

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Objectives

The objectives of this Chapter are to:

- (a) minimize the negative effects of sanitary and phytosanitary (hereinafter referred to as “SPS”) measures on trade between the Parties while protecting human, animal or plant life or health in the Parties’ territories;
- (b) enhance transparency in and mutual understanding of the application of each Party’s SPS measures;
- (c) strengthen cooperation and communication among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and
- (d) enhance implementation of the SPS Agreement.

Article 5.2: Scope and Definitions

1. This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.
2. For the purposes of this Chapter, the definitions in Annex A to the SPS Agreement shall apply.

Article 5.3: Reaffirmation of the SPS Agreement

Except as otherwise provided for in this Chapter, the SPS Agreement shall apply between the Parties and is hereby incorporated into and made part of this Chapter.

Article 5.4: Technical Cooperation

1. The Parties agree to explore the opportunity for technical cooperation in SPS areas, with a view to enhancing the mutual understanding of the regulatory systems of the Parties and minimizing the negative effects on bilateral trade.
2. The Parties shall give due consideration to cooperation in relation to SPS issues. Such cooperation, which shall be on mutually agreed terms and conditions, may include, but is not limited to:
 - (a) furthering exchange of experience and cooperation in the development and application of domestic SPS measures as well as international standards;

- (b) strengthening cooperation with respect to, *inter alia*, risk analysis methodology, disease/pest control methods, laboratory testing techniques, and exchange of information on domestic regulations;
- (c) enhancing cooperation and exchange of experience between the WTO SPS Enquiry Points of the Parties;
- (d) developing exchange programs for relevant officials of competent authorities, with the objectives of building capacity and confidence of the Parties regarding animal disease and plant pest management; and
- (e) carrying out joint research and sharing the result of such research in areas, such as:
 - (i) animal and plant disease/pest surveillance;
 - (ii) animal and plant disease/pest prevention and control;
 - (iii) detection methods for pathogenic microorganisms in food; and
 - (iv) surveillance and control of harmful substances and agro-chemical and veterinary medicine residues and other food safety issues.

Article 5.5: Committee on the SPS Measures

1. The Parties hereby agree to establish a Committee on the SPS Measures (hereinafter referred to as the “Committee”) comprising representatives of each Party’s competent authorities of SPS matters.
2. The objectives of the Committee shall be to enhance each Party’s implementation of the SPS Agreement, to protect human, animal, or plant life or health, to enhance cooperation and consultation on SPS matters, and to minimize the negative effects on trade between the Parties.
3. Recognizing that the resolution of SPS matters must rely on science and risk-based assessment and is best achieved through bilateral technical cooperation and consultation, the Committee shall seek to enhance present or future relations between the Parties’ competent authorities of SPS matters. For these purposes, the Committee shall:
 - (a) recognize that scientific risk analysis shall be conducted and evaluated by the relevant regulatory agencies of each Party;
 - (b) enhance mutual understanding of each Party’s SPS measures and the regulatory processes that relate to those measures;
 - (c) consult on matters related to the development or application of SPS measures that affect, or may affect, trade between the Parties;

- (d) communicate timely, through the contact points of the Parties, the significant, sustained or recurring non-compliance with SPS requirements;
- (e) consider, if necessary, upon request of a Party, establishing technical consultations on the basis of terms and conditions to be agreed by the Committee when one Party considers that an SPS measure of the other Party is likely to be applied, or has been applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction, with a view to, as appropriate, seeking to address SPS matters of mutual interest to the Parties. Such consultations shall take place within a reasonable period of time from the date of the request;
- (f) coordinate on issues, positions, and agenda for meetings of the WTO SPS Committee established under the SPS Agreement, the *Codex Alimentarius Commission* (CAC), the *World Organization for Animal Health* (OIE), the relevant international and regional organizations operating within the framework of the *International Plant Protection Convention* (IPPC), and other international and regional fora on food safety and on human, animal, or plant life or health;
- (g) promote coordination of technical cooperation activities in relation to development, implementation, and application of SPS measures; and
- (h) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement, including clarification of each Party's regulatory frameworks and rulemaking procedures.

4. The Parties shall establish the Committee not later than 90 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

5. The Committee shall meet at least once a year unless the Parties otherwise agree. The venue of meetings shall also be mutually agreed and the chairmanship shall alternate between the Parties.

6. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of SPS measures from its relevant trade and regulatory agencies or ministries participate in the Committee meetings.

7. To coordinate the implementation of this Chapter, in particular the Committee meetings and to provide a means of information exchange within a reasonable period of time, the Parties shall designate the following contact points:

- (a) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor; and
- (b) for Korea, the Ministry of Agriculture, Food and Rural Affairs or its successor.

Article 5.6: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.