

Japan's Comments on The Aquatic Commission Report of the September-October 2014 meeting

Japan would like to express its appreciation to the Aquatic Animal Health Standards Commission (AAHSC) for all the works they have done and thanks the AAHSC for giving us the opportunity of offering comments on proposed revisions to the text of Aquatic Animal Health Codes.

1. User's Guide

Introduction	
4)	The absence of chapters, articles or <u>if</u> recommendations on particular pathogenic agents or commodities does not mean that <u>are absent in the Aquatic Code</u> . Competent Authorities may <u>not</u> apply appropriate aquatic animal health <u>and welfare</u> measures based on risk <u>analysis assessment</u> conducted in accordance with the <i>Aquatic Code</i> <u>or provisional aquatic animal health measures on the basis of available pertinent information</u> .

Rationale

The user's guide should be user friendly. It is difficult for Member Countries other than the English-speaking countries to understand double negative English sentences. They should be avoided to facilitate to correctly understand the Code among all Member Countries, as much as possible.

Even if there are chapters and articles in Aquatic Code, if there are no specific recommendations on particular agents or commodities, WTO Members should conduct risk assessment to apply aquatic health measures except the case below.

Subject to Article 5-1 of the *Agreement of the Application of Sanitary and Phytosanitary Measures* in annex 1A of the *Marrakesh Agreement Establishing the World Trade Organization (SPS Agreement)*, WTO Members can apply appropriate sanitary and phytosanitary measures based on an assessment of risk but not on risk analysis. According to the Glossary of the *Aquatic Code*, risk analysis means the complete process composed of hazard identification, risk assessment, risk management and risk communication. WTO Members do not necessarily have to conduct risk communication before applying aquatic health measures.

Subject to Article 5-7 of the *SPS Agreement*, WTO Members may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information in cases where relevant scientific evidence is insufficient. OIE Codes should not curtail the Members' rights under the *SPS Agreement*.

Since whether or not the import restrictions related to animal welfare are justified under WTO Agreement is controversial and should be discussed in the framework of WTO, the OIE Code should not prejudge the international discussion.

Aquatic Code content

- 4) The standards in the chapters of Section 2 are designed to guide the importing country in conducting import risk analysis including risk assessment in the absence of OIE trade standards recommendations on particular pathogenic agents or commodities. The importing country may also use these standards to justify import measures which are stricter than existing OIE trade standards the recommendations existing in the Aquatic Code.

Rationale

WTO Members have to conduct only risk assessment in the absence of OIE standards because of the same reason above.

OIE Member Countries cannot identify particular OIE standards as “OIE trade standards”. The Japanese proposed text is more definite and understandable for Member Countries, because the trade-related standards in the Aquatic Code, which is not legally binding, are usually recommendations.

Specific issues

4) Trade requirements

Aquatic animal health measures related to international trade should be based on OIE the standards, guidelines or recommendations of the OIE, where they exist. A Member Country may authorise the importation of aquatic animals or aquatic animal products into its territory under conditions more or less trade-restrictive than those recommended by the recommendations in the Aquatic Code, if there is a scientific justification. If measures are more trade-restrictive than OIE standards, the importing country should provide scientific justification by conducting conduct a risk analysis assessment in accordance with the Aquatic Code OIE standards, as described in Chapter 2.4. Members of the WTO should refer to shall comply with the Agreement on the Application of Sanitary and Phytosanitary Measures in annex 1A of the Marrakesh Agreement Establishing the World Trade Organization (SPS Agreement).

Chapter 5.1. to 5.3. describe the obligations and ethical responsibilities of importing and exporting countries in international trade. Competent Authorities and all veterinarians and certifying officials directly involved in international trade should be familiar with these chapters. Chapter 5.3. provides OIE procedures relevant to the SPS Agreement including guideline for informal dispute mediation by the OIE.

Disease-specific chapters in the Aquatic Code include articles listing the safe commodities, which that are considered safe for trade without the imposition of disease-specific sanitary measures, regardless of the status of the exporting country or zone for the pathogenic agent in question. Where such a list is

present, importing countries should not apply trade restrictions to the listed commodities with respect to the agent in question.

Rationale

Rhetorical correction and clarification based on the *SPS Agreement* and each relevant chapters

The terms of ‘standards’ and ‘recommendations’ are mixed up together without clarification in the texts. It may lead to the confusion among Member Countries. The expression of ‘recommendations’ is preferable, because the trade-related standards in the Aquatic Code are usually recommendations.

Application by importing countries of less trade-restrictive measures than OIE recommendations has the potential risk of spread of pathogenic agents in question worldwide. Even if it is applicable under the SPS agreement, the OIE should not encourage it, from viewpoint of the purpose of its establishment. Member Countries should comply with the standards of the OIE.

6) International health certificates

An international aquatic animal health certificate is an official document drawn up and issued by the Competent Authority of the exporting country in accordance with Chapter 5.1. and Chapter 5.2. The certificate lists the aquatic animal health requirements for the exported commodity. The quality of the exporting country's Veterinary Services or Aquatic Animal Health Services is essential in providing assurance to trading partners regarding the safety of exported aquatic animal commodities. This includes the Veterinary Services' or Aquatic Animal Health Services' ethical approach to the provision of international health certificates and their history in meeting their notification obligations.

Rationale

Rhetorical correction and clarification based on the Glossary

According to the Glossary, Aquatic Animal Health Services are the governmental and non-governmental organisations that implement animal health and welfare measures and other standards and recommendations in the Aquatic Code in the territory. If Veterinary Services have such a function, they come under Aquatic Animal Health Services.

- a) the importing country should list the diseases, from which the importing country is justified in seeking protection because of its own aquatic animal health status. Importing countries should not impose measures in regards to disease that occur in their own territory but not subject to official control

programmes;

Rationale

Rhetorical correction

- c) when preparing international aquatic animal health certificates, the importing country should endeavor to use terms and expressions in accordance with the definitions given in the Glossary. As stated in Article 5.2.3., international aquatic animal health certificates should be ~~kept as~~ written using terms that are simple, unambiguous and as easy to understand as possible ~~and should be clearly worded~~, to avoid misunderstanding of the importing country's requirements;

Rationale

Rhetorical correction and clarification based on Article 5.2.3.

6) Guidance notes for importers and exporters

It is recommended that Competent Authorities prepare 'guidance note' to assist importers and exporters ~~to in~~ understanding trade requirements. These notes should identify and explain the trade conditions, including the measures to be applied before and after export and during transport and unloading, and the relevant legal obligations and operational procedures. The guidance notes should ~~advise on~~ provide all details to be included in the international aquatic animal health certification certificates accompanying the consignment to its destination. Exporters should also ~~be reminded of~~ refer to the International Air Transport Association rules governing air transport of aquatic animals and aquatic animal products, if necessary.

Rationale

Rhetorical correction and clarification

The IATA rules apply only to transport by air.

2. Chapter 5.1 General Obligations related to Certifications

Article 5.1.2.

Responsibilities of the importing country

- 1) The import requirements included in the international veterinary aquatic animal health certificates should assure that *commodities* introduced into the *importing country* comply with have been exported on the basis of the trade-related standards of the OIE. *Importing countries* should align base their requirements

with on the recommendations ~~those recommended~~ in the relevant standards of the OIE. If there are no such standards recommendations or if the country ~~choose~~ determines a level of protection requiring measures stricter than the standards of the OIE, these should be based on an import risk analysis assessment.

Rationale

Rhetorical correction and clarification based on the *SPS Agreement*

The noun of ‘requirement’ means something that you need or want. Therefore the import requirements cannot assure anything.

Subject to Article 3-1 of the *SPS Agreement*, WTO Members shall base their SPS measures on, but neither comply with nor align them with, international standards.

Subject to Article 5-1 of the *SPS Agreement*, WTO Members can apply appropriate SPS measures based on an assessment of risk but not on risk analysis.