Equivalence and Mutual Recognition in International Food Trade

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Trade Facilitation tools

1) Harmonization
2) Equivalence-
3) Mutual recognition

• Both TBT and SPS agreements encourage international harmonization of food standards and the use of equivalence and mutual recognition to facilitate trade.

• Measures aimed to protect health must be scientifically justified based on a risk assessment defining a corresponding “Appropriate Level of Protection – ALOP.

• While SPS measures have to be scientifically justified and based on risk assessment, there are no such conditions for introducing TBT measures
1) Harmonization

- The goal of harmonization is uniformity of trade measures on an international basis.
- However, full harmonization may not be achievable in practice or even not desirable for legitimate reasons like for instance differences such as perceived acceptable protection levels etc.
- The process of harmonization may, be quite time consuming, and full harmonization can thus be difficult to accomplish.
- Harmonization is not always necessary or the appropriate tool to use in many situations.
- Equivalence and mutual recognition can be used as alternative trade facilitating techniques allowing for regulatory differences under certain conditions.
2) Equivalence-

• Equivalence assessment and acceptance is an alternative way of facilitating trade..
• the equivalence concept is based on the fact that regulatory goals, in relation to health and food quality, may be fulfilled by the use of different kinds of measures. For instance, Australia uses heat treatment of milk for the production of hard cheese to ensure food safety. Switzerland uses raw milk, however still attaining at least the same level of pathogen destruction as pasteurisation through a special manufacturing process.
• equivalence recognition can lead to the same results as harmonization;
3) Mutual recognition

- Mutual recognition means that two or more parties mutually accept each other’s rules.
- Such acceptance is used in situations where differences in national regulatory measures and objectives are considered to be of no such nature as to allow for trade restrictions.
- A classic example of this conception of mutual recognition is the so-called “Cassis de Dijon doctrine” of the European Union, which implies that a product lawfully produced in one member state must be accepted into another member state.
- According to this doctrine national food legislation cannot be invoked to prevent trade unless necessary for reasons of public health,
3) Mutual recognition

- national food legislation cannot be invoked to prevent trade unless necessary for reasons of public health,
- *Mutual recognition in this sense means that producers that comply with the regulatory requirements of an exporting country, automatically should be allowed into an importing country.*
- A second conception of mutual recognition is linked to so-called *Mutual Recognition Agreements (MRAs) on conformity assessment procedures*
- The mutual recognition aspect means that the involved parties *mutually accept each other’s conformity assessment procedures* as equivalent in order to ensure compliance with prevailing regulatory requirements
- **Mutual recognition**

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Mutual recognition

- Food manufactures have the benefits of a “one stop” control removing duplicated inspections and fees and reducing the time for the product to reach the market.

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EQUIVALENCE AND MUTUAL RECOGNITION IN INTERNATIONAL ORGANIZATION

- The WTO agreements on sanitary and phytosanitary measures (SPS Agreement) and technical barriers to trade (TBT Agreement) both explicitly address the problem of trade restricting regulatory measures (regulations, standards and conformity assessment procedures)
- both agreements encourage international harmonization of food standards and the use of equivalence to facilitate trade.
- In addition, provisions of the TBT Agreement include the use of mutual recognition of conformity assessment procedures
- The SPS Agreement sets out different criteria for the use of health/sanitary protective regulations to ensure that the least trade restrictive measures are applied.
The CCFICS work on equivalence and mutual recognition guidelines for TBT measures

• Harmonization is a key activity of Codex, but in many areas there are no international standards and different regulatory measures thus create uncertainty for consumers and trade problems. In such cases, one option is to enter into agreements involving judgment of equivalence.

• Codex Guidelines for the Judgement of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems
Mutual recognition and equivalence in agreements covering seafood trade

• Canada stands out as a country that has been active in using equivalence and mutual recognition as trade-facilitating tools in the food sector. This is especially true for fish and seafood production where Canadian authorities have negotiated so-called equivalence agreements and memoranda of understanding/mutual recognition agreements with Australia and 7 other countries.

• The Agreement implies that the Australian Quarantine and Inspection Service and the Canadian Department of Fisheries and Oceans will monitor fish and fish products for export to the other party for compliance with the applicable standards for fish and fish products.
--Mutual recognition and equivalence in agreements covering seafood trade

- The parties will recognize export certificates issued by the participating agencies, thus minimizing the requirements for further inspections and analysis. The certificates will ensure that the exporter meets the importing country requirements.

- The Agreement leaves inspection with the exporting country without any additional inspection and analysis on arrival.

- The parties thus mutually accept each other’s food control and inspection systems as equivalent in order to ensure compliance with applicable regulations and standards.

- The Agreement thus combines a required compliance of the regulations/standards of the importing country with a judgment of equivalence of conformity assessment procedures.
THE PROCESS TOWARDS EQUIVALENCE ACCEPTANCE AND MUTUAL RECOGNITION – CONDITIONS FOR SUCCESS

• **Cost-benefit analysis:** Before entering into negotiations involving equivalence assessments of regulatory systems, countries have to analyse the associated costs and benefits. Establishing equivalence is both complicated and time-consuming. Countries should thus consider carefully whether they should spend the efforts to entering into negotiations.
Compatibility of regulatory systems and resources available:

A certain degree of symmetry between the parties’ regulatory systems should exist before starting negotiations. For instance, sound and effective regulatory infrastructure calls for three basic elements: food law and accompanying regulations (i.e. a legislative and administrative base), qualified trained staff to deal with programmes, and performance provisions and well-equipped analytical laboratories and other facilities.
Scope of the agreements:

- negotiating an umbrella arrangement that lays down the general principles that can be used to guide subsequent sectoral agreements on specific products or product groups.
- Equivalence (of measures or conformity assessment procedures) can thus be established on a case-to-case basis.
Building capacity and trust:

- Regulatory convergence between parties is a process over time that requires information exchange, mutual learning, training and trust building.
- Confidence between the parties is thus an important condition for making it possible to establish and maintain equivalence. This is particularly important with regard to the conformity assessment systems.
- The negotiating parties should thus start the process with information sharing and visits to each other’s facilities.
- Parties can assist each other in building capacity into the systems, making the system of the exporting country capable of performing the conformity assessments required by the importing country.
- Assesses.
Learning from experience

- The gradual process of establishing mutual recognition and equivalence under a general trade framework gives regulatory agencies useful experience in dealing with complicated discrepancies between national systems.
- Regulatory agencies to search for information on how such trade arrangements work for other products and other countries.
THE SADC SPS ANNEX TO THE PROTOCOL ON TRADE

• The SPS Annex to the SADC Protocol on Trade was approved by the SADC Committee of Ministers of Trade on 12 July 2008 in Lusaka, Zambia. The 6 main obligations of the SADC SPS Annex are:

• **Harmonization:** Members to cooperate and work towards harmonization of SPS measures or standards in SADC, and to use international standards and guidelines as a basis for harmonization

• **Equivalence:** Members to enter into Equivalence agreements with each other.
• Members to base their standards on international SPS standards.
• Members to base their standards on scientifically based Risk Assessments.
• The SPS measures of SADC Member States make provision for adaptation to regional conditions, including pest or disease free areas and areas of low pest or disease prevalence.
• **Transparency:** Members to notify laws and regulations, procedures and requirements to the SADC Secretariat, and publish, including general transparency on the measures themselves (Article 10, Appendix A, B)
CONCLUSION

• The agreements contribute to the reduction of trade barriers, at least with regard to conformity assessment systems, which is what most equivalence and mutual recognition agreements seem to concentrate on.

• Trade arrangements involving equivalence and mutual recognition also can lead to a harmonization process between the parties.

• Mutual recognition and equivalence are thus important trade-facilitating tools, but nevertheless should be studied and applied in combination with international harmonization and standardization.

• SADC member countries are yet to apply Equivalence Mutual Recognition and harmonization as provided for in the SPS Annex to the SASDC Trade Protocol.
Thank You
for your attention