

ANNEX IX TO CHAPTER 4

PROCESS OF DETERMINATION OF EQUIVALENCE

1. Principles

- (a) Equivalence can be determined for an individual measure or groups of measures or systems related to a certain commodity or categories of commodities or all of them;
- (b) The consideration of equivalence by the importing Party of a request by the exporting Party for recognition of its measures with regards to a specific commodity shall not be a reason to disrupt trade or suspend on-going imports from the exporting party of the commodity in question;
- (c) Determination of equivalence of measures is an interactive process between the exporting Party and the importing Party. The process consists of an objective demonstration of equivalence of individual measures by the exporting Party and the objective assessment of this demonstration with a view to the possible recognition of equivalence by the importing Party;
- (d) The final recognition of equivalence of the relevant measures of the exporting Party rests solely with the importing Party.

2. Preconditions

- (a) The process depends on the health or pest status, the legislation and the effectiveness of the inspection and control system related to the commodity in the exporting Party. To this end the legislation in the sector concerned shall be taken into account, as well as the structure of the competent authority of the exporting Party, the command chain, authority, operational procedures and resources, and the performance of the competent authorities as regards inspection and control systems, including the level of enforcement related to the commodity and the regularity and rapidity of information to the importing Party in case of identified hazards. This recognition may be supported by documentation, verification and earlier documented experience;
- (b) The Parties shall initiate the process of determination of equivalence based upon the priorities established in Article 66 (4) of the Agreement.
- (c) The exporting Party shall only initiate the process when no safeguard measures imposed by the importing Party apply to the exporting Party as regards the commodity.

3. The process

- (a) The exporting Party initiates the process by submitting to the importing Party a request for recognition of equivalence of an individual measure or groups of measures or systems for a commodity or a category of commodities in a sector or sub-sector or all of them;

- (b) When appropriate, this request includes also the request and required documentation for approval by the importing Party on the basis of equivalence of any program or plan of the exporting Party required by the importing Party as a condition for allowing import of that commodity or categories of commodities;
- (c) With this request, the exporting Party:
 - (i) explains the importance for trade of that commodity or categories of commodities;
 - (ii) identifies the individual measure(s) with which it can comply with out of the total of the measures expressed in the import conditions of the importing Party applicable to that commodity or categories of commodities;
 - (iii) identifies the individual measure(s) for which it seeks equivalence out of the total of the measures expressed in the import conditions of the importing Party, applicable to that commodity or categories of commodities;
- (d) In reply to this request, the importing Party explains the overall and individual objective and the rationale behind its measure(s), including the identification of the risk;
- (e) With this explanation, the importing Party informs the exporting Party on the relationship of the domestic measures and the import conditions for that commodity or categories of commodities;
- (f) The exporting Party objectively demonstrates to the importing Party that the measures that it has identified are equivalent to the import conditions for that commodity or categories of commodities;
- (g) The importing Party objectively assesses the demonstration of equivalence by the exporting party;
- (h) The importing Party concludes whether equivalence is achieved or not;
- (i) The importing Party provides to the exporting Party full explanation and supporting data for its determination and decision if so required by the exporting Party;

4. Demonstration of equivalence of measures by the exporting party and assessment of this demonstration by the importing Party

- (a) The exporting Party shall objectively demonstrate equivalence for each of the identified measures of the importing Party expressed in its import conditions. When appropriate, equivalence shall objectively be demonstrated for any plan or program required by the importing Party as a condition to allow import (e.g. residue plan, etc);
- (b) Objective demonstration and assessment in this context should be based, as far as possible, on:

- internationally recognised standards; and/or standards based on proper scientific evidence; and/or
- risk assessment; and/or
- objective earlier documented experience; and
- legal status or level of administrative status of the measures; and
- level of implementation and enforcement on the basis of in particular:
- corresponding results of surveillance and monitoring programmes;
- inspection results by the exporting Party;
- results of analysis with recognised analysis methods;
- verification and import check results by the importing Party;
- the performance of the competent authorities of the exporting Party; and
- earlier experiences.

5. Judgment by the importing Party

In case the importing Party arrives at a negative conclusion, it shall provide the exporting Party with a detailed and reasoned explanation.

6. For plants and plant products, equivalence concerning phytosanitary measures, shall be based on relevant ISPMs.