



## Implementation Regionalization Principle Based on Sanitary and Phytosanitary (SPS) Agreement According to Vienna Convention on the Law of Treaties (1969)

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### Abstract

The practice of the regionalization principle in Article 6 Sanitary and Phytosanitary (SPS) Agreement is still conflicted. This is because of several cases regarding the members misinterpretation of international guidelines in the regionalization principle, such as India – Agricultural Products and Russia – Pigs (EU). Recently, Coronavirus Diseases 2019 (Covid-19) has been considered to affect animal trade. Such conditions prompt the World Trade Organization (WTO) to recommend the Members to take SPS Measures to protect their domestic market. However, the trade would be inhibited in case the country-wide ban approach is applied. Therefore, this paper discusses the possible SPS measures under the regionalization principle to promote the trade during the pandemic according to WTO decisions from previous cases in line with the VCLT of 1969. The research result shows that the Covid-19 is an obstacle to international trade and makes humans and animals vulnerable to this virus. Consequently, many animal trades have been banned to prevent its spread. To deal with this condition, Indonesia could apply the regionalization principle in Article 6 SPS Agreement. Moreover, the government should update the quarantine law by pointing out the regionalization principle, unlike the zone system rules only applied to animals susceptible to Food Mouth Disease.

### I. Introduction

International trade is one of the best ways of enhancing the economy of a country. The trade routes established link different regions, an essential thing in uniting people from different backgrounds. For instance, the Silk Road Linked Samarkand, Mediterranean to Changan in China, and Greece to India ([Roy Goode, 2015:12](#)). In this route, merchants

gathered from different backgrounds and cultures, resulting in the law of merchant as a custom called *lex mercatoria* (law of merchant) ([Huala Adolf, 2006:25](#)). Gunarto Suhardi (2004:51) stated that one of the motivations for conducting international trade is the awareness that it could create prosperity and welfare. Consequently, countries worldwide agreed to be bound in bilateral, multilateral, or regional agreements in international trade relationships. International agreement is set out in Vienna Convention on The Law of Treaties (VCLT) 1969. VCLT codified the law of treaties with rules and procedures for making and applying treaties and their legal effects (Anthony Aust, 2010:50). Moreover, international trade makes the agreement the source of public law ([Huala Adolf, 2006:76](#)). The most prominent international trade agreement, particularly regulating trade rules in goods, is General Agreement on Tariff and Trade (GATT) to lessen the trade barrier. GATT set out various 'General Exceptions' in Article XX, which permit Members to act inconsistently with their obligations. One of the exceptions is in sub-paragraph (b), which draws up specific measures to protect human, animal, or plant life.

COVID-19 (CoronaVirus Disease 2019) is a pandemic that erupted for the first time in Wuhan, Hubei Province, China. This is a contagious disease caused by a coronavirus that could infect humans and animals. Efforts have been made to prevent COVID-19 in animals, such as injecting animals with the Carnivak-Cov vaccine in Russia. According to World Trade Organization (WTO) Press Release, this unprecedented health crisis is expected to reduce world trade by 13-32% ([WTO, Press/858Press Release, 2020](#)). On 23 April 2020, WTO issued Export Prohibitions and Restrictions information note in which members are given three options to impose protection measures during COVID19. One of the options is to protect animal, plant, and human health based on Article XX (b) GATT 1994. However, members consider the article incapable of achieving health protection and rooting out the disguised protection in trade ([Simon Lester et al., 2012:470](#)). Therefore, SPS Agreement is the most appropriate regulation to deal with the safety and health of animals, plants, and humans. Although SPS Agreement has set out regulations to minimize trade barriers, the practice is usually undertaken with a nationwide approach.

Indonesia is one of the top ten countries in Asia with the highest COVID-19 human transmission cases. Furthermore, trading partners worldwide fear that the exporting countries would continuously experience high COVID-19 mutation in animals. Therefore, they protect their domestic market by imposing various SPS standards to shield animals and humans from the threat. However, disputes may arise in case the exporting countries experience high COVID-19 transmission in animals. Therefore, Article 6 SPS Agreement (regionalization principles) encourages the members to take regional SPS measures to sustain the trade. Article 6 was brought many times to WTO regarding its interpretation and implementation. The first case was India - Agricultural Products (DS430) in 2012, which became an epidemic situation and could become a pandemic. The latest case was Russia - Pigs (EU) (DS475), also classified as a pandemic. Since these two cases were dealt with as global diseases, it is possible to conduct trade during COVID-19. Therefore, this paper discusses the interpretation of Article 6 and the international guidelines according to Panel and Appellate Body opinions consistent with VCLT 1969. Also, it examines the application of the regionalization principle in Indonesia to unleash the barriers caused by COVID-19 in animal trade and movement.

## II. Research Methods

This research used a normative juridical approach, which focuses on legal interpretation and construction ([Soerjono Soekanto & Sri Mamudji, 2009:23](#)). It examines the principles, the problems in the relationship, comparison, and application of the SPS Agreement descriptively and analytically. Data were collected in line with the actual situation, processed, and analyzed to overview the existing problems. Furthermore, the research described the Article 6 SPS Agreement regarding the regionalization principle in DS430 and DS475 WTO decisions. It also examined the international guidelines, Terrestrial Code associated with the Vienna Convention on the Law of Treaties 1969 and systematically identified with Indonesia regulations. The study aims to understand the implementation of the regionalization principle, specifically for international trade during the pandemic.

## III. Results and Discussions

### A. Article 6 Sanitary and Phytosanitary Agreement

Sanitary and Phytosanitary Agreement (the 'SPS Agreement') is an international instrument that allows WTO members to protect human, animal, and plant health. The agreement fosters international trade by restraining excessive SPS Measures to trade (Koul Krishen, 2018:451). At least two reasons explain why SPS Agreement merited special attention. First, these measures are linked to agricultural trade and are difficult to liberate. Second, they are considered sensitive in the government political scope ([Peter van den Bossche, 2006:462](#)). As a result, the agricultural goods ban is a policy that prohibits products from infection-affected countries to keep dangerous viruses outside their borders without considering the fact. Products from both disease or pest-infested and unaffected areas are banned from entering other countries. Consequently, this policy weakens the whole exporting country's economy.

Article 6 recognizes that health hazards do not respect political frontiers, promote regionalization or zoning ([Rudiger Wolfrum et al., 2007:469](#)). Due to variations in geography, climate, pest or disease, and safety conditions, it is unfair to restrict trade to countries or their specific regions based on SPS Measures. Although it is common to apply SPS measures nationwide, 6 of the SPS Agreement sets out regionalization principles to handle this matter. This principle encourages Members to abandon traditional perspectives and adopt different treatments recommended by governments according to the actual sanitary or phytosanitary situation. This is because the trade volumes would be affected when import products are contaminated by diseases or viruses. Consequently, this would raise potential negative cross-border externalities in line with the fundamental economic reason of the SPS Agreement (Emily Blanchard & Mark Wu, EUI Working Papers RSCAS, 2018:14).

The negotiation history shows that exporting countries complain about the SPS Measures taken by the importing countries against products, even when the problems were localized only in certain regions of a country ([Rudiger](#)

[Wolfrum et al., 2007:469](#)). The first draft of rules for SPS Regulations created by the European Community (EC) stated that risk assessment had to be regional. Therefore, import bans must not be applied to the entire exporting country, particularly areas declared unhealthy ([GATT, Negotiating Group on Agriculture: Drafting of an Appropriate Framework of Rules for Sanitary and Phytosanitary Regulations, 1988](#)). Furthermore, The Cairns Group developed a Pest Disease-Free Areas (PDFA) concept that should be verifiable scientifically ([GATT, Negotiating Group on Agriculture: Communication from the Cairns Group, 1989](#)). In 1990, The Nordic countries also indicated that importing members may afford more favorable treatment on products from PDFAs countries ([GATT, Negotiating Group on Agriculture: Working Group on SPS Regulations and Barriers: Note by the Nordic Countries, 1990](#)). SPS Committee finally came out with “Guidelines to Further the Practical Implementation of Article 6 of the Agreement on the Application SPS Measures” to resolve the administration process. The administration step starts with exporting member requests about procedure and recognition until the importing Member decides.

## **B. The Implementation of Regionalization Principles**

A case was brought for the first time to the Dispute Settlement Body (DSB) WTO in India-Agricultural Products (DS 430). In 2011, Statutory Order (S.O.1663 E) enacted importation ban on agricultural products, such as day-old chicks, ducks, turkeys, un-processed meat, and Avian species and egg products due to the fear of those infected by LPAI (Low Pathogenic Avian Influenza) ([Panel Report, India - Agricultural Products, 2014:25](#)). Subsequently, this ban has badly impacted the US, one of the biggest poultry exporters with famous brands called Tyson Food and Perdue ([C Bown & J Hilman, 2017:238](#)). It was challenged by the US, resulting in Dispute Settlement after a country-wide restriction. These violations result from the misinterpretation of the term ‘*shall take into account*’ in Article 6.1. It is because India’s measure was not adopted with SPS in different areas and was assessed scientifically. Additionally, the US considers this measure an explicit ‘poultry ban’ from all areas of a country. It reported that Notifiable Avian Influenza (NAI) was not identified anywhere in the country, adding that the measure “*leaves no room for deviation*” ([Panel Report, India- Agricultural Products, 2014, para.7.619](#)). Therefore, this measure precludes regionalization, as delivered in Terrestrial Code and Article 6 SPS Agreement, and unnoticed PDFA/ALPDP concepts in Article 6.2.

The latest regionalization principle case was brought by the European Union (EU) to the Dispute Settlement Body. African Swine Fever was first discovered in 2014 in Lithuania and escalated to Poland, Latvia, and Estonia, the four-member countries of the EU. As a result, Russia restricted importing pig and related products from those four countries, known as the European Union Wide Ban (EU Wide Ban). Furthermore, this measure refused to open access for pig products from countries free from African Swine Fever (ASF) in the EU. Therefore, the EU Wide Ban applied to the European Union as one

nation without considering the regionalization principle. Under ordinary conditions, 42% of agricultural products consumed in Russia originated from the EU ([Alesandra Arcuri & Lukasz Gruszczynski, 2018:1](#)). However, Russia's misinterpretation was that the EU Wide ban has not adjusted to the sanitary distinction of the products' origin and destination. Moreover, Russia failed to recognize relevant factors (large geographical territory) mentioned in the second paragraph of Article 6.2 and believed that the regionalization principle was an abstract idea. There is a claim that the EU demonstrated "necessary evidence" to Russia. This is because Russia's defense was the lack of Article 6.3, making it act inconsistent with Article 6.1 and 6.2 ([Panel Report, Russia – Pigs \(EU\), 2016, para.7.910](#)).

### C. Regionalization Principle Implementation in Indonesia for Foot Mouth Disease (FMD).

In 2009, the society and the government disagreed on whether the importation of ruminants livestock should be banned or allowed. The government issued Law No. 18 of 2009 Concerning Animal Husbandry and Animal Health, including regionalization or zone system in Article 59 (2).

Article 59 (2)

"Fresh animal products imported into the Republic Indonesia as referred to in paragraph (1) (a) must originate from a country or zone within country that have met the requirements and procedures for the import of animal products."

The society argued that the zone system measures only promote animal imports to maintain national stability and food security. The article allows foreign entrepreneurs to enter cattle from disease-free areas of infected countries to another country. The FMD is airborne and only attacks even-toed ungulates, such as buffaloes, goats, sheep, pigs, kangaroos, deer, llamas, elephants, armadillos, and rats. This disease was a threat to international trade, including in Indonesia. Therefore, the society eventually brought an action to Constitutional Court to examine the material, and its claim was granted. However, the society was unsatisfied by Law No. 41 of 2014 Concerning Amendments to Law No. 18 of 2009 Concerning Animal Husbandry and Animal Health. Therefore, it filed a lawsuit for the same reason, but the Constitutional Court rejected the sue because the government had provided maximum security in that article. The Constitutional Court expressed that the law protects the public interest by giving strict quarantine procedures for maximum security.

### D. COVID-19

WHO stated that the COVID-19 virus could be transmitted through droplets and contact routes or from human to human. COVID19 could not multiply in food, but the virus needs an animal or human host to multiply. Additionally, according to the OIE Website, certain animals may become infected due to intimate contact with infected humans. The virus has infected a tiger in the New

York Zoo, and a cat in the Spanish region of Catalonia, a cat in Hongkong, and three lions in the Bronx, New York (CGTN, 2020). Veterinary scientists believed that the pets were infected by living and contacting humans. Also, it was believed that COVID-19 was spread by the wildlife trade in Wuhan. The patients infected by this virus had a history of Seafood Wholesale Market that illegally sells snakes, marmots, poultry, and bats ([Khan et al., 2020:2](#)). Furthermore, the experts stated that the genetic material of the virus had been found in the market. After the first outbreak, China imposed a temporary ban on all wild animal trade across the country to stop the spread because it might be transmitted to humans. Although the virus was initially carried by animals, the most frequent transmission is from human to human.

## E. Interpretation by Appellate Body towards Rights and Obligations Under Article 6 SPS Agreement

### Article 6 SPS Agreement

(1) Members shall ensure that their sanitary or phytosanitary measures are adapted to the area, whether all or part of a country or all or parts of several countries from which the product originated and its destination. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, among other things, the prevalence of specific diseases or pests, eradication or control programs, and appropriate criteria or guidelines developed by international organizations.

*(2) Members shall particularly recognize pest- or disease-free areas and those of low pest or disease prevalence (PDFA/ALPDP). Such areas shall be determined based on geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.*

*(3) Exporting Members claiming that areas within their territories are pest- or disease-free areas or of low pest or disease prevalence shall provide the necessary evidence to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing, and other relevant procedures.*

#### 1) Article 6.1

The Appellate Body in India - Agricultural products emphasized that Article 6.1 is “main and overarching obligation” and express interlinkages among the paragraphs of the provision. This article covers two requirements in two sentences. First, the members must ensure their SPS measures are adapted to specific areas’ sanitary or phytosanitary characteristics. The Appellate Body stated that this requirement contains “*is an ongoing obligation that applies upon adoption of an SPS Measure,*” which needs continuous updating. Second, the members should assess sanitary or phytosanitary characteristics by considering international guidelines. The international guidelines recommended by SPS

Agreement are the Terrestrial Code from the World Organization for Animal Health (OIE), International Plant Protection Convention (IPPC), and Codex Alimentarius (Food Code) Codex Alimentarius Commission. The prevalence of specific diseases or pests and the suppression or control programs should be non-exhaustive. ([Appellate Body Report, India – Agricultural Products, 2015, para.5.135](#)). Therefore, the adaptation requirement has to be maintained over time to adjust the measures due to changes in circumstances.

2) Article 6.2

The interpretation of PDFFA/ALPDP concepts, known as regionalization, is clarified in Appellate Body in Russia – Pigs (EU). Similar to the first paragraph, this article covers two obligations. First, the members shall recognize the concepts of PDFFA/ALPDP. In this ruling, the AB interpret Article 6.2 to make the concept clear. There is an “*in particular*” word in Article 6.2 which means something is said about some, but not all, of a class. This means that when imposing SPS measures, the Members must note that some areas have different characteristics. Second, the members shall determine the PDFFA/ALPDP concepts using the factor in the second sentence. Also, The Appellate Body provides significant facts under the obligation of importing members, as stated in Article 6.2. It must be interpreted based on Article 6.3 that the exporting members may take the claims that areas within their territories are PDFFAs or ALPDPs ([Appellate Body Report, Russia – Pigs \(EU\), 2017, para.5.126](#)). Moreover, this article commands that the importing Member must allow the exporting members to make such a claim and render operational the concepts of PDFFA and ALPDP. This could be achieved through an individual or joint provision in the regulatory framework ([Appellate Body Report, Russia – Pigs \(EU\), 2017, para.5.129](#)). However, the concept of effective opportunity is left unclear by Appellate Body. The effective opportunity must enable the exporting countries to create measures in a territory, whether regionalization is included or the measures are already guided by international guidelines ([Nelson Saika, 2017:863](#)). The intention of effective opportunity in Article 6.2 should be performed to reduce the probability of “pay lip service,” while the members refuse to recognize PDFFA/ALPDP concepts ([Alesandra Arcuri & Lukasz Gruszczynski, 2018:7](#)). Along with the requirement of Article 6.2 to acknowledge the PDFFA or ALPDP concept, Article 6.1 requires upkeep of measures that are fittingly adjusted under any condition ([Nicholas Laneville, 2017:11](#))

3) Article 6.3

Article 6.3 comprises two responsibilities in the first sentence for exporting countries. In claiming PDFFA/ALPDP in their territories, the exporting countries should first “provide necessary evidence” and “objectively demonstrate.” It had been decided in the negotiation history that the exporting countries must prove the PDFFA or ALPDP, and the importing countries should recognize the basic concept ([Kim Gaegoung & Kim Minjung, 2019:157](#)). The necessary evidence

refers to objects (documents or testimony) that describe the evidence's nature, quantity, and quality. Moreover, it must be sufficient for importing members to make an objective "determination" regarding the meaning of Article 6.2. Necessary evidence in the first sentence of Article 6.3 has to be made out based on the facts and circumstances of each case. To make it clear, ALOP (Appropriate Level of Prevalence) would be built by importing members based upon the necessary evidence given by the exporting members.

"To objectively demonstrate" is exporting countries' duty for importing countries to determine the PDF/A/ALPDP concepts. The Appellate Body in India - Agricultural Products noted that when the exporting members fail to demonstrate the necessary evidence of Article 6.3, the importing members would find it challenging to comply with Article 6.1 and 6.2. However, the Appellate Body stated that the obligations in Article 6.1 and 6.2 are not triggered by an invocation of Article 6.3. Additionally, when importing members evaluate the evidence, the period is not necessarily required and not mentioned in Article 6.3. The importing things to evaluate are only the necessary evidence and objective demonstration. Moreover, Article 6.3 has similar words as Article 4.1 SPS Agreement which requires the recognition of equivalent concepts when the exporting members "objectively demonstrate to the importing members". This implies that importing Member in SPS Agreement should analyse information to determine the exporting members' measure to achieve the ALOP provided by its own relevant SPS Measure ([Cornelia Furculita, 2018:13](#)).

#### **F. Status of International Standards in SPS Agreement in VCLT Perspective of Article 6.1**

When negotiating the SPS Agreement, the three bodies were perceived to create standards on a scientific basis. This made the negotiation parties support Codex, IPPC, and OIE ([Justin Schwegel 2018:287](#)). Both India-Agricultural Products and Russia-Pigs dispute raised issues on conformity inconsistent with Article 3 SPS Agreement but linked with Article 6.1. Article 3 explains that the SPS Measures must be harmonized and conformed to international standards to protect humans and other living entities or health. In panel ruling, India recognized Terrestrial Code as international guidelines to help the members determine their SPS Measures. However, it stated that Article 6.1 means that importing members may use or not use Terrestrial Code and consider other factors on their Appropriate Level of Protection (ALOP) ([A. G Miacra, 2017:119](#)). By this argument, India Measures were not "conforming to" to the Terrestrial Code. Also, the risk assessment and ALOP are not pursuant to Article 3. This is also related to the inconsistency of India Measures with Article 6.1, where the country-wide restriction is not based on international guidelines. The same happened with Russia - Pigs (EU) case that Russia did not comply with the science-based rules of the SPS Agreement, which imposed EU Wide Ban without any risk assessment. Therefore, the "zone" and "compartment" procedures introduced by OIE are put aside. The conflict in recognizing the



international guidelines has led to the question of whether the members respect and recognize the international guidelines. Eventually, the panel found that India did not certify that the AI Measures are pursuant to Article 6.1, first sentence, and failed to recognize PDFA and ALPDP. Furthermore, India discovered that its measures are not based on a determination of a region's SPS characteristics as intended by Article 6.1, second sentence ([Panel Report, India- Agricultural Products, 2014, para.7.711](#)).

As a decision base, the ALOP is from India and does not adhere to Terrestrial Code. Nonetheless, the Appellate Body emphasizes that Russia – Pigs (EU) must complete the legal examination and show that the OIE Code complies with Article 31 and 32 of the VCLT. James J. Nedumpara stated that based on India's perspective, the Panel is responsible for interpreting the international standards ([Saggi & Wu, 2017:17](#)), and the interpretation of the Terrestrial Code must be based on Article 31-34 VCLT. This issue could be resolved by considering Mexico – Telecom's case in which the panel and the parties adhere to recommendations by the International Telecommunication Union (ITU) for 'anti competitive practice.' The Panel recognized that Mexico and the United States are members of ITU and WTO and bound to ITU recommendations ([Marina Foltea, 2012:106-107](#)). Panel and Appellate Body preferred ITU Recommendation as 'supplementary means of interpretation' (Article 32 VCLT) rather than 'subsequent agreement' (Article 31 (3) (a). Article 32 stated,

“Recourse may be had to supplementary interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, to confirm the meaning of Article 31, or when its interpretation:

- a) leaves the meaning ambiguous or obscure; or
- b) leads to an absurd or unreasonable result.”

The panel saw Working Party on the Interaction of Trade and Competition Policies to decide anti-competitiveness in ITU Recommendation as preparatory work under Article 32 VCLT. In EC- Hormones, the Appellate Body responded to the allocation of the burden of proof when WTO members deviated from international standards mentioned in SPS Agreement. According to the agreement, the adjudicating bodies cannot infer one measure is heavy or less-heavy based on compliance standards, guidelines, or recommendations, and a wider assumption in Article 3 SPS Agreement would be required ([Petros Mavroidis, 2008:442-443](#)). However, based on this study, the interpretation cannot be as done by India and Russia. Instead, it has to be done because the negotiation history of Article 6 and the members have agreed to be bound.

#### **G. Recommendation to Reinforce Trade and Health Policy Concerning COVID-19 Outbreak in Indonesia**

In this circumstance, the SPS Agreement permits the Members to impose precautionary measures regarding COVID-19. Most of the measures apply to Personal Protective Equipment (PPE) and other essential medical equipment concerning Technical Barriers Trade (TBT). Furthermore, based on SPS, most measures facilitate the trade through e-certification. A few WTO members imposed temporary

restrictions on the importation and transit of live animals and their products. Also, they restricted certain species, such as exotic and decorative animals, including insects, arthropods, amphibians, reptiles, and live fish. Other members' measures also included plants and aquatic organisms in addition to fish. According to the WTO website, Indonesia has notified SPS Committee that any importation and movement of mammals and pets from Hong Kong, China, must be accompanied by Laboratory test results for COVID-19 (GN/SPS/N/IDN/132). Moreover, any importation of Live Animal (Pet Animal) from a country that is not free from COVID-19 should be accompanied by Certification of Declaration free from COVID-19 (SARS-Cov-2) (GN/SPS/N/IDN/133), and Certification of Laboratory Analysis that the consignment (live animals) is negative tested for COVID-19 (SARS-Cov-2) from an accredited or authorized laboratory in the importing country. There should be a validation of the Electronic/Digital/Scanned Phytosanitary Certificate from Indonesia (GN/SPS/N/IDN/134). WTO Director-General, Roberto Azevedo, recalled the importance of transparency to share information, such as the publication measure in the domestic system and its "notification" to WTO ([WTO Export Prohibitions and Restrictions, 2020](#)).

Due to the recent conditions, Indonesia Quarantine Agency (Badan Karantina Indonesia/ Barantan) has issued Circular Letter No. 5732/KR-120/k/04/2020. It states that the importation of mammals into Indonesia Territory from all countries affected by the COVID-19 outbreak must be free of COVID-19 (SARS-CoV-2). Such mammals include companion animals (dogs, cats, horses, donkeys, mules, and all pet mammals) and tigers, lions, primates, civets, bats, giraffes, and other wild mammals. The importation must include a COVID-19 Free Declaration by an attachment to Laboratory Results stating "Negative COVID-19 (SARS-CoV-2). Furthermore, every entrance of those animals must undergo a 14-day quarantine period, and retesting would be conducted in case an infected animal is found during quarantine with chronic respiratory symptoms. Additionally, this circular letter considers Law No. 21 of 2019 Concerning Animal, Fish, and Plant Quarantine.

The previous quarantine Law No. 16 of 1992 Concerning Animal, Fish, and Plant Quarantine was amended to Law No. 21 of 2019 Concerning Animal, Fish, and Plant Quarantine. However, the Government Regulation No. 82 of 2000 was not amended and still considers the previous law. Notwithstanding the incompatibility, Article 94 Law No. 21 of 2019 stated that the existing regulations are still valid provided they are not conflicted when this law becomes effective. Moreover, the regulations for this law are stipulated within a maximum period of two years from the promulgation of this law.

Indonesia lacks a regionalization principle quarantine but could apply maximum security for animals or products outside in implementing the regionalization principle or zone system. However, that decision only applies to FMD infected animals. This is based on Decision Constitutional Court Number 129/PUU-XIII/2015 Concerning the Review of Law Number 41 of 2014 Concerning Amendments to Law Number 18 of 2009 Concerning Animal Husbandry and Animal Health. First, maximum security could be achieved with strict requirements, such as certification that mammals and

animals capable of transmitting COVID-19 come from virus-free areas. This is in line with the SPS Agreement, the risk assessments from information obtained from other countries. Second, the regionalization principle would be carried out in certain cases and still consider national interests. Certain cases mean urgent situations due to disaster when the society needs supplies of livestock or animal products. Third, the importation of animal products into Indonesia, especially through the zone system, must be considered a temporary solution only in certain circumstances. For instance, the zone system was implemented when the FMD pandemic threatened the health of local goats and when the ASF virus hit the world. In this emergency, a zone system could be implemented to avoid transmission to domestic mammals and pets. Therefore, it could be used for temporary conditions until the COVID-19 pandemic ends to prevent animal transmission or new mutations.

The history formation of Article 6 SPS Agreement is based on concerns about the reduced supply of agricultural products. For this reason, the national interest focuses on animal and plant products that are needed daily. However, three paragraphs in Article 6 of the SPS Agreement do not state that the regionalization principle would only be carried out by considering the national interest in agricultural products. The SPS Agreement protects all animals in the trade, as mentioned in Appendix I. This is also proven by the research collaboration between the SPS Committee and OIE to determine the vulnerability of mammals and wild animals against COVID-19. Therefore, the principles of the SPS Agreement, especially regionalization, must be upheld for smooth trade flows during a pandemic by implementing maximum security.

From an international aspect, OIE and SPS have not provided specific rules regarding handling animal movements between areas infected and those free from COVID-19. However, OIE recommends that governments carry out the risk assessments in Chapter 2 and disease control, including zoning and compartmentalization in Chapter 4. Furthermore, governments should implement export-import policy procedures and animal and plant health certification in Chapter 5 Terrestrial Code. Member countries are advised not to implement SPS policies related to COVID-19 until risk assessments prove them to be consistent with international standards. In line with this, the SPS Committee is developing e-vet as a form of digital and online animal certification to support risk assessment, though it must be carried out with transparency.

#### IV. Conclusion

Article 6 SPS Agreement promotes regionalization to avoid using SPS Measures in a nationwide approach during a pandemic. The Appellate Body clarified the interpretation of the regionalization principle or PDFFA/ALPDP concepts into SPS Measures Article 6.1 emphasizes that the members adopt measures to the sanitary and phytosanitary characteristics of specific areas based on certain factors and guidelines from the international organization. Furthermore, Article 6.2 commands to "recognize" the PDFFA/ALPDP concepts and "determine" the specific area based

on factors listed in the paragraph. Article 6.3 is an obligation for exporting members to objectively demonstrate the necessary evidence to describe the nature, quality, and quantity of their areas. In assessing the PDFFA/ALPDP concepts, the Member must consider the standards, such as Codex Alimentarius, IPPC, and Terrestrial code entrusted by the negotiators of SPS Agreement and VCLT 1969. Therefore, the interpretation of regionalization in international guidelines (mandated by the SPS Agreement) must be consistent with Article 6 without being narrowed as was aspired since negotiation time.

The COVID-19 pandemic is an obstacle to international trade and makes humans and animals vulnerable to this virus. Consequently, many animal trades have been banned to prevent its spread. To deal with this condition, Indonesia could apply the regionalization principle in Article 6 SPS Agreement. Furthermore, the trade and the safety of animals in the national framework could be enhanced by applying three maximum security measures. These include strict requirements (certification and quarantine), carrying out trade in an urgent situation, and considering national interest, and the measures must be temporary. Moreover, the government should update the quarantine law by pointing out the regionalization principle, unlike the zone system rules only applied to animals susceptible to FMD. From international aspects, members could apply Chapters 2, 4, and 5 Terrestrial Code.

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