

# WORLD TRADE ORGANIZATION

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## Committee on Sanitary and Phytosanitary Measures

### EQUIVALENCE: CONSIDERATION OF ARTICLE 4 OF THE SPS AGREEMENT

#### Summary of Informal Discussions on Equivalence

#### Third Report by the Chairman

1. On 9 July 2001, the SPS Committee held a third informal meeting on the issue of equivalence in the context of developing country concerns. The Committee had first agreed to informal discussions on this issue at its meeting of June 2000. Subsequently, the Committee received the General Council's request that it "examine the concerns of developing countries regarding the equivalence of sanitary and phytosanitary measures and come up with concrete options as to how to deal with them".

2. In concluding the first informal meeting on equivalence, in November 2000, Members were requested to provide specific information regarding their experiences – both positive and negative – in seeking recognition of equivalence. For the informal meeting on 9 July 2001, such information was provided by Japan (G/SPS/GEN/261), and orally by Colombia. Information has previously been provided by New Zealand (G/SPS/GEN/232), Argentina (Job(01)/31), Fiji (G/SPS/GEN/238), the United States (G/SPS/GEN/212), the European Communities (G/SPS/GEN/101), Thailand (G/SPS/GEN//242), Australia (G/SPS/GEN/243) and India. The information previously provided was summarized in a document by the Secretariat (G/SPS/W/111).

3. The Secretariat document also listed the major concerns raised by developing countries with regard to equivalence, and on the basis of the submissions by Members and discussions in the Committee, identified possible concrete approaches for addressing these concerns. These possible approaches are annexed to this report.

4. In addition, for the informal meeting on 9 July, Argentina presented a paper further elaborating their recommendations regarding the criteria and content of any international standard for the determination of equivalence (G/SPS/GEN/268). In particular, Argentina proposed principles to govern the process of determining equivalence.

5. In the discussions, some Members recalled that there were actually very few formal equivalence agreements between Members because these were time-consuming and costly. Equivalence was only one tool for achieving greater market access, and other provisions of the SPS Agreement could provide more immediate, easier and less costly results. Additionally, provisions such as Article 6 on Adaptation to Regional Conditions, could complement the recognition of equivalence. It was also stressed that the value of recognition of equivalence was not limited to exports by developing countries to developed country markets, but indeed could be a useful tool for facilitating trade among all Members.

6. Members again stressed the critical importance of transparency and access to information regarding equivalence agreements and discussions. While agreeing that technical assistance should be provided to help developing countries identify and implement equivalent measures, it was noted that

no Member had to date requested such assistance. The Committee subsequently held useful discussions regarding technical assistance.<sup>1</sup>

7. The Committee sought further information from the relevant standard-setting organizations regarding their activities in the area of equivalence. The representative of the Codex Alimentarius Commission confirmed that Codex had already developed guidelines for generic certificates, as well as for the design, operation, assessment and accreditation of food import and export inspection certification systems, and recently advanced with guidelines for the judgement of equivalence. These guidelines were designed to allow the recognition of equivalence either of inspection and certification systems, or of individual products and treatments. Other work by various Codex committees, including on the development of specific certificates and with respect to microbiological contamination, were also relevant in this regard. The representative of the OIE reported that work was underway both in developing general guidance for recognizing equivalence at the systems level as well as on the recognition of the equivalence of specific methodologies. Members of the IPPC had not to date identified the issue of equivalence as being problematic and in need of specific guidance, but had discussed it on an ad hoc basis. Given the interest of the Committee, the IPPC indicated its intention to bring this matter to the attention of its members.

8. The Committee agreed that the possible approaches identified in the Secretariat document could provide the basis for the development of concrete options for dealing with the concerns of developing countries, as well as of other Members. In addition, the proposals of Argentina warranted more detailed consideration as they addressed critical questions with respect to the recognition of equivalence. The Committee agreed to continue its consideration of this issue at its next meeting and to examine in depth the possible approaches, with a view to developing recommendations that would make the provisions of Article 4 on Equivalence more operational. Members were encouraged to provide further concrete examples of their experiences in this regard, and the relevant standard-setting organizations were invited to keep the Committee regularly informed regarding their activities which were relevant to the issue of equivalence.

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<sup>1</sup> See the Chairman's summary report of the discussions, G/SPS/GEN/267.

## ANNEX

### Possible Approaches Suggested in G/SPS/W/111

1. A possible approach to address both the "sameness" concern and the "administrative burden" issue is the acceptance of equivalence at the technical level (i.e. equivalence for a specific product or of a particular sanitary and phytosanitary measure) as a first step, moving gradually, when necessary and appropriate, to more comprehensive and formal systems-wide or broad-ranging agreements on equivalence. In other words, instead of seeking a formal systems-wide or broad-ranging equivalence agreement, Members may wish to start with a more targeted approach and agree on the equivalence of a single product or measure (which may or may not require an equivalence agreement). If the need exists or arises, the Members may subsequently seek to broaden the recognition of equivalence and enter into a systems-wide agreement.
2. An importing Member could, whenever possible, clearly identify the appropriate level of protection which its sanitary or phytosanitary measure is designed to attain. In doing so, Members should take into account the *Guidelines to Further the Practical Implementation of Article 5.5* adopted by the SPS Committee at its meeting of 21-22 June 2000.<sup>2</sup>
3. An importing Member could explain to the exporting country the objective of the sanitary or phytosanitary measure and identify the risks that the relevant measure is intended to address. Where appropriate, the explanation could be accompanied by a copy of the risk assessment underlying the sanitary or phytosanitary measure.
4. In order to enable the importing Member to decide whether the alternative measure of the exporting country provides the adequate level of protection against a given risk, the exporting Member could provide appropriate, science-based technical information to support its application for recognition of equivalence.
5. In accordance with Article 9 of the SPS Agreement, the importing country could provide technical assistance requested by the exporting country to help identify and implement measures which are recognized to be equivalent.
6. Members could actively participate in the ongoing work in Codex on the issue of equivalence, and in any related work in the OIE and IPPC.
7. The Committee could formally request the OIE and IPPC to consider the need for the elaboration of guidelines on equivalence of sanitary and phytosanitary measures and equivalence agreements in the animal health and plant protection areas.
8. In the light of Committee's conclusion, the recommended notification procedures<sup>3</sup> could be revised to encourage the notification of recognition of the equivalence of sanitary and phytosanitary measures of other Members, as well as to provide information on their participation in any bilateral or multilateral equivalence agreements.

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<sup>2</sup> G/SPS/15

<sup>3</sup> G/SPS/7/Rev.1

9. Members could also be requested to provide additional information on any experiences they have had in the recognition of equivalence.

10. The Committee could develop a specific programme for further work designed to clarify the current practices and difficulties faced by Members in efforts to achieve recognition of equivalence, with particular consideration of the problems encountered by developing country Members.

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