

EQUIVALENCE: CONSIDERATION OF ARTICLE 4 OF THE SPS AGREEMENT

Summary of the Discussions of the SPS Committee

Report by the Chairman

1. At its Special Session on 18 October 2000, the General Council referred to the relevant WTO bodies a number of implementation-related issues. Among these, the General Council requested the SPS Committee "to examine the concerns of developing countries regarding the equivalence of SPS measures and to come up with concrete options as to how to deal with them". I was requested, as the Chairman of the SPS Committee, to report on progress on the matter to the General Council before its Special Session on 14-15 December 2000.

2. Prior to the request of the General Council, the SPS Committee had already embarked on an examination of the concerns of developing countries with respect to implementation of the SPS Agreement. The Committee had in particular agreed to focus first on the issue of special and differential treatment as well as on the issue of equivalence and the implementation of Article 4 of the SPS Agreement. At its meeting of 21-22 June 2000, the SPS Committee had agreed that an informal meeting would allow for in-depth and freer discussion of the issues, and that observer organizations could participate in the informal meeting. Members were invited to submit papers or non-papers on the subject of special and differential treatment, and requested that Members bring to the Committee's attention equivalence agreements reached with trading partners and specific examples of problems encountered in seeking equivalence agreements. The observer organizations had also been requested to provide any relevant information regarding their work on equivalence.

3. The SPS Committee held an informal meeting on equivalence (Article 4) on 7 November 2000, and also considered the issue at its regular meeting on 8-9 November 2000. The informal meeting on Article 4 provided an opportunity for a useful discussion of equivalence, and the difficulties many Members face in making use of this provision. There was a good exchange of views and different perspectives were identified.

4. The United States introduced a paper (G/SPS/GEN/212) which described the US experience implementing Article 4. The representative of the FAO/WHO Codex Alimentarius Commission (Codex) presented two papers relevant to Article 4. These papers help with the comprehension of the importance and complexity of the equivalence issue. The Codex guidelines on equivalence agreements for food safety control, inspection and certification systems identify what types of information should be evaluated in reaching such agreements for food safety systems (G/SPS/GEN/210). Work on the judgement of equivalence is at an early step in the Codex process (G/SPS/GEN/211).

5. Several developing countries stressed that instead of recognizing the equivalence of developing country SPS measures, importing countries often required "sameness", i.e., that the developing country demonstrate that its SPS measure was entirely similar to that of the importing

country. The developing countries felt this to be a major impediment to entering into equivalence agreements.

6. Among the interesting information and ideas brought out during the discussions was that there are a variety of ways to apply the equivalence provisions. These range from (i) formal agreements recognizing the equivalence of SPS systems; to (ii) agreements of equivalence for specific products; to (iii) acceptance, on an ad hoc basis, of the equivalence of specific technical aspects of certain SPS measures.

7. Some delegates noted that formal equivalence determinations and/or agreements at the systems level are few, and are resource intensive and time-consuming to negotiate. At the same time, delegates noted that ad hoc acceptance of the equivalence of specific products, or of the equivalence of certain technical aspects related to SPS measures, was very commonplace. This acceptance of equivalence is often at the technical level, and is not necessarily reflected in any formal bilateral agreement.

8. Some delegates were concerned that large importing countries might think that the administrative burdens of equivalence agreements were not justified when the anticipated trade benefits were small. However, this improved access could be very important to the exporting country. It was suggested that Members should explore practical ways to reduce the administrative burden and thus facilitate equivalence agreements. It was also pointed out that both the importing and the exporting country face administrative burdens associated with formal equivalence agreements.

9. The importance of technical assistance in the recognition of equivalence of SPS measures was emphasized by several delegates.

10. It was also suggested that Members should actively participate in the on-going work in the Codex on the issue of judgement of equivalence. This issue will be considered by the Codex Committee on Food Inspection and Certification Systems (CCFICs) at its meeting in mid-December 2000.

11. Although neither the Office internationale des epizooties (OIE) nor the International Plant Protection Convention (IPPC) have yet addressed the issue of system-wide equivalence agreements, both are in the process of carefully examining the work of the Codex in this regard. For animal health and plant protection, ad hoc acceptance of equivalence of specific products or of certain technical SPS aspects is widespread.

12. The SPS Committee agreed to continue the discussions of this issue at an informal meeting to be held immediately before the next regular meeting of the SPS Committee (tentatively scheduled for 14-15 March 2001), as well as keep the issue on the agenda for its next regular meeting. The SPS Committee also agreed that observer organizations (and governments) would again be invited to contribute and participate in the informal discussions; their input into the debate and information on their activities in this regard is important.

13. Members have been requested to put on paper their experiences, positive or negative as the case may be, in seeking equivalence. This should include all types of equivalence recognition, whether formal agreements at the systems level, informal agreements on a product basis, or ad hoc acceptance of specific technical aspects of certain SPS measures. More specifically, Members could provide the following:

(a) for any positive experiences where equivalence has been recognized, whether on a systems, product or ad hoc basis, information on the steps taken and the factors considered in reaching this recognition;

(b) for negative experiences, where equivalence was sought but not recognized, information on the difficulties encountered and the reasons why equivalence was not recognized; and

(c) any practical suggestions based on these experiences, both positive and negative, that could facilitate the recognition of equivalence for other Members in the future. In particular, Members are invited to submit practical, concrete suggestions on how to make it easier for developing countries to get recognition of equivalence for their export products, including any suggestions how the administrative burden could be reduced.

All Members are encouraged to provide such information by **16 February 2001** at the latest.
