

1 ARTICLE 4 OF THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES1

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1 ARTICLE 4 OF THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES

1.1 Text of Article 4

Article 4

Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

1.2 Decision on equivalence

1.2.1 General

1. At its meeting of 26 October 2001, the Committee on Sanitary and Phytosanitary Measures (SPS Committee) adopted a Decision on the Implementation of Article 4 ("Decision on Equivalence")¹, which was subsequently clarified and/or revised on 15 November 2002², 15 July 2003³, 26 March 2004⁴, 2 April 2004⁵, and 23 July 2004.⁶ The revision provided, *inter alia*, clarifications of paragraphs 5, 6, and 7 of the Decision, as foreseen in the Programme for Further

¹ [G/SPS/19](#).

² [G/SPS/19/Add.1](#).

³ [G/SPS/19/Add.2](#).

⁴ [G/SPS/19/Add.3](#).

⁵ [G/SPS/19/Rev.1](#).

⁶ [G/SPS/19/Rev.2](#).

Work adopted by the SPS Committee in March 2002.⁷ The Committee also adopted a procedure and format for the notification of recognition of equivalence.⁸

1.2.2 Concept of equivalence

2. The preamble of the Decision on Equivalence notes that equivalence requires "acceptance of alternative measures that meet an importing Member's appropriate level of sanitary or phytosanitary protection", but not duplication or "sameness" of measures. Paragraph 1 of the Decision on Equivalence provides:

"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.⁹ 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."¹⁰

1.2.3 Explanation of sanitary and phytosanitary measures taken by importing Member

3. In order to facilitate the implementation of the provisions of Article 4 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the Decision on Equivalence describes the elements to be included in an explanation of the sanitary and phytosanitary measures (SPS measures) taken by an importing Member, when so requested by an exporting Member:

- (a) 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.
- (b) The importing Member should indicate the appropriate level of protection which its sanitary or phytosanitary measure is designed to achieve.¹¹
- (c) 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.
- (d) 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.¹²

1.2.4 Procedure for the recognition of equivalence

1.2.4.1 General

4. The Decision on Equivalence provides for a number of requirements and recommendations regarding the procedure to be followed for the recognition of equivalence:

"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.

⁷ [G/SPS/20](#).

⁸ [G/SPS/7/Rev.2/Add.1](#), incorporated in [G/SPS/7/Rev.4](#), paras. 2.40-2.43.

⁹ Product-related infrastructure and programmes is in reference to testing, inspection and other relevant requirements specific to product safety.

¹⁰ [G/SPS/19/Rev.2](#).

¹¹ 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).

¹² [G/SPS/19/Rev.2](#).

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.

...

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."¹³

1.2.4.2 Accelerated procedure

5. Paragraph 5 of the Decision on Equivalence provides that "[t]he importing Member should accelerate its procedure for determining equivalence in respect of those products which it has historically imported from the exporting Member." In the Decision, the SPS Committee notes that the importance of knowledge based on historic trade reasons has been fully recognized by other international organizations and international agencies:

"This information and experience, if directly relevant to the product and measure under consideration, should be taken into account in the recognition of equivalence of measures proposed by the exporting Member. In particular, information already available to the importing Member should not be sought again with respect to procedures to determine the equivalence of measures proposed by the exporting Member."¹⁴

1.2.4.3 Duty not to interrupt or suspend imports

6. Paragraph 6 of the Decision on Equivalence establishes that "a request by an exporting Member for recognition of the equivalence of its measures with regard to a specific product [by an importing Member] shall not be in itself a reason to disrupt or suspend on-going imports from that Member of the product in question". The SPS Committee clarifies paragraph 6 of the Decision on Equivalence as follows:

"[S]ince a request for recognition of equivalence does not in itself alter the way in which trade is occurring, there is no justification for disruption or suspension of trade. If an importing Member were to disrupt or suspend trade solely because it had received a request for an equivalence determination, it would be in apparent violation of its obligations under the *SPS Agreement* (e.g. under Article 2)."¹⁵

7. Also in relation to paragraph 6, the Decision on Equivalence provides that a request for recognition of equivalence does not preclude an importing Member from taking measures necessary to achieve the appropriate level of protection:

"[A] request for recognition of equivalence does not impede the right of an importing Member to take any measure it may decide is necessary to achieve its appropriate level of protection, including in response to an emergency situation. However, if the decision to impose some additional control measure were to coincide with consideration by the same Member of a request for recognition of equivalence, this might lead an exporting Member whose trade is affected to suspect that the two events were linked. To avoid any misinterpretation of this kind, the Committee recommends that the importing Member should give an immediate and comprehensive explanation of the reasons for its action in restricting trade to any other

¹³ [G/SPS/19/Rev.2](#), paras. 1-4.

¹⁴ [G/SPS/19/Rev.2](#), para. 5.

¹⁵ [G/SPS/19/Rev.2](#), para. 6.

Members affected, and that it should also follow the normal or emergency notification procedures established under the *SPS Agreement*."¹⁶

1.2.4.4 Comparison of level of protection

8. Paragraph 7 of the Decision on Equivalence provides that Members should analyse the science-based and technical information provided by the exporting Member on its measures with a view to determining whether these measures achieve the level of protection provided by its own relevant sanitary or phytosanitary measure. The SPS Committee noted, in this regard, that conscientious implementation of the Guidelines to Further the Practical Implementation of Article 5.5 (G/SPS/15) will assist Members in determining equivalence. The Committee suggests that Members consider the approach of the Codex Alimentarius Commission of establishing an objective basis for comparison or the similar approach of the World Organisation for Animal Health when determining the equivalence of sanitary measures, and requests that the Interim Commission on Phytosanitary Measures take into consideration the Decision on Equivalence in its future work on judgement of equivalence.

9. Furthermore, the SPS Committee agrees that:

"[W]here the objective basis for comparison, or a similar+ approach established by a relevant international organization, demonstrates that the level of protection achieved by the importing Member's sanitary or phytosanitary measure differs from its appropriate level of protection, the importing Member should resolve this difference independently of the procedure for determination of equivalence."¹⁷

1.2.5 Technical assistance

10. Paragraph 8 of the Decision on Equivalence provides further that, in line with Article 9 of the SPS Agreement, Members shall give full consideration to requests for appropriate technical assistance to facilitate the implementation of Article 4, especially when those requests come from developing countries:

"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."¹⁸

1.2.6 International cooperation outside the WTO

11. In order to improve international cooperation in this sphere outside the WTO, paragraph 9 of the Decision on Equivalence advises active participation of Members in the ongoing work in the Codex Alimentarius Commission, in any work related to equivalence undertaken by the World Organisation for Animal Health, and in the framework of the International Plant Protection Convention.

12. Paragraph 10 of the Decision on Equivalence outlines a number of actions to be taken by the SPS Committee in this regard:

"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 World Organization for Animal Health and the Interim Commission

¹⁶ [G/SPS/19/Rev.2](#), para. 6.

¹⁷ [G/SPS/19/Rev.2](#), para. 7.

¹⁸ [G/SPS/19/Rev.2](#), para. 8.

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 World Organization for Animal Health 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."¹⁹

1.2.7 Notification

13. In accordance with paragraph 11 of the Decision on Equivalence, the SPS Committee revised its recommended notification procedures to provide for the notification of the conclusion of agreements between Members which recognize the equivalence of SPS measures.²⁰

14. In accordance with paragraph 12 of the Decision on Equivalence, Members should regularly inform the SPS Committee of their experiences concerning the implementation of Article 4. In particular, the Decision encourages Members to inform the SPS Committee of the successful conclusion of any bilateral equivalence agreement.²¹

1.3 Specific programme for the further implementation of Article 4 of the SPS Agreement

15. Paragraph 13 of the initial Decision on Equivalence asks the SPS Committee to develop a specific programme to further the implementation of Article 4 of the SPS Agreement, paying particular attention to the problems encountered by developing country Members.²² At the Doha Ministerial Conference, Members also instructed the SPS Committee to develop the same specific programme.²³ At its meeting of 21 March 2002, the SPS Committee adopted a specific programme for the further implementation of Article 4.²⁴ The programme established the timetable and the agendas of the meetings for the discussion of the Decision on Equivalence, and resulted in the subsequent revisions of the Decision.

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¹⁹ [G/SPS/19/Rev.2](#), paras. 9 and 10.

²⁰ [G/SPS/19/Rev.2](#), para. 11; and [G/SPS/7/Rev.2/Add.1](#), incorporated in [G/SPS/7/Rev.5](#), paras. 2.40-2.43.

²¹ [G/SPS/19/Rev.2](#), para. 12.

²² [G/SPS/19/Rev.2](#), para. 13.

²³ [WT/MIN\(01\)/17](#), para. 3.3.

²⁴ [G/SPS/20](#).