

CHAPTER 4

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 4.1

Objectives

The objectives of this Chapter are to:

- (a) further the implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the “SPS Agreement”);
- (b) strengthen cooperation between the Parties in the field of sanitary and phytosanitary measures to facilitate trade and access to their respective markets;
- (c) facilitate information exchange between the Parties and enhance mutual understanding of each Party’s regulatory system; and
- (d) effectively solve trade concerns affecting trade between the Parties within the scope of this Chapter.

ARTICLE 4.2

Scope

This Chapter applies to sanitary and phytosanitary measures which may, directly or indirectly, affect trade between the Parties.

ARTICLE 4.3

Affirmation of the SPS Agreement

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

ARTICLE 4.4

International Standards

For the purposes of this Chapter, “international standards” means the standards, guidelines and recommendations of the Codex Alimentarius Commission (CAC), the World Organisation for Animal Health (OIE) and the relevant international and regional

organisations operating within the framework of the International Plant Protection Convention (IPPC).

ARTICLE 4.5

Inspections, Certification System and System Audits

1. An importing Party shall base assessments of the inspection and certification system of the exporting Party on international standards³.
2. The Parties agree to use system audits as the preferred assessment method. The need to perform on-site inspections shall be justified.
3. Corrective actions, timeframes and follow-up procedures shall, if applicable, be clearly documented in an assessment report.
4. The costs incurred in carrying out the audit shall be borne by the importing Party.
5. The importing Party shall provide the relevant information in writing to the exporting Party within 60 days from the audit. The exporting Party shall comment on such information within 45 days. Comments made by the exporting Party shall be included in the assessment report

ARTICLE 4.6

Certificates

The Parties agree to cooperate in order to minimise the number of model SPS certificates as far as possible. Where official certificates are required, these should be in line with the principles laid down in international standards. When a Party introduces or modifies a certificate, it shall notify the proposed new or revised certificate to the other Parties in English as early as possible. The Party shall provide the factual basis and justification of the new or modified certificate. The exporting Party shall be given sufficient time to adapt to the new requirements.

ARTICLE 4.7

Cooperation

1. The Parties shall strengthen their cooperation with a view to increasing the mutual understanding of each other's systems and facilitating access to their respective

³ In particular standards and guidelines developed by the Codex Alimentarius Committee on Food Import and Export Inspection and Certification Systems (CAC/GL 26-1997).

markets. Such cooperation shall include, but not be limited to, collaboration between scientific institutions that provide the Parties with scientific advice and risk analysis.

2. The Parties shall ensure that all applicable SPS regulations are published and available on the internet. Upon request, a Party shall provide supplementary information regarding import requirements in English.

3. The Parties shall notify any substantial change in structure, organisation and division of responsibilities of their competent authorities and contact points to the other Parties.

4. When a Party introduces new SPS measures, its competent authority shall, upon request, and as far as practicable in English, provide the appropriate risk assessment justifying the measure.

ARTICLE 4.8

Import Checks

1. The import requirements and checks applied to imported products covered by this Chapter shall be based on the risk that is associated with such products and shall be applied in a non-discriminatory manner. Import checks and border controls shall be carried out as expeditiously as possible in a manner that is no more trade-restrictive than necessary.

2. Upon request, information about the frequency of import checks or changes in this frequency shall be exchanged between the competent authorities of the Parties.

3. Each Party shall allow a person responsible for a consignment, subject to sampling and analysis, to apply for a second expert opinion as part of the official sampling.

4. Import control should be structured according to international standards⁴.

5. Products subject to random and routine checks should not be detained at the border while awaiting the results of the tests.

6. If products are detained at the border due to a perceived risk, the decision on clearance shall be taken as soon as possible. Every effort shall be made to avoid deterioration of perishable goods. For the purposes of this Chapter, “perishable goods” means products that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

⁴ In particular the Codex Alimentarius Commission guidelines for food import control systems (CAC/GL 47-2003) and guidelines for the design, operation, assessment and accreditation of food import and export inspection and certification systems (CAC/GL 26-1997).

7. If products are rejected at a port of entry due to a verified serious sanitary or phytosanitary issue, the competent authority of the exporting Party shall be informed as soon as possible. For the purposes of this provision, “serious sanitary or phytosanitary issue” means cases for which a notification between competent authorities is foreseen in international standards⁵.

8. If products are rejected at a port of entry, the factual basis and scientific justification shall, upon request, be provided in writing to the exporting Party, as soon as possible.

9. Where a Party detains, at a port of entry, products exported from another Party due to a perceived failure to comply with a sanitary or phytosanitary measure, the factual justification for the detention shall be promptly notified to the importer or his representative.

10. Each Party shall ensure that appropriate legal procedures exist for an importer or any other person responsible for the consignment, or his representative, whose products are rejected at a port of entry, to appeal that decision.

ARTICLE 4.9

Consultations

Consultations shall be held at the request of a Party which considers that another Party has taken a measure which is likely to create, or has created, an obstacle to trade. Such consultations shall take place within 30 days from the receipt of the request with the objective of finding a mutually acceptable solution. The consultations shall take place in the Joint Committee if a Party so requests. If consultations are not taking place in the Joint Committee, it should be informed thereof. In case of perishable goods, consultations between the competent authorities of the Parties shall be held without undue delay. The consultations may be conducted by any agreed method.

ARTICLE 4.10

Review

The Parties shall, upon request by a Party, and without undue delay, agree on an arrangement extending to each other treatment related to sanitary and phytosanitary regulations granted by each Party to the European Union.

⁵ In particular in the guidelines for the exchange of information between countries on rejections of imported food, by Codex Alimentarius Commission (CAC), the OIE, and the IPPC.

ARTICLE 4.11

Contact Points

For the purposes of this Chapter, the Parties shall exchange names and addresses of contact points in order to facilitate communication and the exchange of information.