

EQUIVALENCE

Submission by New Zealand

I. SUMMARY

1. This paper collates background information on equivalence and outlines New Zealand's views on associated issues. New Zealand considers that the Committee on Sanitary and Phytosanitary Measures (SPS Committee) has made good progress on clarifying the policies and principles underpinning the application of the concept of equivalence. We recommend that the Committee ensure that its work does not duplicate or detract from that underway in the standard-setting bodies.

II. PROGRESS ON EQUIVALENCE IN 2001

2. Application of the concept of equivalence has ongoing importance in this Committee. It is a fundamental principle of the SPS Agreement, described in Article 4. The Agreement's role in trade facilitation is highly regarded by New Zealand as a trading nation.

3. The Secretariat's paper of 4 July 2001 (G/SPS/W/111) outlined five key issues relating to the application of Article 4 of the SPS Agreement, on equivalence. The Committee discussed these issues and arrived at a Decision (G/SPS/19) in October 2001 expanding on the basic principles outlined in Article 4.

	Key issues	Relevant sections of Decision
1	Equivalence does not require sameness in measures to achieve an appropriate level of protection (ALOP)	<ul style="list-style-type: none">· Point 5 of chapeau· Paras 1, 2, and 4
2	Administrative burden involved in determining equivalence	<ul style="list-style-type: none">· Point 11 of chapeau· Paras 1 and 5
3	Difficulty of identifying importing country's ALOP	<ul style="list-style-type: none">· Paras 2 and 3
4	Need for international harmonisation based on guidelines established by standard-setting bodies	<ul style="list-style-type: none">· Paras 9, 10, and 13
5	Transparency of equivalence agreements and confidence in the equivalence determination process	<ul style="list-style-type: none">· Point 10 of chapeau· Paras 11 and 12

4. The Decision builds upon not only the issues identified in July 2001, but also general principles of the WTO international trading framework, such as trade facilitation (point 9 of chapeau; paras 6 and 8) and technical assistance for developing country Members (paras 8 and 9). New

Zealand considers that the Committee has made good progress on clarifying the policies and principles underpinning the application of the concept of equivalence.

III. ISSUES

5. New Zealand hopes to further the Committee's discussions in the area of equivalence by sharing our views on the following issues.

A. WHAT DOES THE CONCEPT OF "EQUIVALENCE" REALLY MEAN?

6. The concept of equivalence is fundamentally about achieving the same outcome through different means. In the SPS area, it is about acceptance of alternative measures that achieve an importing Member's ALOP. This concept has been expressed in slightly different ways in international fora as it has been adapted to different purposes.

7. Article 4.1 of the SPS Agreement in effect defines equivalence as the situation where an exporting country achieves an importing country's appropriate level of protection even through differing measures.

8. Point 5 of the *château* of the Decision states that equivalence:

"... does not require duplication or sameness of measures, but the acceptance of alternative measures that meet an importing Member's appropriate level of sanitary or phytosanitary protection."

9. The *Glossary of Phytosanitary Terms* (International Standard for Phytosanitary Measures, publication number 5, 1999) defines equivalence as:

"... the situation of phytosanitary measures which are not identical but have the same effect."

10. The Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems (CAC/GL 26-1997) defines equivalence as:

"... the capability of different inspection and certification systems to meet the same objectives."

11. Elsewhere in Codex, the current version of the Proposed Draft Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems (Appendix III of Alinorm 01/30A) defines equivalence (specifically of sanitary measures) as:

"... the state wherein sanitary measures applied in an exporting country, though different from the measures applied in an importing country, achieve, as demonstrated by the exporting country, the importing country's appropriate level of sanitary protection."

12. The current version of the OIE's Draft Paper on the Judgment of Equivalence of Sanitary Measures relating to International Trade in Animals and Animal Products defines equivalence as:

"... agreement by an importing and exporting country that the sanitary measure(s) proposed by the exporting country as an alternative to those of the importing country, achieve(s) an equivalent level of protection."

13. New Zealand believes that it is important to be clear that the concept of equivalence as applied in the SPS area is about whether the alternative sanitary or phytosanitary measures proposed by the exporting Member deliver the importing Member's chosen level of protection (its ALOP) – not an "equivalent level". This is a subtle but very important distinction. The issue at hand is equivalence of measures to achieve a set outcome – it confuses this already difficult issue to speak instead of equivalence of outcomes.

B. WHAT ARE THE APPROPRIATE ROLES OF THE RELEVANT INTERNATIONAL ORGANIZATIONS WORKING ON EQUIVALENCE?

14. The second area requiring clarity is the distinct and mutually-reinforcing roles of the SPS Committee and the relevant international organizations (the three recognized international standard-setting bodies) in the area of equivalence. This is expressed in paragraph 10 of the Decision and Article 12 of the SPS Agreement.

15. The SPS Committee has a vital role in making policy and identifying issues relevant to the SPS Agreement. Its responsibilities include providing a policy framework for the development of international standards, and advice on related systemic policy issues.

16. The standard-setting bodies' role is equally important to this Committee's role, and should not be considered to have lesser value or significance. Codex, the ICPM, and the OIE are international bodies of technical experts. It is their responsibility to develop international standards, guidelines, and recommendations in their specialist areas of human, plant, and animal health. They are best placed to consider how concepts such as equivalence can be implemented or operationalised in these fields, at a detailed procedural level.

17. It would be unnecessary duplication of effort for the SPS Committee to develop detailed procedures or other texts on equivalence. This Committee should retain its focus on principles and concepts. Where agreement is reached on these, this Committee should then feed into the standard-setting bodies' work developing international standards.

18. The Codex Alimentarius Commission has described to this Committee the advanced stage of development of its *Proposed Draft Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems*. The Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) is developing that text and has also considered developing another related text: *Proposed Draft Guidelines on the Judgment of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems*. New Zealand has been tasked with leading a thirteen-member drafting group in revising the first text over the next few months.

19. There has been less progress in the other two recognized standard-setting bodies. The OIE is developing a *Draft Paper on the Judgment of Equivalence of Sanitary Measures relating to International Trade in Animals and Animal Products*. The ICPM has not yet commenced related work. This Committee could usefully provide encouragement to the ICPM to begin to develop an international text to provide guidance on applying equivalence in the phytosanitary area as soon as possible.

20. New Zealand strongly supports this Committee's encouragement to Members to participate in the standard-setting bodies' ongoing work, as highlighted in paragraph 9 of the Decision. The concept of equivalence has largely reached the stage of implementation in these bodies, so this should be the focus of Members' activities.

C. HOW SHOULD PROCEDURES FOR DETERMINING EQUIVALENCE BE ACCELERATED TO RECOGNIZE HISTORICAL TRADE?

21. One of the fundamental building blocks of an equivalence agreement is an importing Member's confidence in the soundness of the exporting Member's regulatory system: the "product-related infrastructure and programmes" referred to in paragraph 1 of the Decision. A history of trade between the two Members provides knowledge about the exporting Member's measures and control systems, which underpins confidence.

22. A judgment of equivalence requires an objective basis for comparison. The exporting Member must provide robust technical information to support its application for an importing Member to recognize alternative measures as providing the same or greater level of protection against risks as that achieved by the prescribed import requirements. This process of submitting and considering information can understandably take some time where the trade is new. In turn, the equivalence determination process should proceed more quickly where historical information exists. In that situation, it is likely that the importing Member already has information about the exporting Member's infrastructure and programmes, allowing prompt assessment of those. Sufficient scientific information about a specific measure within that framework will still be required, however.

23. This effect of a trading history is recognized in paragraph 5 of the Decision. New Zealand believes that it is not necessary for this Committee to expand much further on it, or we risk duplicating the work of the standard-setting bodies and thus detracting from their role. We note that they have already begun incorporating this principle in the texts that they are developing. The Codex draft Guideline described earlier notes that "When judging the equivalence of sanitary measures, the importing country should take into account any knowledge it has of the food inspection and certification systems in the exporting country and the performance of those systems" (section 10.9). The OIE's draft Paper also states that "the importing country should take into account prior experience with the veterinary administration or other competent authority of the exporting country" (section 17), and notes that there is no single sequence of steps to be taken in determining equivalence (section 18).

IV. FUTURE DIRECTIONS

24. New Zealand recognizes the difficulty of determining equivalence in practice, from our experience as both an exporting and importing country. It can be difficult to "unpack" a measure to identify its underlying objective, especially when it is historically based.

25. All Members face the challenge of moving to standards based on more rigorous science, a process that will take a significant length of time. Two key ways of overcoming the difficulty are mentioned in the Decision: development of international standards (para. 9) and technical assistance (paras 8 and 9). New Zealand strongly supports both these activities and believes that these will help to facilitate equivalence agreements, particularly for developing countries.

26. The development of international standards is already underway in the standard-setting bodies, as described earlier. New Zealand believes that the most productive activity for this Committee to engage in over its three-year work programme is the sharing of Members' experiences with equivalence. We urge Members to describe their positive and negative experiences, in order that this Committee can identify issues for standard-setting bodies to consider in their technical texts, and to identify gaps where supporting systems (such as transparency and technical assistance) can be targeted to facilitate equivalence agreements.
