

Committee on Sanitary and Phytosanitary Measures

CLARIFICATION OF PARAGRAPH 6 OF THE DECISION ON EQUIVALENCE

Note by the Secretariat¹

1. Paragraph 6 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 consideration by an importing Member of a request by an exporting Member for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend on-going imports from that Member of the product in question."

2. When this Decision was adopted, some Members raised the concern that this provision could hinder Members in taking legitimate measures in response to an urgent problem, or in case of non-compliance by the exporting Member with existing requirements.

3. Several Members addressed this concern in oral and written submissions. In particular, Australia noted that it was necessary to avoid the perception of a causative linkage between the submission of a request for recognition of equivalence and taking action to address compliance problems in existing trade. Restrictions on trade had to be justified in accordance with the SPS Agreement.

4. This particular issue has also been addressed in 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). Footnote 3 of the Guidelines states:

"The benefit to an exporting country of application of the principle of equivalence would be offset or negated if a request for an equivalence determination were, by itself, used as a pretext for the disruption of established trade. Such action by an importing country would be contrary to the principles of international trade and in particular in violation of Article 2 of the WTO SPS Agreement."

5. Although the work at the OIE on the recognition of equivalence in animal health matters (G/SPS/W/119) currently does not address this matter explicitly, it does echo the preamble of the Decision on Equivalence in recognizing that the objective of pursuing recognition of equivalence is to enhance trade opportunities. If the mere fact that an exporting Member had initiated a request for recognition of equivalence were to result in the disruption of on-going trade, the underlying objective of trade enhancement would be contradicted.

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.

6. On the other hand, nothing in the Decision on Equivalence or the relevant texts of Codex and OIE indicate that an importing Member's right to take measures necessary to protect health would be impeded by the fact that they were considering a request for recognition of equivalence from an exporting Member.

Recommendation

7. It is recommended that the Committee agree that since a request for recognition of equivalence does not in itself alter the way in which trade is occurring, there is no justification for disruption or suspension of trade. If an importing Member were to disrupt or suspend trade solely because it had received a request for an equivalence determination, it would be in apparent violation of its obligations under the SPS Agreement (e.g. under Article 2).

8. At the same time, a request for recognition of equivalence does not impede the right of an importing Member to take any measure it may decide is necessary to achieve its appropriate level of protection, including in response to an emergency situation. However, if the decision to impose some additional control measure were to coincide with consideration by the same Member of a request for recognition of equivalence, this might lead an exporting Member whose trade is affected to suspect that the two events were linked. To avoid any misinterpretation of this kind, the Committee recommends that the importing Member should give an immediate and comprehensive explanation of the reasons for its action in restricting trade to any other Members affected, and that it should also follow the normal or emergency notification procedures established under the SPS Agreement.

9. The Committee should note that this issue has been addressed also in the draft Codex Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems, and should encourage the maintenance of such a provision in the further elaboration of specific guidance by the Codex.
