

**GUIDELINES TO FURTHER THE PRACTICAL IMPLEMENTATION OF
ARTICLE 6 OF THE AGREEMENT ON THE APPLICATION OF
SANITARY AND PHYTOSANITARY MEASURES**

Submission by New Zealand on behalf of the Small Group Process on Article 6

On behalf of the Members who have been participating in the Small Group Process on Article 6, New Zealand wishes to submit the attached proposal for the Committee's consideration. This proposal is without prejudice to the position of the Members who have participated in the Small Group Process.

**GUIDELINES TO FURTHER THE PRACTICAL IMPLEMENTATION OF
ARTICLE 6 OF THE AGREEMENT ON THE APPLICATION OF
SANITARY AND PHYTOSANITARY MEASURES**

Proposal for a Decision¹

The Committee on Sanitary and Phytosanitary Measures ("the Committee"),

Having regard to paragraph 1 of Article 12 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("the Agreement");

Recalling that in its first review of the operation and implementation of the Agreement, concluded in 1999, the Committee, while noting that adaptation to regional conditions, including the recognition of pest- or disease-free areas or areas of low pest or disease prevalence, was of significant importance for trade in agricultural products, also noted that Members faced difficulties in the implementation of Article 6 of the Agreement;

Recalling that at its June 2003 meeting the Committee initiated substantive discussion of problems linked with the implementation of the provisions for recognition of pest- or disease-free areas and areas of low pest or disease prevalence in Article 6;

Recalling that in its second review of the operation and implementation of the Agreement, concluded at its June 2005 meeting, the Committee agreed that it should develop a proposal for a decision on the effective application of Article 6, taking as the point of departure the various proposals submitted by Members and the discussions in the Committee;

Taking into account the work of the OIE and the IPPC in developing international standards, guidelines and recommendations to further the practical implementation of Article 6;

Recognizing the constructive manner in which the OIE and IPPC have responded to requests from the Committee for technical and administrative guidance;

Decides as follows:

1. These guidelines are intended to provide assistance to Members in the practical implementation of Article 6 by improving transparency, exchange of information, predictability, confidence and credibility between importing and exporting Members. These guidelines are not intended to duplicate the technical and administrative guidance provided to Members by the IPPC and OIE.

2. These guidelines do not add to nor detract from the existing rights and obligations of Members under the Agreement nor any other WTO Agreement. These guidelines do not provide any legal interpretation or modification to the Agreement itself. These guidelines are without prejudice to the right of a Member to determine its appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health.

¹ There is a desire from Members who participated in the Small Group Process on Article 6 to seek legal advice from the WTO Secretariat on a number of issues regarding (a) whether this decision could constitute subsequent agreement or practice in accordance with Article 31 of the Vienna Convention; and (b) around the appropriate terms to use in a decision (i.e. should, shall and may).

3. These guidelines will be reviewed periodically and revised as necessary by the Committee in light of experience gained through the implementation of the Agreement and the use of these guidelines themselves. The Committee should undertake a first review of these guidelines within 36 months of their adoption by the Committee and thereafter as the need arises.

I. GENERAL CONSIDERATIONS

4. Importing Members should publish the basis for recognition of pest- or disease-free areas and areas of low pest or disease prevalence and a description of the general process used, including the information generally required to evaluate such requests and a contact point responsible for requests for recognition of pest-or disease-free areas or areas of low pest or disease prevalence.

5. Members should proceed with a recognition process without undue delay.

6. The process should be applied without discrimination between Members.

7. Members should endeavour to maintain transparency in all aspects of the recognition process.

8. Any determination under Article 6 should consider the strength and credibility of the veterinary or phytosanitary infrastructure of the exporting Member in accordance with the importing Member's appropriate level of sanitary or phytosanitary protection. The veterinary or phytosanitary authorities of the exporting Member should be able to demonstrate their ability to maintain freedom from specified pests or diseases to encourage confidence on the part of the importing Member.

9. The importing Member should take into account any relevant knowledge of and prior experience with the authorities of the exporting Member.

10. Where an exporting Member resubmits a request for recognition of pest- or disease-free areas or areas of low pest or disease prevalence, the importing Member should take into consideration all information previously provided, if verification has been provided by the exporting Member that the information remains valid.

11. If an exporting Member submits multiple requests to the importing Member, the exporting Member should identify its priority among these requests and this will be taken into account by the importing Member.

12. Upon request from the exporting Member, an importing Member should provide information on the stage of the exporting Member's request within its evaluation process.

II. INITIAL DISCUSSIONS

13. The importing Member should, upon request, enter into discussions with the exporting Member with the aim of clarifying their general process and the information generally required to facilitate a request for the recognition of a pest- or disease-free area or area of low pest or disease prevalence.

14. In this regard, the discussions should, *inter alia* clarify:

- (i) the general process used by the importing Member in the evaluation of requests for the recognition of pest- or disease-free areas and areas of low pest or disease prevalence;
- (ii) the general information required to evaluate the request;

- (iii) the process for the exchange of information relating to the request, including a contact point, and a language or languages to be used, which should include at least one of the official languages of the WTO; and
- (iv) if possible, an anticipated timeframe for completion of the recognition process.

15. The discussions should be undertaken within a reasonable period of time, and normally within 90 days of a request or as otherwise mutually decided.

16. The clarification(s) made in the course of the discussions should, if necessary, be appropriately recorded by the importing Member and transmitted to the exporting Member to avoid any misunderstandings of the general process.

17. When an importing Member has limited resources to undertake work on new requests for recognition, discussions may be postponed for a reasonable period of time. In deciding whether to postpone discussions, the importing Member should take into account as relevant factors, *inter alia*:

- (i) the number of requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence it has received;
- (ii) the priority of the exporting Member in situations where it has submitted multiple requests, and
- (iii) capacity to undertake work on new requests.

18. When an importing Member has postponed discussions in accordance with paragraph 17 of this decision, it should inform the exporting Member and provide an explanation in writing for the delay.

III. TYPICAL ADMINISTRATIVE STEPS IN THE RECOGNITION PROCESS

19. While Members have the sovereign right to determine their own processes for the evaluation of requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence, a process for making a determination under Article 6 typically involves a number of steps such as the following.

Step A: Exporting Member requests information about procedures and/or recognition

20. The exporting Member requests information about the importing Member's requirements and procedures for the evaluation of requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence. An exporting Member may either request information about an importing Member's requirements and procedures prior to formally requesting recognition of an area as a pest- or disease-free area or an area of low pest or disease prevalence, or at the time it requests such recognition. In the latter case, the exporting Member at the same time communicates its sanitary or phytosanitary status to relevant trading partners along with a copy of its request for recognition of an area as a pest- or disease-free area or an area of low pest or disease prevalence.

21. The request for the recognition of a pest- or disease-free area or an area of low pest or disease prevalence may be accompanied by supporting scientific and technical information, including reference to relevant international recognition of the area as a pest- or disease-free area or an area of low pest or disease prevalence. In the interests of transparency, the exporting Member should indicate the organization and an individual within the organization to act as a contact point for the request, and request that the importing Member do the same.

Step B: Importing Member explains requirements

22. The importing Member explains its requirements and procedures for the evaluation of requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence. The importing Member may, for example, request answers to a specific questionnaire.

Step C: Exporting Member provides documentation

23. The exporting Member sends the documentation demonstrating compliance with the requirements laid down by the importing Member. Where applicable, the exporting Member provides supporting information showing that the procedures it used to identify that area as pest- or disease-free or of low pest or disease prevalence are based on an international standard, guideline or recommendations. The exporting Member also supplies any further information that could help the importing Member to make a determination.

Step D: Importing Member evaluates the documentation and, if necessary, requests additional information

24. The importing Member acknowledges the receipt of documentation provided by the exporting Member. The importing Member evaluates the documentation provided by the exporting Member and provides feedback to the exporting Member regarding whether the documentation is in order. In addition, the importing Member may indicate the necessity of additional information or an on-site verification, where justified, based on the results of the ongoing evaluation.

Step E: Exporting Member responds to feedback

25. The exporting Member provides any clarifications, additions or modifications requested by the importing Member.

Step F: Importing Member evaluates any additional information and, if required, seeks further clarifications

26. The importing Member evaluates any additional information provided by the exporting Member and provides further feedback to the exporting Member in accordance with step D. If further clarification is needed steps D and E are repeated.

Step G: Importing Member conducts on-site verification

27. If applicable, the importing Member carries out on-site verification in order to verify the information provided in support of the request for recognition of a pest- or disease-free area or an area of low pest or disease prevalence. Such inspections may consider, *inter alia*, the administrative structure of the regulatory bodies concerned and the programmes they implement with a view to prevention, control and eradication of pests and diseases. The strength and credibility of the veterinary or phytosanitary infrastructure of the exporting region(s) would also be part of this evaluation.

28. The importing Member provides a report on the on-site verification to the exporting Member.

Step H: Exporting Member responds to inspection report

29. If the inspection report so requests, the exporting Member provides further clarifications, additions or modifications.

Step I: Importing Member makes a determination

30. Where its evaluation of the evidence provided by the exporting Member results in a decision by the importing Member not to recognize the pest- or disease-free area or area of low pest or disease prevalence, the importing Member provides to the exporting Member the technical grounds for the determination, so that, if appropriate, the exporting Member may modify and adapt its system with a view to future requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence.

31. Where its evaluation of the evidence provided by the exporting Member results in recognition of the pest- or disease-free area or area of low pest or disease prevalence, the importing Member takes the necessary administrative or legal steps to facilitate trade from the exporting Member. If necessary, the importing Member modifies existing sanitary or phytosanitary regulations or elaborates new ones to support its recognition of the area in question as a pest- or disease-free area or an area of low pest or disease prevalence. In addition, the importing Member may circulate any modified or new regulation for public comment.

IV. EXPEDITED PROCESS

32. The importing Member may determine that an expedited process can be used to evaluate a request for recognition of pest- or disease-free areas or areas of low pest or disease prevalence. An expedited process may involve exclusion of one or more stages or some parts of a stage of the importing Member's general process for the recognition of pest- or disease-free or areas of low pest or disease prevalence. In determining the possibility of applying an expedited process, the importing Member should take into account factors including *inter alia*:

- (i) when there has been official recognition of an area as a pest- or disease-free area or an area of low pest or disease prevalence by a relevant international organization; or
- (ii) when there has been an outbreak in an area previously recognized, and suspended, by the importing Member as a pest- or disease-free area or an area of low pest or disease prevalence and which has been restored to its former status as determined by the importing Member in accordance with the relevant international standards, guidelines or recommendations; or
- (iii) when the infrastructure and operation of the responsible veterinary or phytosanitary service of the exporting Member are familiar to the importing Member as a result of existing trade relations; or
- (iv) when there has been no previously notified occurrence of the pest or disease and the importing Member agrees that the surveillance procedures and activities implemented by the exporting Member have shown the non existence thereof, the territory of the Member in question shall be considered free of that pest or disease.

V. MONITORING

33. The Committee will monitor the implementation of Article 6 under the standing agenda item at its regular meetings. In this regard, Members are encouraged to inform the Committee when:

- (i) a request for recognition of pest- or disease-free areas or areas of low pest or disease prevalence is made; and/or,
- (ii) a determination on whether to recognize a pest- or disease-free areas or areas of low pest or disease prevalence is made.

34. Members are also encouraged to provide information on their experiences in the implementation of Article 6 and to provide relevant background information on their decisions to other interested Members upon request.

35. The Secretariat should prepare an annual report to the Committee on implementation of Article 6 based on the information provided by Members under paragraphs 33 and 34.
