

Committee on Sanitary and Phytosanitary Measures

**SUMMARY OF THE SPECIAL MEETING ON EQUIVALENCE
HELD ON 18-19 SEPTEMBER 2001**

Note by the Secretariat

1. The Chairman informed Members that on 25 July 2001, he had received a request by the Chairman of the General Council that the SPS Committee provide concrete recommendations to the General Council regarding the issue of the implementation of Article 4 by 30 September 2001 at the latest. The purpose of the special meeting was therefore to agree on these concrete recommendations, which would then be submitted to the General Council for endorsement and any further action if necessary.
2. He recalled that at its meeting of June 2000, the Committee had decided to begin to examine Article 4 on equivalence, as part of its consideration of concerns raised by developing countries. In October 2000, 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". The SPS Committee examined the issue of equivalence at informal and formal meetings in November 2000, March and July 2001. Following each meeting of the Committee, the Chairman had submitted a report to the General Council.
3. The Chairman further noted that Members had submitted papers and non-papers regarding their own experiences with recognition of equivalence and suggestions for appropriate guidance. Submissions had also been received from the relevant international standard-setting organizations, and in particular the Codex, on the work which they have undertaken with respect to equivalence.
4. He recalled that based on the submissions and discussions in the Committee, the Secretariat had prepared a working document which summarized the information provided by Members and suggested possible approaches for addressing the specific concerns identified by developing countries (G/SPS/W/111). This document had been on the agenda of the 10-11 July 2001 meeting of the Committee. Although the Committee did not have sufficient time for an exhaustive examination of the document, it had agreed that the possible approaches identified in the Secretariat document could provide the basis for the development of concrete options for dealing with the concerns of developing countries, as well as of other Members. Members had subsequently been invited to submit specific comments regarding these "possible approaches" and the development of concrete options, before the end of August. Several Members had submitted comments. The Secretariat had prepared a draft decision taking those comments into account. The draft decision had been circulated to Members in advance of the special meeting.
5. The representative of the European Communities welcomed the contributions of developing countries to the development of the draft decision on equivalence. He indicated that the European Communities supported the development of guidelines and stressed the need to take into account the work of the three international standard-setting bodies in the development of concrete options. The representative of the United States underlined that equivalence guidelines needed to reflect Members' experiences in this regard. He suggested that further discussions, especially with developing

countries, should be pursued in future Committee meetings. The representative of Argentina noted that there was an urgent need for a more operational approach. For this purpose words like "should" or "could", in the draft decision should be replaced by "shall".

6. The Chairman adjourned the formal meeting and resumed in informal mode to allow for further discussions of the draft decision.

7. The formal meeting was reconvened on 19 September 2001. The Chairman noted that there was a quasi consensus for the adoption of the decision as amended following the informal discussions and suggested that it be adopted by consensus on an ad referendum basis. Members opposing the adoption of the decision should inform the Secretariat by 25 September 2001, close of business. The decision, as adopted ad referendum on 19 September, is attached.

8. The representative of the United States requested that at its next meetings the Committee give priority to the development of a specific work programme to further the implementation of Article 4 , as provided for in paragraph 13 of the decision.

**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.¹ 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

¹ 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).

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.

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.² 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.

² G/SPS/7/Rev.1