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

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Agriculture and Commodities Division, WTO
1. The SPS Agreement and equivalence
2. The SPS Committee and equivalence
3. Transparency and equivalence
4. Dispute Settlement and equivalence
THE SPS AGREEMENT AND EQUIVALENCE
What is Equivalence?

- Legal terms - Article 4

- In practice – ?
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)
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

A. Make a request for recognition of equivalence

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

Importing Member

B. Explain objective and rationale of SPS Measure; identify risks to be addressed:
   - Indicate the desired ALOP
   - Risk assessment or based on international standard
   - Any additional information to assist exporting Member

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

Make a determination

Possibility of expedited process

(G/SPS/19/Rev.2)
Equivalence – Guidelines (G/SPS/19/Rev.2)

Importing Member

➢ shall respond in a timely manner: normally within 6 months (para. 3)

Possibility of expedited process

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

Historic knowledge and confidence among competent authorities

Existence of an evaluation and recognition of the system of inspection and certification

Available scientific information

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
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)

Total: 447

Source: SPS Information Management System (http://spsims.wto.org)
SPS Committee – Specific Trade Concerns
By Topic (1995-July 2018)

Total STCs = 447

Plant Health 24%
Food Safety 33%
Animal Health 37%
Other 6%

Source: SPS Information Management System (http://spsims.wto.org)
SPS Committee – Specific Trade Concerns
Equivalence

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

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

<table>
<thead>
<tr>
<th>1. Member notifying:</th>
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<tbody>
<tr>
<td>2. Title of the text stating the determination of the recognition of equivalence:</td>
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<tr>
<td>3. Parties involved:</td>
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<tr>
<td>4. Date of entry into force of the determination of the recognition of equivalence and any associated procedures or regulations (dd/mm/yyyy):</td>
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<tr>
<td>5. Products covered (HS or CCCN where applicable, otherwise national tariff heading):</td>
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<td>6. Description of measures recognized to be equivalent:</td>
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<td>7. Further information available from:</td>
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[ ] National Enquiry Point    [ ] 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
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)
<table>
<thead>
<tr>
<th>Case/Article</th>
<th>Scientific justification (2.2 / 5.7)</th>
<th>Harmonization (3.1 – 3.3)</th>
<th>Equivalence (4)</th>
<th>Risk assessment (5.1- 5.3)</th>
<th>Consistency (5.5)</th>
<th>Least trade restrictive (5.6)</th>
<th>Regionalization (6)</th>
<th>Transparency (7 / Annex B)</th>
<th>Approval proced. (8 / Annex C)</th>
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## US – Poultry (DS392)

### Parties & calendar

<table>
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<tr>
<th>Category</th>
<th>Details</th>
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<tbody>
<tr>
<td>Complainant:</td>
<td>China</td>
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<tr>
<td>Third Parties:</td>
<td>Brazil, Chinese Taipei, EU, Guatemala, Korea, Turkey</td>
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<tr>
<td>Panel established:</td>
<td>31 July 2009</td>
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<td>Panel report issued:</td>
<td>26 July 2010</td>
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<td>Report adopted by DSB:</td>
<td>25 October 2010</td>
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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
THANK YOU!

SPS gateway
http://www.wto.org/sps