



# Making Equivalence Work; From International Standards to Modern Trading Relationships

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# Key Messages

- Focus today is more on food safety than zoosanitary or phytosanitary
- Equivalence is not a standalone Article (its part of a continuum)
- Measures versus approvals
- Context is key - equivalence for what purpose (the effect)
- Effect on health outcomes NOT procedural effect or similarity
- Equivalence of the system versus equivalence of individual measures

# What it's like wading through other country's legislation



# New Zealand Context

- Agriculture is the business of New Zealand (60% of our exports)
- Much of our exports are animal products which are amongst the most regulated commodities in international trade
- We trade with over 160 countries, each with their own regulatory control systems and expectations that imports conform
- We have no problem meeting outcomes, the problems arise when countries prescribe process

# New Zealand Context

- New Zealand regulatory controls already reflect best international practice and are consistent with Codex, OIE and IPPC standards
- Have already been judged as meeting or exceeding the requirements of the world's most discerning markets
- Unfortunately too many markets still insist on prescribing their own variations on the processes (the how) that must be followed
- Too often this is regardless of the evidence of what level of protection is being delivered by their own National Food Control Systems

With the growth in global trade and increasing complexity of supply line – there has to be a better way?



# The Problem Definition:

- Too often countries impose measures which prescribe the “how” rather than the “outcome” that must be achieved
- The prescribed processes (the how) can be associated with e.g.:
  - How the animals or plants are raised;
  - How the food commodity is harvested / processed;
  - How processing establishments are approved;
  - How, when and who does what inspection; and
  - How controls over certification are achieved.
- Equivalence is a tool that helps you compare whether different ways of doing things (the “hows”) are capable of achieving the same outcome



# Equivalence is not a standalone Article – part of a continuum

- The WTO/SPS is a multilateral agreement that applies disciplines on bilateral trading relationships.
  - Countries do NOT meet their obligations just by notifying measures to WTO
- Articles 2, 3 and 5 set the foundation expectations on countries e.g.
  - Based on a risk assessment relative to the (bilateral) circumstance
  - Least trade restrictive to achieve the health outcome
  - Only applied to the level necessary to achieve the outcome
  - Harmonised with international standards (must justify deviations)
  - Non-discrimination, esp with what's nationally achieved (national treatment)



# Relationship of Article 4 Equivalence to Articles 2, 3 and 5

- The Principles and Obligations of Articles 2, 3 and 5 are obligations on the importing party to engage and justify their measures
  - As relevant to the bilateral circumstance
  - To consider least trade restrictive options
  - Obligations apply to both existing and new bilateral trade negotiations irrespective of any previous WTO notification
- Article 4; Equivalence should theoretically only kick in once the processes under Articles 2, 3 and 5 have been exhausted
  - Importing parties must enter into substantive negotiations
  - But the onus to demonstrate passes to the exporting party

## Country considerations before process prescriptive requirements imposed

- Is there an appropriate international standard
- Have you quantified the level of protection achieved by your system
- What evidence of a heightened risk (disproportionate residual risk) do you have, as relevant to the bilateral circumstance, that justifies the imposition of additional controls on the export country's system
- Are the options provided for; outcome-focussed, risk-based, least trade restrictive and only applied to the extent necessary

# Equivalence

- The ability for two systems to achieve the same (or better) outcome
  - **Codex:** The **capability** of different inspection and certification systems to meet the same objectives
  - **OIE:** The **state** wherein the sanitary measure(s) proposed by the exporting country as an alternative to those of the importing country, **achieve(s) the same level of protection**
  - **IPPC:** The **situation** where, for a specified pest risk, different phytosanitary measures achieve a contracting party's appropriate **level of protection**
- For the SPS Agreement the relevant comparison is the animal, plant or human health outcome (relative risk of disease or pest spread)
- This is already the objective of Importing countries considering whether / what measures are justified under Articles 2, 3 and 5
  - Is there a greater “residual risk” associated with products coming out of the exporting country's

# Measures versus Approvals

- If the same (like) product is already marketed in the country then any additional requirements are by definition measures
  - Subject to the obligations in the core Articles (only what's necessary)
  - Need to take into account differences in risk profiles and the regulatory controls already being applied
- Establishment registration requirements and associated processes are measures not approvals (subject to Article 2, 3 and 5 disciplines)
  - Approvals (Article 8 and Annex C) are designed / intended for port of entry type checks or approvals of new / different non-alike products (e.g. Ag chemicals, different formulations, processing aids or food additives) – but can be used to assess systems

# Establishment and Process Approvals

- Just because a country runs an approval process for establishments or processes within its own boundaries does not justify it applying the same process transboundary
- Exporting establishments will normally have already been subject to national controls (approvals and ongoing verifications) – any additional measures should only be what is required to achieve the ALOP
- Foreign establishment registration or process approvals are additional measures that must be justified as necessary relevant to the bilateral circumstance (otherwise they are unjustified Non-tariff barriers)

# New Zealand's approach to unjustified non-tariff barriers?



# Reality Check

- Most countries have not quantified the health outcomes (ALOP) of their food control systems – and its usually contextual
- Similarly, the relative impact (attribution) that individual measures may have on health outcomes is often not known
- Its not appropriate to impose specific measures on another country in the absence of a known / measureable impact on the health outcome
- Laws and the design and operation of national regulatory control systems are often specific to the country context. Expecting replication of the design of your country's system is often not appropriate



# Use of Proxy assessment tools

- The relevant comparison is whether the summation of measures achieves, in accordance with the relevant risk profile, at least the same level of health outcome / protection
- Proxys can be ok (e.g. treatment lethality) – if there is a defined intervention logic and attribution that is relevant to both contexts
- Otherwise you are just comparing the effects of procedures rather than their effect, in the context of the country's hazard profile, on the overarching health outcomes

## Context – Equivalence for what purpose

- Too many countries over think and over complicate equivalence considerations
- Equivalence is not a blank cheque and only means / has effect in accordance with what you say it means in the associated agreement
- Equivalence is however a useful tool that can reduce or remove various trade restricting processes or procedures being applied or required by the importing party
- Equivalence only gives some flexibility as to the how, not the what (outcome) that must be met

# Equivalence – its not about the differences



# Equivalence for what purpose

- Trade impediments, such as costs associated with unnecessary duplication or lack of flexibility to innovate, caused by prescribed measures are commonly the drivers behind equivalence requests
- These impediments can be specific process prescriptive procedures, inspections or treatments imposed on the exporting country, or they can be wider system assurances or checks such as establishment approvals, type and frequency of in country system audits or level of port of entry check

# Effect of Equivalence

- Is not a blank cheque
- The effect of the equivalence determination may be an ability for the exporting country to make a certain level of change to their control systems without renegotiation, or it may be a pre-listing agreement, or a reduced frequency and intensity of audit or port of entry inspection or even a modified response (cooperative) in the advent of non-compliant findings
- The effect is only as broad as both parties agree it to be and most equivalence agreements have safeguard clauses and ongoing communication requirements

# Making Equivalence work in the real world

- In practice, Equivalence discussions can often occur around the same time the two countries may be working out what are the most appropriate measures / conditions for trade between them
- In effect discussions under Articles 2, 3 and 5 may be in play, especially with regard to the bilateral circumstance, at the same time the equivalence of the exporting country's assurance systems are considered
- Experience, Knowledge and Confidence plays a large part in the conclusion of equivalence agreements

# Equivalence of Systems versus Individual Measures

- For the most part equivalence of systems, in whole or in part, as opposed to measure by measure comparisons are far more productive and appropriate
- With the exception of certain lethality treatments, the attribution (proportional effect) that any one measure / procedure has on the overall desired health outcome is rarely know
- Assurances come from a summation of the system of controls, checks and performance metrics and how appropriate these are to the wider context the exists in that country. It is rarely practical nor appropriate to expect one country to replicate another country's systems



# Equivalence work in Codex

- **Principles and guidelines on the use of system equivalence**
  - Applies to both SPS and TBT considerations
  - Is designed to be practical guidance that effectively works in with Article 2, 3 and 5 deliberations / considerations. Focuses on objectives and outcomes
  - Applied at the level of the National Food Control Systems or relevant part
  - Builds upon and is consistent with CCFICS foundation standards
  - The utility of CAC/GL 53-2003 has not been great. It is specific to just sanitary measures, focuses on separately comparing individual ones
- **Consolidation and updating of all Codex Equivalence guidance**
  - The existing work on system equivalence will still be completed
  - Will attempt to align all of the existing standards with the new thinking and remove any unnecessary overlap or duplication
  - On a much longer timeline

Staying with the lamb theme – Any Questions?



We know Politicians love blaming imports



# Getting more countries to notify equivalence agreements

