

**CLARIFICATION OF PARAGRAPH 5 OF THE DECISION
ON EQUIVALENCE**

Comments by Argentina on the Document Prepared by
the Secretariat (G/SPS/W/121)

Document G/SPS/W/121, prepared by the Secretariat, outlines developments in regard to the above, comments on the presentations made by the various countries on the subject of historical trade and sets out a number of recommendations. Argentina considers that this document has properly incorporated the key positions and arguments put forward by the Members in the meetings of the SPS Committee and that it is of prime importance as a tool for advancing work on the regulation of Article 4 of the SPS Agreement.

Argentina agrees with the recommendations set forth in the document, and especially the recommendation that the international reference organizations be encouraged to initiate, complete or approve work aimed at the effective implementation of equivalence, having special regard to historical trade information.

Without prejudice to the above, Argentina proposes the inclusion of recommendations relating to the work proposed and follow-up on the issue of equivalence in the SPS Committee, based on the considerations outlined below.

1. Paragraph 5 of Decision G/SPS/19 on the Implementation of Article 4 of the SPS Agreement 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. Several Members having indicated that paragraph 5 should be clarified in order to ensure the effective implementation of simplified procedures, the Programme for Further Work adopted in Decision G/SPS/20 foresees the "consideration of draft guidance for accelerated procedures for the recognition of equivalence of products historically traded, on the basis of categorization of trade patterns and risks" at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.

The "consideration and, if possible, adoption of guidance for accelerated procedures for the recognition of equivalence of products historically traded" is scheduled for the first meeting in 2003.

3. Paragraph 5 of Decision 19 contains a guideline or recommendation but does not specify the elements needed to conduct bilateral negotiations on equivalence according to agreed parameters.
4. The rules developed by the relevant international organizations will provide extremely important technical references for addressing the sanitary or phytosanitary aspects of equivalence of each type of product (food safety, animal or plant health); but although they highlight the need to lay special emphasis on historical trade information, they do not constitute the "guidance for simplifying procedures" requested by the developing countries and incorporated in the Committee's Programme.

5. The first thing that an exporting country needs to know in assessing whether or not to engage in an equivalence determination process is the procedure to be followed in making such a determination. This will enable it to assess the time and costs involved and hence to decide whether or not to initiate the process.

If country X exports potatoes under the measure in force in destination country Z and wishes to export the goods under its own measure, or if country X has difficulty in securing access for its potatoes under the measure in force in destination country Z and wishes to resolve the problem by obtaining recognition of the equivalence of its own measure, it needs to know what to demonstrate to the importer so that the latter can determine the equivalence of that measure. This will enable country X to assess the time and costs involved and hence to decide whether or not to initiate the process.

6. It is also important to ensure legal predictability. Although the guidelines laid down in the Programme will provide general guidance, parameters need to be established in respect of requirements by the importing country, depending on the information available and the type of product and product risk involved.

Otherwise, equivalence is not an advisable option for the developing and least-developed countries. They should not initiate an equivalence procedure if there are no guidelines for:

- Determining the procedure required by the importer;
- assessing whether the procedure proposed by the importer is appropriate;
- assessing the cost-benefit aspect of engaging in such a procedure.

7. The international reference organizations and the task they have undertaken will therefore provide the technical framework needed to supplement the "guidance for accelerated procedures for the recognition of equivalence of products historically traded", but this will not in and of itself respond to the developing countries' concerns regarding the implementation of Article 4 of the SPS Agreement.

PROPOSALS

- To incorporate, in the set of recommendations already made, a recommendation, to be included as Recommendation 2, reaffirming the need for the Committee to approve "guidance for accelerated procedures for the recognition of equivalence of products historically traded", as foreseen in the Programme, within the scheduled time-frame.
- To incorporate, as Recommendation 4, a paragraph providing for follow-up and analysis, in the SPS Committee, of the guidelines on the judgement of equivalence developed by the international reference organizations currently referred to under point 2.
- To incorporate a final Recommendation 5 providing for consideration of any notifications received regarding agreements recognizing equivalence, as foreseen in the Programme, to enable the Committee to examine the question of practical implementation of Article 4.