

Committee on Sanitary and Phytosanitary Measures

CLARIFICATION OF PARAGRAPH 5 OF THE DECISION ON EQUIVALENCE

Note by the Secretariat¹

1. Paragraph 5 of the Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "Decision on Equivalence", G/SPS/19) states that "The importing Member should accelerate its procedure for determining equivalence in respect of those products which it has historically imported from the exporting Member."
2. At the time of adoption of this decision, several Members indicated that clarification of Paragraph 5 was required, to ensure its appropriate implementation. This concern was reflected in the Committee's subsequent adoption of a Programme for Further Work on Equivalence (G/SPS/20). This programme foresees the "consideration of draft guidance for accelerated procedures for the recognition of equivalence of products historically traded, on the basis of categorization of trade patterns and risks" at the 7-8 November 2002 meeting of the Committee.
3. Several Members have submitted papers regarding clarification of Paragraph 5, or made oral suggestions at informal and regular meetings, including Argentina (G/SPS/W/116), Australia (G/SPS/GEN/331) and New Zealand (G/SPS/GEN/326).
4. Argentina suggested, in document G/SPS/W/116, that the normal procedure for the recognition of equivalence could be accelerated in the light of certain variables. These concern primarily the experience and knowledge already acquired by services with respect to imported products from the trading partner seeking recognition of equivalence. In situations where a product was being imported without any rejections due to SPS reasons, Argentina suggested that there should be essentially automatic recognition that the exporting country's sanitary measures comply with the importing country's appropriate level of protection. However, in those cases where a Member wishes to export a new product, or wishes to resume exportation of a product after a change in the importing or exporting country's sanitary conditions, the ordinary (non-accelerated) procedure for recognition of equivalence should apply. A third situation identified by Argentina was when existing trade arrangements had been suspended due to failure to meet certain sanitary requirements, or when the initiation of trade in new products was well advanced, but all exchanges and controls had not been completed. Argentina suggested that a fast-track procedure might be appropriate in these cases, to address unresolved issues but to avoid repeating steps already taken.
5. Argentina identified the product risk as a second variable that would need to be taken into consideration, along with that regarding established trade contacts. In this respect, the relative safety or risk of products or groups of products was critical, recognizing that processed food products

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

normally presented considerably lower health risks than raw meat products, or raw horticultural products.

6. Australia noted that conformity with the requirements of an importing country should not be confused with determinations of equivalence. In the first instance, the entry of a product from the exporting country was permitted because it complied with the requirements identified by the importing country. A recognition of equivalence only applied in cases where an exporting country was using means that were different from those normally required by the importing country. Historic trade usually was based on the exporting country complying with the importer's requirements. The exporting country would seek recognition of equivalence only if it wished to export products that met the importers' ALOP using other means. A history of previous trade, however, could facilitate acceptance of the reliability of the competent authority of the exporting country.

7. New Zealand also stressed the importance of the importing country's confidence in the soundness of the exporting country's regulatory system for determination of equivalence. A history of trade provided knowledge about the exporting Member's measures and control systems, which could facilitate the process of reaching a determination of equivalence. New Zealand noted that this was reflected in both the Codex draft guidelines on judgement of equivalence (Alinorm 03/30, Appendix III) and the OIE's draft paper (G/SPS/W/119, section 17).

8. In the discussions on Paragraph 5, a number of Members agreed that the existence of a trading relationship between two Members could facilitate the determination of equivalence of a new measure proposed by the exporting country primarily because of the existence of information regarding an exporting country's infrastructure and regulatory systems, and the historic contacts between the appropriate regulatory officials of an exporting and importing country. The extent to which the determination of equivalence could be accelerated depended on the specific nature of the measure being proposed as "equivalent" by the exporting Member, and the extent to which this measure differed from the measure which historically served as the basis for trade. The nature of the risk associated with the proposed new measure or the product could also be relevant, as suggested by Argentina.

9. As noted above, the important role that this previous relationship can play in the recognition of equivalence is currently recognized by both the Codex and OIE. The current version of the Codex Draft Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems (CX/FICS 02/11/3 of September 2002) includes a Section on General Principles for the Determination of Equivalence.² Paragraph 7 of this section reads as follows:

"Determination of the equivalence of sanitary measures associated with food inspection and certification systems should be based on application of the following principles:

- (j) The importing country should take into account any knowledge it has of the food inspection and certification systems in the exporting country to make the determination as efficiently and quickly as possible."

Section 5 of the draft text addresses "The Context of an Equivalence Determination". Paragraphs 10 and 11 of this section state:

² Governments and international organizations are invited to submit comments on this subject-matter by 30 October 2002. This draft text and the comments submitted will be considered by the next meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) on 2-5 December 2002, in Adelaide, Australia.

10. "The extent of the equivalence determination will depend on the prior experience, knowledge, and confidence that the importing country has regarding the food control measures of the exporting country.
11. "When an importing country has prior experience, knowledge and confidence in food control measures relevant to those being evaluated for equivalence and the countries agree that import requirements are being fully met, e.g. where trade experience exists, determination of the equivalence of sanitary measures may be made without further consideration of those other relevant measures making up the food control system."

The final section of the Codex draft text, Section 8 on Judgement, states that:

20. "Judgement of the equivalence of sanitary measures should take into account:
 - a) experience and knowledge of an exporting country's food inspection and certification systems (see section 5)."

10. Work on recognition of equivalence in animal health matters at the OIE is much less advanced than the Codex work. Nonetheless, the draft paper submitted by the OIE on the Judgement of Equivalence of Sanitary Measures relating to International Trade in Animals and Animal Products recognizes that a history of prior trade between countries is relevant and could facilitate recognition of equivalence. In particular, Section F on "Principles for Judgement of Equivalence" states, in paragraph 17:

"In conjunction with the above considerations, determination of the equivalence of sanitary measures should be based on application of the following principles:

- the importing country should taken into account prior experience with the veterinary administration or other competent authority of the exporting country ... "

11. The IPPC has not yet begun to explicitly address the issue of equivalence. Work on consideration of efficacy of treatments may, however, facilitate the recognition of different treatments as equally effective means of controlling particular plant pests or diseases.

Recommendation

12. It is recommended that the Committee agree that historic trade provides an opportunity for an importing Member to become familiar with the infrastructure and measures of an exporting Member, and to develop confidence in the regulatory procedures of that Member. This information and experience, if directly relevant to the product and measure under consideration, should be taken into account in the recognition of equivalence of measures proposed by the exporting Member. In particular, information already available to the importing Member should not be sought again with respect to procedures to determine the equivalence of measures proposed by the exporting Member.

13. The Committee should note that the importance of this knowledge based on historic trade has been fully recognized in the draft Codex Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems. The Committee should further note that the importance of such prior experience is also recognized in the OIE draft paper on the Judgement of Equivalence of Sanitary Measures relating to International Trade in Animals and Animal Products. The Committee should encourage that further elaboration of specific guidance by these organizations should ensure that such recognition is maintained.

14. The Committee should draw the attention of the Interim Commission on Phytosanitary Measures (ICPM) to its Decision on Equivalence, and to the above clarification with respect to Paragraph 5 of the Decision. The Committee should request that the ICPM take into consideration the Decision and this clarification in its future work on judgement of equivalence with regard to sanitary measures to address plant pests and diseases.
