

**A PRACTICAL EXAMPLE OF IMPLEMENTATION OF
THE PRINCIPLE OF EQUIVALENCE**

Submission by the European Communities

Introduction

1. The European Communities herewith submits a document which describes the application of the principle of equivalence of inspection and certification systems in its imports of fishery products. It should however be emphasized that this example dates from the period before the SPS Agreement was in place.

2. The European Community has always been concerned about the possibilities for developing countries (DC) to facilitate trade. To this end the European Communities has established ways to help in solving the problems that are facing many developing countries without however, lowering the health and safety standards and level of protection. This level is based on independent and sound scientific advice and therefore remains a prerequisite in its actions. This document shows that the EC requirements are fully in line with the ones as laid down in the lately adopted Decision by the General Council (G/SPS/19).¹ Articles 10 and 13 of this Decision point to the role of the three Sister organizations in this process. The Codex Alimentarius Commission (Codex) has however made the most progress and has issued several documents. The present EC submission is equally fully in line with the concept of equivalence as elaborated by Codex (reference document: Codex Alimentarius, Food Import and Export Inspection and Certification Systems, Combined Texts; ISSN 0259-2916 and in particular document CAC/GL 34-1999², as well as with Food Hygiene, Basic texts CAC/RCP 1-1969, Rev.3 (1997), amended 1999³; and its Annex⁴).

Objective

3. The objective of the present document is to provide other Members with one practical example of how the European Communities has been applying the principle of equivalence in its day-to-day work and in particular towards facilitating trade from developing or less developed country Members. For this purpose the example of the import conditions for fishery products is taken. This has been a very important step towards facilitating trade with developing countries since this is the type of commodity which is of largest interest to these country Members in terms of trade figures. It should be emphasized that future submissions will provide further examples.

¹ Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures.

² Guidelines for the Development of Equivalence Agreements Regarding Food Import and Export Inspection and Certification Systems.

³ Recommended International Code of Practice, General Principles of Food Hygiene.

⁴ Annex to CAC/RCP 1-1969, Rev.3 (1997): Hazard Analysis and Critical Control Point (HACCP) System and Guidelines for its Application.

Equivalence in practice

4. EC Council Directive 91/493/EEC is the legal basis laying down health conditions for the production and placing on the market of fishery products, originating both in EC member States and in third countries.⁵ The principle of equivalence is reflected in Art. 10 and 11 of the said Directive. Article 10 says "provisions applied to imports of fishery products from third countries shall be at least equivalent to those governing the production and placing on the market of Community products." Article 11 elaborates on the specific import conditions that need to be fulfilled. It should be remarked that this legal basis dates from 10 years ago, which points towards an evolution meanwhile. Therefore it is the purpose to describe the system rather than the individual measures. Moreover, the European Communities has always emphasized the prerequisite need for an equivalent system before considering product equivalence as stipulated in the recent Decision on equivalence in Article.⁶

5. To this end, particular account shall be taken of the legislation of the third country, the organisation of the competent authority and its inspection services, the actual health conditions during production, storage and dispatch of the fishery products; and the assurances which a third country can give on the compliance with its own standards on health control and monitoring of production conditions. As a first conditional step, documentary evaluations of the inspection system of the exporting Member are performed and the structure and performance level of the Competent Authority assessed (in line with Codex Alimentarius CAC/GL 26-1997⁷). To allow the import conditions to be fixed, an EC inspection on the spot is carried out further on. These are tailor-made import conditions adapted to the particular situation in the third country, based on equivalence of the inspection and certification system. The exporting country shall also establish a procedure for issuing a health certificate accompanying the consignments forwarded to the European Communities. This latter measure provides for the ultimate assurance that the inspection of the fishery products has been performed in an equivalent way to the EC standards. This procedure also applies to listing of approved establishments and auction or wholesale markets registered and approved by the competent authority. The latter is subject to compliance to requirements in the third country that are equivalent to the ones laid down in EC legislation as well as to the monitoring by an official inspection service of the third country.

6. During this process and clearly in line with Codex guidelines (section 7 of CAC/GL 34-1999), information is exchanged on the legal framework, programs and implementation of control, decision criteria and measures, infrastructure, equipment, transport and communication, including basic hygiene and water quality; on laboratories and their assessment or possible accreditation and proof of proficiency testing; on details on the guarantees to establish a competent inspection service (e.g. staff training, number of staff, etc.); on details on the procedures of audit; and finally on the structure and operation of any rapid alert system in the exporting country. The verification of the HACCP application is also in line with Codex Alimentarius guidelines on HACCP (Food Hygiene, Basic texts CAC/RCP 1-1969, Rev.3 (1997), amended 1999; and its Annex).

7. Once the exporting country has been assessed also on site by the European Communities and in case sufficient guarantees have been provided to establish an equivalent system of inspection, exports of the products under scope can take place. However, in practice several possibilities exist to fulfil this commitment and hence export to the European Communities.

⁵ OJ N° L 268, 22.07.1991, p. 15

⁶ Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures. Article 1: "...An evaluation of the product-related infrastructure and programmes within which the measure is being applied may also be necessary...."

⁷ Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems.

- (a) A country has been assessed on site and the whole inspection and certification system has been favourably assessed as equivalent, including all products contained in EC Directive 91/493/EEC. In this case the exporting country is listed as foreseen in Commission Decision 97/296/EC, in the list of countries from which the import into the European Communities of fishery products is authorized for human consumption. However, this is only the case from the approved establishments (including processing plants, cold stores, factory and freezer vessels) for which a list has been drawn up by the national Competent Authority.
- (b) In case the inspection system is not considered as equivalent for all fishery products, a restricted equivalence recognition can be considered (e.g. only for fresh fishery products, only for products from freezer vessels).
- (c) In other cases equivalence of the inspection system can be interpreted in a broader scope. An example shows that in accordance with Council Directive 91/493/EEC Art. 11, §3(b), the organization of a competent authority and inspection service can be recognized as equivalent in a certain country, even when these services are not part of that same country. Another example thereof is the recognition as equivalent of a competent authority using private premises for certain inspection or laboratory testing services.
- (d) European legislation foresees that any EC member State must inspect and take measures vis-à-vis establishments itself. Therefore an exporting third country also has the responsibility to take some measures in order to correct some deficiencies and, if necessary, to temporarily or permanently withdraw establishments from the list originally forwarded to the European Communities. Such a rapid reaction is perceived positively by the European Communities and helps to re-establish its confidence in its trading partner.
- (e) As a consequence, the fact that countries are recognized as having an equivalent inspection and certification system also implies that these guarantees have to be provided continuously. In case there is evidence to believe that these guarantees are no longer maintained, an exporting country can again be temporarily withdrawn from the above-mentioned list, until the situation has been rectified.

8. A very important feature of this procedure is that, in contrast to the SPS Committee's Decision on equivalence, the driving force and efforts to establish this equivalence are shared by the European Communities and the exporting country. Especially for developing countries this has shown to be essential in accelerating the process and can be regarded as a way of technical assistance.

9. This EC approach of equivalence recognition of inspection and certification systems for fishery products has brought various advantages to both the importing and exporting Members. A very important benefit is the reduction of frequency of physical controls at the border inspection posts. From a 100 per cent control, this percentage is reduced to 50 or 20, depending on their risk level. The presence of a health certificate accompanying the consignments provides for the necessary public health guarantees. Moreover this equally allows for free circulation of these goods between EC member States, which is clearly an improvement compared to existing bilateral agreements.

10. Since this legislation was enforced in 1991, 62 third countries have been recognized as implementing an equivalent system of inspection and certification for fishery products and hence have access to the EC market. Another 41 countries can export their fishery products to certain EC member States on the basis of a bilateral agreement, but equivalence of their inspection and certification system will soon be assessed.

11. It is clear that the European Communities has quickly recognized the major importance of the economic and social challenges of this system for the developing countries. As already mentioned the commodity concerned represents an enormous amount of developing countries' exports: 50 to 60 per cent of world-wide catch is performed in waters under jurisdiction of developing countries. More than 40 per cent of the world production is internationally commercialized. Since it concerns commercially valuable products, 80 per cent of it is marketed in the developed world. During the last ten years – the period the Directive is in force - fishery product imports from developing countries into the European Communities have doubled. When converted into value, in 1999 fishery products exports represented 4 billion € in total, of which 1.4 billion from Latin America, 1.4 billion from ACP countries and 1.2 billion € from Asia. This represented a total amount of fishery product imports into the EC market of 3,954,890 tons from developing countries.

12. These advantages demonstrate that in obtaining an equivalent level of inspection and certification system for *in casu* fishery products, trade can be facilitated and be an important trump for developing countries.
