
General Council

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**IMPLEMENTATION OF ARTICLE 4 OF THE AGREEMENT ON THE APPLICATION OF
SANITARY AND PHYTOSANITARY MEASURES**

Report of the Chairman of the Committee on Sanitary and Phytosanitary Measures
to the Chairman of the General Council

The following communication, dated 2 October 2001, has been received by the Chairman of the General Council from the Chairman of the Committee Sanitary and Phytosanitary Measures.

You will recall that in October 2000, the General Council had 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". This request reinforced the previous decision of the SPS Committee to examine this issue in light of developing country concerns.

The SPS Committee examined the issue of equivalence at formal and informal meetings in November 2000, March 2001 and July 2001, taking into account information provided by Members regarding their own experiences with recognition of equivalence and by the Codex Alimentarius Commission. Following each meeting of the Committee, I submitted a report to the General Council (G/L/423, G/L/445 and G/L/455).

In light of the request by the Chairman of the General Council, on 25 July 2001, that the SPS Committee provide concrete recommendations to the General Council by 30 September 2001, a special meeting of the SPS Committee was held on 18-19 September 2001. At this meeting, the Committee held a substantive, constructive discussion on a draft decision regarding equivalence. On 19 September, the Committee reached agreement, ad referendum, on the attached draft decision.¹ I regret to inform you that four Members advised the Secretariat, prior to the 25 September deadline agreed by the Committee, that they objected to the adoption of this decision. The objection concerned inclusion of one sentence in the first paragraph of the decision, namely "An evaluation of the product-related infrastructure and programmes within which the measure is being applied may also be necessary."

On 26 September, I consulted informally with a number of Members, including the four who raised objections. Several other Members indicated that they had been prepared to accept certain provisions in order to reach a decision, however if the text were to be reopened for further discussion, they also would seek additional changes. Three of the four Members which had presented objections stated informally that they would not block the adoption of the decision as agreed ad referendum. Unfortunately, one Member confirmed to me on 27 September that they were not able to join in the consensus on the decision. Subsequent consultations have given me reason to believe that it may be possible to reach a consensus on this issue within the coming days. I will inform you immediately of any conclusion.

I request that you bring this information to the attention of the General Council.

¹ Reproduced as Annex I.

ANNEX I

Draft Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures

The Committee on Sanitary and Phytosanitary Measures,

Having regard to paragraph 1 of Article 12 of the Agreement on the Application of Sanitary and Phytosanitary Measures;

In response to the request from the General Council that the Committee examine the concerns of developing country Members regarding the equivalence of sanitary or phytosanitary measures and develop concrete options as to how to deal with them;

Reaffirming the right of Members to establish sanitary and phytosanitary measures necessary to ensure the protection of human, animal and plant life or health and the protection of their territory from other damage caused by the entry, establishment or spread of pests, in accordance with the Agreement on the Application of Sanitary and Phytosanitary Measures;

Desiring to make operational the provisions of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures;

Noting that equivalence of sanitary or phytosanitary measures does not require duplication or sameness of measures, but the acceptance of alternative measures that meet an importing Member's appropriate level of sanitary or phytosanitary protection;

Recognizing that equivalence can be applied between all Members, irrespective of their level of development;

Noting that Members have faced difficulties applying the provisions of Article 4 recognizing the equivalence of sanitary and phytosanitary measures;

Taking into account the specific concerns raised by developing country Members, and particularly the least developed among them, regarding their difficulties in having the equivalence of their sanitary or phytosanitary measures accepted by importing Members;

Recognizing the importance of minimizing possible negative effects of sanitary or phytosanitary measures on trade and of improving market access opportunities, particularly for products of interest to developing country Members;

Recognizing that transparency, exchange of information and confidence-building by both the importing and exporting Member are essential to achieving an agreement on equivalence;

Recognizing that there may be other less resource-intensive and time-consuming means for Members to enhance trade opportunities;

Decides as follows:

1. Equivalence can be accepted for a specific measure or measures related to a certain product or categories of products, or on a systems-wide basis. Members shall, when so requested, seek to accept the equivalence of a measure related to a certain product or category of products. An evaluation of the product-related infrastructure and programmes within which the measure is being applied may also be necessary. Members may further, where necessary and appropriate, seek more comprehensive and

broad-ranging agreements on equivalence. The acceptance of the equivalence of a measure related to a single product may not require the development of a systems-wide equivalence agreement.

2. In the context of facilitating the implementation of Article 4, on request of the exporting Member, the importing Member should explain the objective and rationale of the sanitary or phytosanitary measure and identify clearly the risks that the relevant measure is intended to address. The importing Member should indicate the appropriate level of protection which its sanitary or phytosanitary measure is designed to achieve.² The explanation should be accompanied by a copy of the risk assessment on which the sanitary or phytosanitary measure is based or a technical justification based on a relevant international standard, guideline or recommendation. The importing Member should also provide any additional information which may assist the exporting Member to provide an objective demonstration of the equivalence of its own measure.
3. An importing Member shall respond in a timely manner to any request from an exporting Member for consideration of the equivalence of its measures, normally within a six-month period of time.
4. The exporting Member shall provide appropriate science-based and technical information to support its objective demonstration that its measure achieves the appropriate level of protection identified by the importing Member. This information may include, *inter alia*, reference to relevant international standards, or to relevant risk assessments undertaken by the importing Member or by another Member. In addition, the exporting Member shall provide reasonable access, upon request, to the importing Member for inspection, testing and other relevant procedures for the recognition of equivalence.
5. The importing Member should accelerate its procedure for determining equivalence in respect of those products which it has historically imported from the exporting Member.
6. 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.
7. When considering a request for recognition of equivalence, the importing Member should analyze the science-based and technical information provided by the exporting Member on its sanitary or phytosanitary measures with a view to determining whether these measures achieve the level of protection provided by its own relevant sanitary or phytosanitary measures.
8. In accordance with Article 9 of the Agreement on the Application of Sanitary and Phytosanitary Measures, a Member shall give full consideration to requests by another Member, especially a developing country Member, for appropriate technical assistance to facilitate the implementation of Article 4. This assistance may, *inter alia*, be to help an exporting Member identify and implement measures which can be recognized as equivalent, or to otherwise enhance market access opportunities. Such assistance may also be with regard to the development and provision of the appropriate science-based and technical information referred to in paragraph 4, above.
9. Members should actively participate in the ongoing work in the Codex Alimentarius Commission on the issue of equivalence, and in any work related to equivalence undertaken by the Office International des Epizooties and in the framework of the International Plant Protection Convention. Bearing in mind the difficulties faced by developing country Members to participate in the work of these bodies, Members should consider providing assistance to facilitate their participation.

² In doing so, Members should take into account the *Guidelines to Further the Practical Implementation of Article 5.5* adopted by the Committee on Sanitary and Phytosanitary Measures at its meeting of 21-22 June 2000 (document G/SPS/15, dated 18 July 2000).

10. The Committee on Sanitary and Phytosanitary Measures recognizes the urgency for the development of guidance on the judgement of equivalence and shall formally encourage the Codex Alimentarius Commission to complete its work with regard to equivalence as expeditiously as possible. The Committee on Sanitary and Phytosanitary Measures shall also formally encourage the Office International des Epizooties and the Interim Commission on Phytosanitary Measures to elaborate guidelines, as appropriate, on equivalence of sanitary and phytosanitary measures and equivalence agreements in the animal health and plant protection areas. The Codex Alimentarius Commission, the Office International des Epizooties and the Interim Commission on Phytosanitary Measures shall be invited to keep the Committee on Sanitary and Phytosanitary Measures regularly informed regarding their activities relating to equivalence.

11. The Committee on Sanitary and Phytosanitary Measures shall revise its recommended notification procedures to provide for the notification of the conclusion of agreements between Members which recognize the equivalence of sanitary and phytosanitary measures.³ Furthermore, the procedures shall reinforce the existing obligation in paragraph 3(d) of Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures for national Enquiry Points to provide information, upon request, on the participation in any bilateral or multilateral equivalence agreements of the Member concerned.

12. Members should regularly provide to the Committee on Sanitary and Phytosanitary Measures information on their experience regarding the implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures. In particular, Members are encouraged to inform the Committee on Sanitary and Phytosanitary Measures of the successful conclusion of any bilateral equivalence agreement or arrangement. The Committee on Sanitary and Phytosanitary Measures shall consider establishing a standing agenda item for its regular meetings for this purpose.

13. The Committee on Sanitary and Phytosanitary Measures shall develop a specific programme to further the implementation of Article 4, with particular consideration of the problems encountered by developing country Members. In this respect, the Committee on Sanitary and Phytosanitary Measures shall review this decision in light of the relevant work undertaken by the Codex Alimentarius Commission, the Office International des Epizooties and the Interim Commission on Phytosanitary Measures, as well as the experience of Members.

14. The Committee on Sanitary and Phytosanitary Measures requests that the General Council take note of this decision.

³ G/SPS/7/Rev.1