

Committee on Sanitary and Phytosanitary Measures

EQUIVALENCE: CONSIDERATION OF ARTICLE 4 OF THE SPS AGREEMENT

Summary of Informal Discussions on Equivalence

Second Report by the Chairman

1. On 13 March 2001, the SPS Committee held a second informal meeting on the issue of equivalence in the context of developing country concerns. The Committee had first agreed to informal discussions on this issue at its meeting of June 2000. Subsequently, the Committee received the General Council's request that it "examine the concerns of developing countries regarding the equivalence of sanitary and phytosanitary measures and come up with concrete options as to how to deal with them".
2. In concluding the first informal meeting on equivalence, in November 2000, Members were requested to provide specific information regarding their experiences – both positive and negative – in seeking recognition of equivalence. For the informal meeting on 13 March, such information was provided by New Zealand (G/SPS/GEN/232), Argentina (non-paper) and Fiji (G/SPS/GEN/238). The United States had previously provided information for the November meeting (G/SPS/GEN/212) and, in the context of the 1998 review of the SPS Agreement, the European Communities tabled a paper which is also relevant to equivalence (G/SPS/GEN/101). Furthermore, India, Thailand and Australia provided information orally on experiences they have had in this regard.
3. Several delegations emphasized that the concept of equivalence is not about "duplication" or "sameness" of measures. It is a concept that relates to whether a sanitary or phytosanitary measure achieves the appropriate level of protection of the importing country. In other words, what is important is that the sanitary or phytosanitary measure delivers the appropriate level of protection sought by the importing country, not the specific measure used.
4. In the Committee's discussions in November 2000, Members recognized that there were several different levels of equivalence, which ranged from (i) formal agreements recognizing the equivalence of sanitary and phytosanitary 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 sanitary and phytosanitary measures. In the March 2001 discussions, it was also suggested that equivalence could be considered for either: (i) inspection and control systems; (ii) processing techniques; and (iii) for product standards.
5. New Zealand's paper gave examples of recognition of equivalence at a very specific, or "micro" level, primarily regarding the equivalence of particular sanitary or phytosanitary measures for a specific pest vector. Argentina addressed equivalency more generally and emphasized in its paper the need for coordination and a pragmatic approach to the negotiation of equivalence agreements. Argentina noted, however, that there were differences in the approaches generally used between the food safety, plant and animal health sectors, and indicated that it would provide more information regarding its experiences in specific areas. Australia reported on its recognition of the equivalence of

Swiss production methods for certain hard cheeses with its general pasteurization requirement. Thailand reported on an agreement regarding control and inspection procedures for fish with Canada.

6. It was stressed that, regardless of whether the equivalence negotiations concerned a specific product and specific treatment or a broad-reaching formal agreement, there are responsibilities for the importer as well as the exporter. For example, the importing country must be clear as to how its requirements relate to its desired level of health protection. It is important that the exporting country provides appropriate, science-based technical information to support its application for recognition of equivalence. This enables the importing country to decide whether the exporting country's alternative measures provide the adequate level of protection against a given risk.

7. Delegations stressed that the purpose of equivalence is to facilitate trade. Recognition of equivalence should enhance developing countries access to export markets, including those of developed countries. The use of the concept of equivalence enhances trade by allowing an exporting country to use different measures to achieve the importing countries appropriate level of protection. Equivalence does not replace the need for the development of international standards and should not be used as an instrument for discrimination, or result in additional barriers to trade. In this regard, concern was expressed about the time, resources and information needed to reach an agreement. International guidelines for systematic application of the principle would be useful and the Committee noted the progress which has been made by the Codex Alimentarius Commission in this respect.

8. In terms of the communication and transparency between the parties negotiating equivalence or equivalence agreements, several delegations emphasized the importance of trust-based dialogue. This is critical not only for the negotiation of equivalence or equivalence agreements but also for their maintenance over time.

9. In respect of access to information, it was pointed out that all Members' Enquiry Points had the obligation to respond to questions regarding for instance, membership and participation in bilateral and multilateral agreements and arrangements within the scope of the SPS Agreement. In other words, it was within the scope of Enquiry Points to provide information on recognition of equivalence or equivalence agreements, and to provide copies of all relevant documents. Members were nevertheless encouraged to report, to the extent possible, on the completion of bilateral equivalence agreements in the SPS Committee.

10. Members have been requested to provide additional information on any experiences they had on the recognition of equivalence. The Committee agreed to give further consideration to this issue at its next meeting, and particularly to focus on concrete options for dealing with the concerns of developing countries. It was suggested that papers submitted by Members was a good basis for more focussed discussions by the Committee, including the identification of the challenges faced by these countries.

11. On the basis of the discussions held to date, the Committee endorsed the following conclusions:

- (i) While noting the concept of equivalence is not about "duplication" or "sameness of measures", the Committee recognized that equivalence may take many different forms, ranging from the acceptance of the equivalence of particular sanitary and phytosanitary measures to protect against specific risks in a specific product, to formal systems-wide or broad-ranging agreements on equivalence. The Committee also recognized that the more broad-ranging the equivalence agreement, the more difficult it may be to conclude.

- (ii) The provision and exchange of data and information is critical for the recognition of equivalence. Therefore, Members reaffirm their commitment, in accordance with Article 7 and Annex B, paragraph 3, of the SPS Agreement, that their SPS Enquiry Point will provide requested information on recognition of equivalence, as well as on their participation in any bilateral or multilateral equivalence agreements, including the texts of such agreements.
 - (iii) To further enhance transparency, Members will inform the SPS Committee of their recognition of the equivalence of the sanitary and phytosanitary measures of other Members.
 - (iv) The Committee agreed to continue its work with regard to equivalence to develop concrete guidance, based on contributions from Members and in close cooperation with the relevant standard-setting bodies, that will enhance the opportunity for all Members, and in particular developing country Members, to benefit from the recognition of equivalence, including through equivalence agreements.
-