal products from these infected countries remained in effect, with some modifications related to the importation of germplasm. In July 2001, Canada lifted measures for

France and the Republic of Ireland and in September 2001, restrictions were lifted for the Netherlands and Northern Ireland.

B. WORK OF STANDARD SETTING BODIES IN THE DEVELOPMENT OF GUIDELINES RELATED TO ARTICLE 6

13. The IPPC and OIE have responded promptly to requests by the SPS Committee over lack of adequate guidelines to address delays in recognition of regional disease conditions.

14. In May 2005, the OIE concluded its work on a chapter within the Terrestrial Animal Health Code related to zoning and compartmentalization. In addition, the Terrestrial Animal Health Code Commission is planning to include zoning and compartmentalization provisions within disease-specific chapters. The first example of this is the chapter on Avian Influenza which includes references to zoning and compartmentalization specific to this disease.

15. In April 2005, the IPPC initiated the development of a standard that would provide guidelines for bilateral recognition of pest free areas, assigning it high priority in its work programme. In October 2005, an expert working group of the IPPC met to prepare a draft standard on the subject. Since the IPPC had already developed a full complement of technical guidelines relating to pest free areas, and areas of low pest prevalence, these new (draft) guidelines address primarily administrative issues, while ensuring that all relevant technical issues are accommodated. During 2006, an IPPC working group will convene to consider the possibilities for an international IPPC recognition system for pest free areas, similar in concept to the role that the OIE carries out in this regard.

16. Canada supports the ongoing work by ISSBs in the development of guidelines for the implementation of sanitary and phytosanitary measures based on regional conditions that support the implementation of Article 6. Such guidelines would encourage all Members to adopt regional measures, where appropriate.

C. WAY FORWARD

17. All Members recognize that both the ISSBs and the Committee have a role to play in the implementation of Article 6. There has been general consensus that the ISSBs should deal with technical aspects of guidelines because of their technical competence.

18. In Canada's view, it can be difficult to differentiate between administrative and technical issues in addressing delays to recognition of regional pest/disease status, given the technical underpinnings of such administrative guidelines. Any technical requirements related to recognition are entwined within an administrative framework. On the other hand, and more importantly, administrative procedures and timelines can be dependent on the issue-specific technical complexities and scientific assessment methods necessary in recognizing, and adapting measures to, regional conditions. Beyond the difficulties in attempting to separate technical and administrative guidelines, any guidelines developed that address only administrative delays would have to be drafted with a detailed knowledge of technical requirements for recognition of regional pest/disease status as promulgated by the standard setting bodies. To proceed otherwise is to risk developing guidelines that conflict with guidelines adopted or under preparation by the ISSBs.

19. The ISSBs have been receptive and responsive to requests by the Committee, and sufficient time must be allowed to review the results of their work in relation to SPS Committee concerns. In our view, the most effective course of action would be to allow the ISSBs to continue the work that they have initiated related to the provisions of Article 6 and for them to report to the Committee upon, or prior to, the conclusion of their work.

20. If, following the conclusion of the work of the ISSBs, it is determined by the Committee that further guidance is still required, the SPS Committee should communicate this to the ISSBs. If the ISSBs do not respond to any remaining concerns communicated to them, then the SPS Committee could consider addressing any remaining requirements for guidelines.
