

WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Sanitary and Phytosanitary Measures

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EQUIVALENCE

Submission by Argentina

Introduction

1. Since the purpose of applying the principle of "equivalent measure" instead of "same measure" is to facilitate trade, it is important that we establish, multilaterally, the general guidelines needed to ensure that the process of determination of equivalence does not, in itself, become a disincentive to initiating the procedure.¹ The Decision on the Implementation of Article 4 of the SPS Agreement sets forth, in 14 points, the guidelines that Members are to follow. Point 5 of that Decision states that "[t]he importing Member should accelerate its procedure for determining equivalence in respect of those products which it has historically imported from the exporting Member".

2. This document is an attempt to contribute to the implementation of point 5 of the Decision by developing a general scheme or table containing guidelines for "accelerating" the procedure in the light of certain variables. It merely seeks to take advantage of the experience and knowledge already acquired by the sanitary services in respect of the product or group of products involved. The application of these variables leads to different situations in which the ordinary procedure for determining equivalence could be simplified, depending on the amount of information made available by the trading history.

3. The variables to be considered when two Members reach a decision to initiate negotiations to determine the equivalence of a product or group of products would be:

- The existence or non-existence of mutual trade
- Product risk

Mutual trade - case studies

4. Current trade

This scenario concerns situations in which a product or group of products is being traded between an importing country and an exporting country. The sanitary authorities of the importing country know that the established requirements - both the sanitary requirements and the hygienic requirements relating to processing - have been met. There have been no rejections for sanitary reasons linked to the requirements pre-established and certified by the exporting country.

¹ The objective of this document is to provide a conversion table as a guideline to convert the current procedure for "same measure" into "equivalent measure".

This scenario may or may not warrant the initiation of a procedure for determining equivalence. If so, current trade implies that the product meets the requirements, since it is being imported and marketed. Thus, the recognition that this product or group of products meets the appropriate level of protection of the importing country is the formal recognition of the current practice.

*In this case, the procedure for determining equivalence should be **automatic** - in other words, it should be the formal recognition that the exporting country's sanitary measures comply with the importing country's appropriate level of protection.*

5. New product

- (a) A Member wishes to export a product or group of products for the first time to an importing Member. In this case, the sanitary authorities of the importing country have no knowledge or references concerning the product or group of products offered. Although exportation of the product or group of products to other countries with a similar appropriate level of protection could serve as an important precedent, the fact is that the sanitary authorities of the importing country will have to take all of the necessary precautions to ensure that it is safe.
- (b) A product previously marketed between the parties without giving rise to any conflicts was no longer traded for a period of time, during which the importing or exporting country's sanitary conditions changed.

*In both cases, the procedure for determining equivalence should be **ordinary** - in other words, it should include all of the pre-established steps or stages, limiting the analysis as far as possible to the standards that concern the product.*

6. Trade involving sanitary problems

- (a) The product or group of products marketed during a given period fails to meet the agreed sanitary requirements, and access is therefore suspended.
- (b) The product or group of products currently traded is consistently rejected due to a variety of circumstances.
- (c) The product or group of products concerning which there is an exchange of information with a view to initiating trade has not yet met the requirements in full. In this case, it is assumed that documentation has been submitted, visits have been conducted to the processing plants of the exporting country, negotiations have begun, etc.

*These cases, given that they involve negotiations that are already under way or have already been concluded, warrant an acknowledgement that certain steps or stages have already been completed. A **fast-track** procedure could be appropriate, depending on the case. This involves specifying the conflictual stages remaining to be settled in order to avoid repeating all that has already been done and to be able to focus on the areas of conflict and establish, where possible, deadlines for settling them.*

Product risk

7. This involves identifying the type of product or group of products concerned and the risk level it represents, taking as a basis the rules established by the relevant international reference organizations. Thus, for example, fresh, unprocessed meat with bone, or bovine offal, are not the

same thing as boneless, frozen and packed meat. Nor does processed and sterilized orange juice present the same risk of disease transmission as fresh fruit.

Table for determining which procedure to apply

8. The procedure for determining equivalence will not always be the same. The stages required will depend on the risk involved and the trading history of the parties with respect to the product or group of products. These variables will reveal whether the procedure for the determination of equivalence should be applied in full, or simplified in accordance with the stages already completed.

Types of procedure

Ordinary procedure: The determination of equivalence involves all of the stages established to assess the legislation applicable to the product and the related control by the competent national body with a view to guaranteeing that the product complies with the relevant standards.

Fast-track procedure: The determination of equivalence involves all pending or conflictual matters, but does not revert to elements that have already been the subject of assessment.

Automatic procedure: The determination of equivalence is merely the formal acknowledgement of a practical reality.

TABLE FOR DETERMINING THE APPLICABLE PROCEDURE

TRADING HISTORY						
Risk (**)	Product already traded	New product	Product already traded - Sanitary problems			
			Requirements not met	Rejection for sanitary reasons	Partial determination	Change of sanitary situation
Low	Automatic procedure	Ordinary procedure	***	***	***	***
Medium	Automatic procedure	Ordinary procedure	***	***	***	***
High	Automatic procedure	Ordinary procedure	***	***	***	***

** Categories to be defined

*** Applicable criteria to be defined
