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SPS Thematic Session on Equivalence (part I) 30 October 2018



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Equivalence in the SPS Agreement

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Content

1. The SPS Agreement and equivalence
2. The SPS Committee and equivalence
3. Transparency and equivalence
4. Dispute Settlement and equivalence



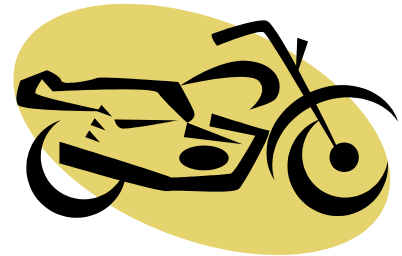
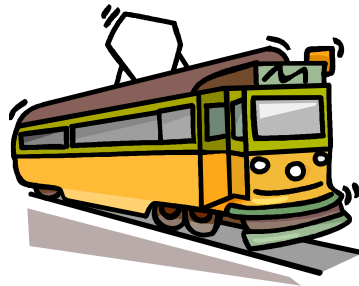
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THE SPS AGREEMENT AND EQUIVALENCE



What is Equivalence?

- Legal terms - Article 4
- In practice – ?

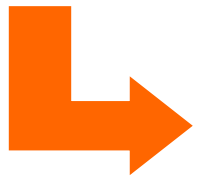


What is Equivalence?

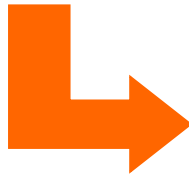
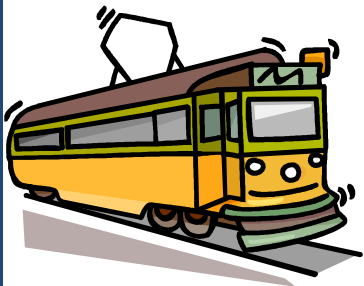
Article 4 – SPS Agreement



If the exporting country **objectively demonstrates** that its measures achieve the ALOP of the importing country



Members shall



accept SPS measures of other Members as **equivalent**





What is Equivalence?

Article 4 – SPS Agreement



Equivalence – in practice



- How to determine if another measure/ process/ product is equally safe?
 - *Is aging equivalent to pasteurization re: cheese safety?*
 - *Can cold treatment replace fumigation?*
 - *Can vaccination ensure disease freedom?*

- What is the ALOP (acceptable level of risk)?

The level of protection deemed appropriate by the Member establishing SPS measure (Annex A, para. 5)



SPS Committee

Guidelines/Recommendations

- The SPS Committee has developed guidance for the implementation of provisions as follows:



- Decision on **Equivalence** (G/SPS/19/Rev.2)
- Guidelines on **Consistency** (G/SPS/15)
- Guidelines on **Regionalization** (G/SPS/48)
- Recommended procedures on **transparency** (G/SPS/7/Rev.4)
- Procedure to enhance transparency of **S&D Treatment** in Favour of Developing Country Members (G/SPS/33/Rev.1)
- Procedure to encourage and facilitate **ad hoc consultations** (G/SPS/61)
- Catalogue of Instruments available to WTO Members to **Manage SPS Issues** (G/SPS/63)



Equivalence – Guidelines

Decision on the Implementation of Article 4 of the SPS Agreement (G/SPS/19/Rev.2)

- “...to **make operational** the provisions of Article 4...”
- “...equivalence... **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.”
- “Taking into account the **specific concerns raised by developing and LDC Members....**”



Equivalence – Guidelines

(G/SPS/19/Rev.2)

Recommended actions of exporting and importing Members in the process of implementation of Article 4

Exporting Member

Importing Member

A

Make a request for recognition of equivalence

B

Explain objective and rationale of SPS Measure; identify risks to be addressed:

C

Objectively demonstrate equivalence of its SPS Measure:

- Science based and technical information to show same ALOP, like International standard, risk assessment by another Member
- Access to importing Member for inspection, testing

D

Analyze the information provided to determine if it achieves the same ALOP

Make a determination ✓

Possibility of expedited process

Equivalence – Guidelines

(G/SPS/19/Rev.2)

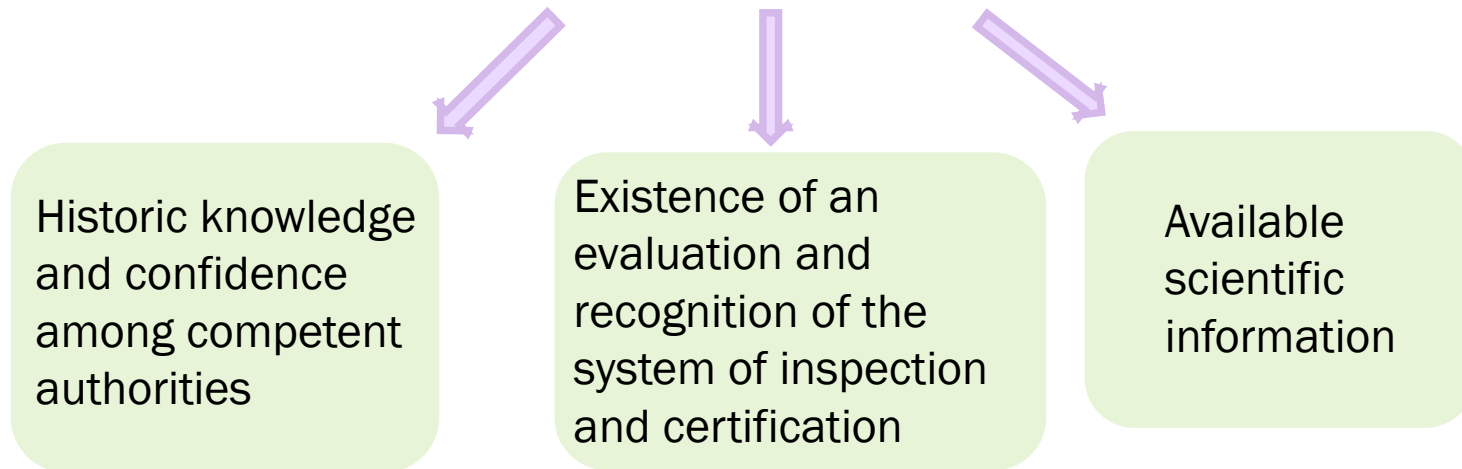


Importing Member

- shall respond in a timely manner : normally within 6 month (para. 3)

Possibility of expedited process

- should accelerate the procedure for products historically imported (para. 5)



The more such information is available, the more rapid should be the procedure

For low risk products, reduce requirements and accelerate the procedure

Equivalence – Guidelines

(G/SPS/19/Rev.2)



Monitoring of the Implementation of Art. 4

(Paras. 11-12)

- The Committee shall revise its recommended notification procedures
- Members encouraged to provide information on:
 - experiences on the implementation of Article 4
 - Successful conclusion of bilateral equivalence agreements
- Standing agenda item for the meetings of the SPS Committee



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THE SPS COMMITTEE AND EQUIVALENCE



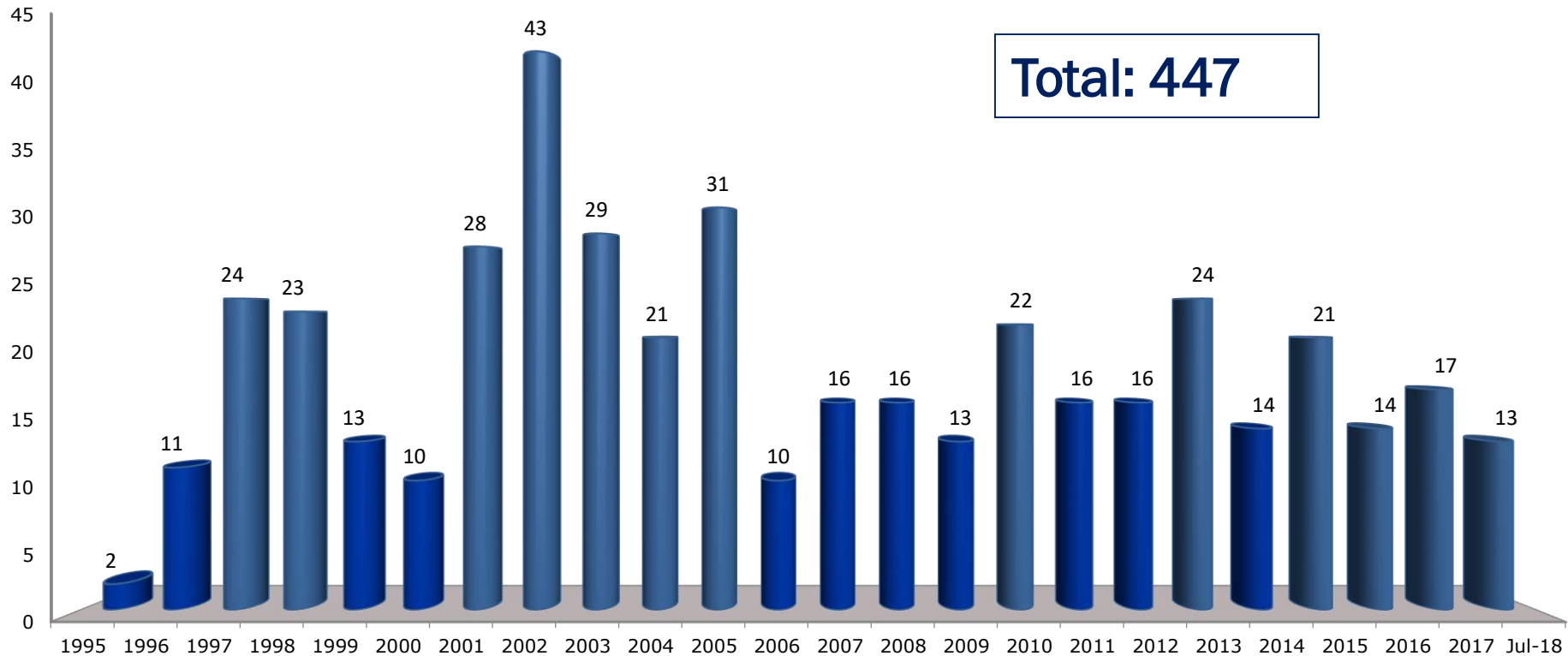
SPS Committee Meetings

Typical agenda items

- Activities of Members
- Specific trade concerns
- Implementation of the Agreement
 - *Equivalence*
 - *Pest- or disease-free areas*
 - *Transparency*
 - *Special and differential treatment*
 - *Monitoring use of international standards*
 - *Review of SPS Agreement*
- Cross-cutting issues
- Technical assistance
- Private standards
- Observers
- ... Other business

Specific Trade Concerns

By year (1995-July 2018)

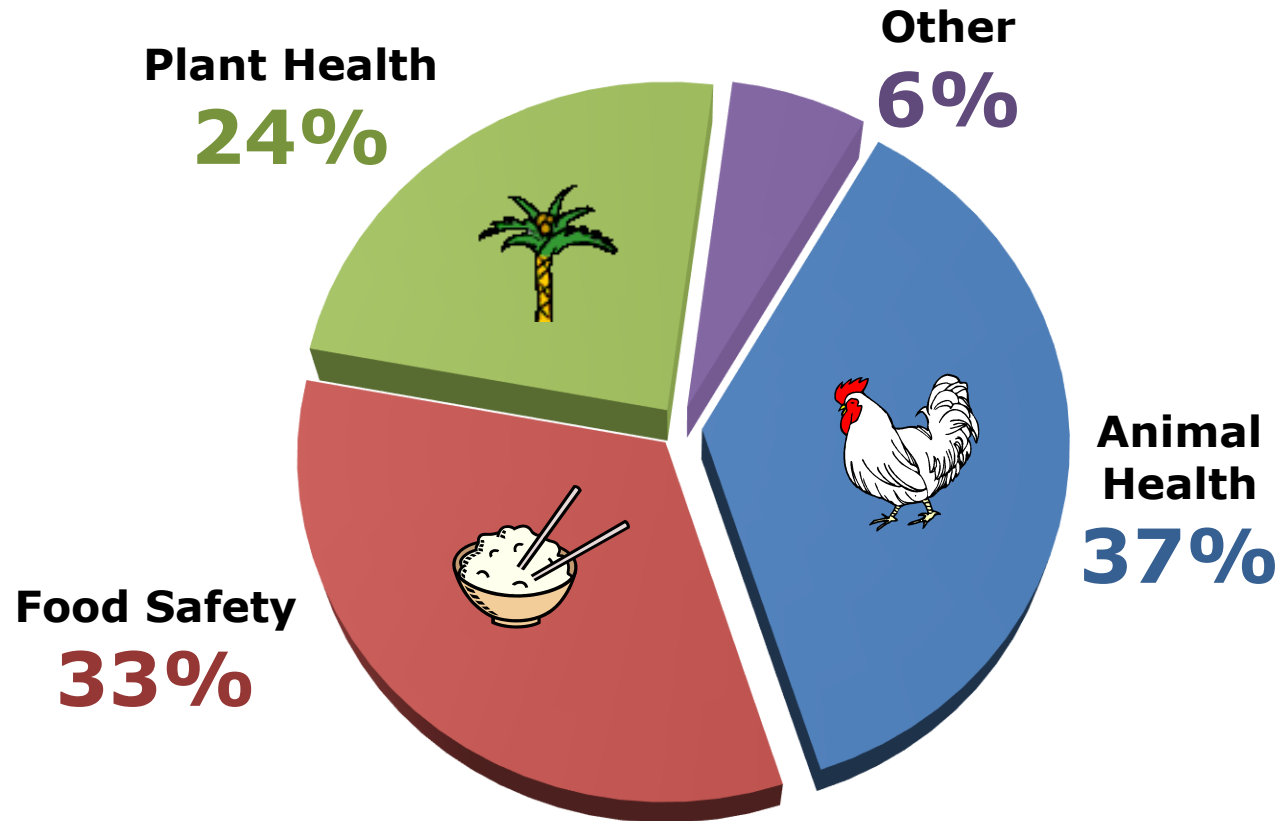


Source: SPS Information Management System (<http://spsims.wto.org>)



SPS Committee – Specific Trade Concerns By Topic (1995-July 2018)

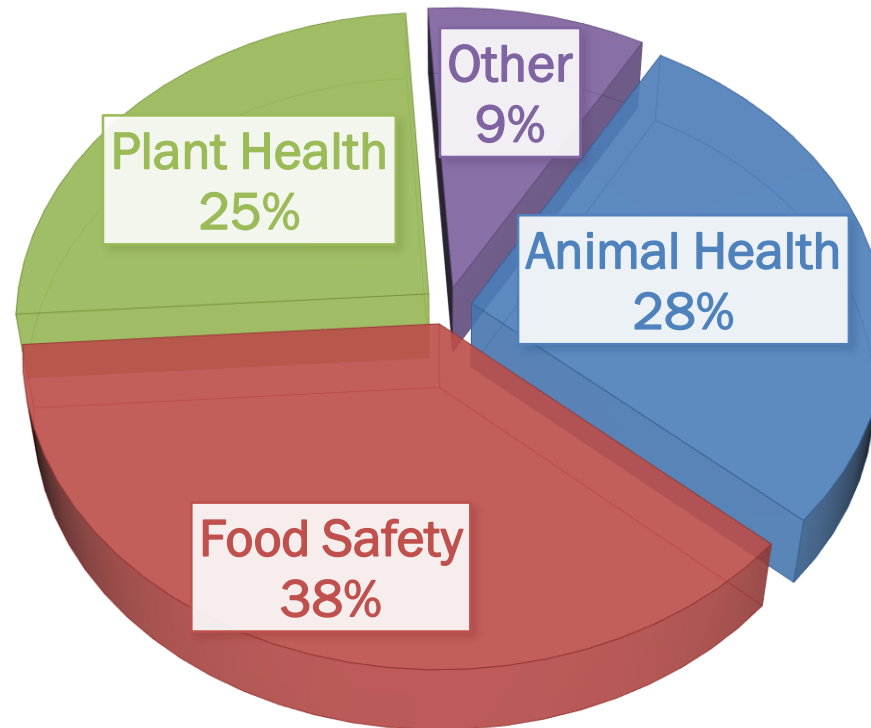
Total STCs = 447



SPS Committee – Specific Trade Concerns Equivalence



STCs related to equivalence = 32 (7% of total)



SPS Committee and Equivalence

Equivalence – Standing agenda item



- Senegal reported on its equivalence agreement with China for:
 - groundnuts (2016)
 - peanut seed exports (2015)
- Madagascar informed on equivalence recognition of their regulatory measures on fishery products by the European Union (2016)

SPS Committee and Equivalence Review



■ Article 12.7

- 3 years after entry into force
- First Review completed March 1999 (G/SPS/12)

■ 2001 Ministerial Decision

reviews at least every 4 years

- Second Review completed June 2005 (G/SPS/36)
- Third Review completed March 2010 (G/SPS/53)
- Fourth Review completed July 2017 (G/SPS/62)

– Fifth Review launched in March 2018:

- Process (G/SPS/W/296/Rev.1)
- Draft background document (G/SPS/GEN/1612)
- Compilation of Proposals from Members, including three on equivalence (G/SPS/GEN/1625/Rev.1)

SPS Committee and Equivalence

Fifth Review – Proposals on Equivalence



- Australia: develop guidance on equivalent systems approaches (G/SPS/W/299, 6 June 2018)
- Brazil: reinforce Members' commitments to implement the SPS Agreement, including equivalence (G/SPS/W/301, 5 June 2018)
- Canada: workshop on equivalence (G/SPS/W/302/Rev.1, 11 September 2018)



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TRANSPARENCY AND EQUIVALENCE



Key SPS Transparency obligations

1. Notification of draft regulations
2. Establishment of enquiry point
3. Designation of notification authority
4. Publication of regulations

SPS Article 7, Annex B

G/SPS/7/Rev.4



Transparency and equivalence

Recommended Transparency Procedures:

- **Notification of Recognition of equivalence:**
measure recognized, products covered
 - (G/SPS/7/Rev.4 – *specific format*,
G/SPS/19/Rev.2 – *implementation of Art. 4*)

Transparency and Equivalence



Notification Format (G/SPS/N/EQV/#)

NOTIFICATION OF DETERMINATION OF THE RECOGNITION OF EQUIVALENCE OF SANITARY OR PHYTOSANITARY MEASURES

The following notification of determination of the recognition of equivalence has been received.

1.	Member notifying:
2.	Title of the text stating the determination of the recognition of equivalence:
3.	Parties involved:
4.	Date of entry into force of the determination of the recognition of equivalence and any associated procedures or regulations (dd/mm/yy):
5.	Products covered (HS or CCCN where applicable, otherwise national tariff heading):
6.	Description of measures recognized to be equivalent:
7.	Further information available from: <input type="checkbox"/> National Enquiry Point <input type="checkbox"/> Other (specify)



Transparency and Equivalence

Notifications

- Total (regular and emergency) > **18,000**
- Notifications on determination of equivalence = **2**

[G/SPS/N/EQV/DOM/1](#) (2008)

[G/SPS/N/EQV/PAN/1](#) (2007)

- Notifications with keyword equivalence = **30**



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DISPUTE SETTLEMENT AND EQUIVALENCE



Food safety:

US/Canada vs. EC - Hormones (WT/DS26, 48)
(EC vs. US/ Canada – Continued Suspension (WT/DS320, 321))

China vs. US – Poultry (WT/DS392)

[Canada vs. Korea - BSE (WT/DS391)]

Japan vs. Korea – Radionuclides (WT/DS495)

Food safety + plant and animal health: (biodiversity considerations)

US/Canada/Argentina vs. EC - GMOs (WT/DS291, 292, 293)

Animal health:

Canada / US vs. Australia - Salmon (WT/DS18, 21)

US vs. India – Avian Influenza (WT/DS430)

Argentina vs. US – Foot-and-Mouth Disease (FMD) (WT/DS447)

EU vs. Russia – African Swine Fever (WT/DS475)









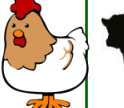
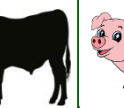
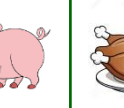

Brazil vs. Indonesia – Chicken (WT/DS484)

Plant protection:

US vs. Japan - Variety Testing (WT/DS76)

US vs. Japan – Fire blight (WT/DS245)

New Zealand vs. Australia - Apples (WT/DS367)

Case/ Article												
Scientific justification (2.2 / 5.7)	X (5.7)		X (5.7)	X (5.7)	X (5.7)	X (5.7)					x	
Harmonization (3.1 – 3.3)	X					X			X	x	x	
Equivalence (4)								X				
Risk assessment (5.1- 5.3)	X	X		X	X	X	X			x	x	
Consistency (5.5)	X	X									x	
Least trade restrictive (5.6)		X	X	X					X	x	x	
Regionalization (6)									X	x	x	
Transparency (7 / Annex B)			X	X					X			
Approval proced. (8 / Annex C)					X			X		x	x	x



US – Poultry (DS392)

Parties & calendar

Complainant:	China
Third Parties:	Brazil, Chinese Taipei, EU, Guatemala, Korea, Turkey
Panel established:	31 July 2009
Panel report issued:	26 July 2010
Report adopted by DSB:	25 October 2010



US – Poultry (DS392)

Disputed measure

- Section 727 of the Agriculture Appropriations Act of 2009 (“AAA”) – restricted funds to establish or implement rules allowing the importation of poultry products from China.
- Joint Explanatory Statement: “There remain very serious concerns about contaminated foods from China ...”
- Question: SPS measure (see Annex A(1))? **Panel: YES.**
- **NO EXPERTS CONSULTED**



US – Poultry (DS392)

Findings – equivalence (Article 4)

- US: Section 727 part of an equivalence regime and subject only to Article 4
- Panel: Article 4 not applied to the exclusion of other relevant provisions, not “in a vacuum”
- Equivalence not to be read in isolation to other provisions



US – Poultry (DS392)

Findings – Equivalence (Decision G/SPS/19/Rev.2)

- Not binding, does not determine the scope of Art. 4
- Expands on Members' own understanding of implementation and relationship of Article 4 with the rest of the SPS Agreement
- Implies that equivalence regimes should also comply with the other relevant provisions of SPS Agreement



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THANK YOU!

SPS gateway

<http://www.wto.org/sps>