

CHAPTER FIVE

Sanitary and phytosanitary measures

Article 5.1

Definitions

1. For the purposes of this Chapter, the following definitions apply:
 - (a) the definitions in Annex A of the SPS Agreement;
 - (b) the definitions adopted under the auspices of the Codex Alimentarius Commission (the 'Codex');
 - (c) the definitions adopted under the auspices of the World Organisation for Animal Health (the 'OIE');
 - (d) the definitions adopted under the auspices of the *International Plant Protection Convention* (the 'IPPC');
 - (e) protected zone for a specified regulated harmful organism means an officially defined geographical area in the European Union in which that organism is not established in spite of favourable conditions for its establishment and its presence in other parts of the European Union; and
 - (f) a competent authority of a Party means an authority listed in Annex 5-A.
2. Further to paragraph 1, the definitions under the SPS Agreement prevail to the extent that there is an inconsistency between the definitions adopted under the auspices of the Codex, the OIE, the IPPC and the definitions under the SPS Agreement.

Article 5.2

Objectives

The objectives of this Chapter are to:

- (a) protect human, animal and plant life or health while facilitating trade;
- (b) ensure that the Parties' sanitary and phytosanitary ('SPS') measures do not create unjustified barriers to trade; and
- (c) further the implementation of the SPS Agreement.

Article 5.3

Scope

This Chapter applies to SPS measures that may, directly or indirectly, affect trade between the Parties.

Article 5.4

Rights and obligations

The Parties affirm their rights and obligations under the SPS Agreement.

Article 5.5

Adaptation to regional conditions

1. With respect to an animal, animal product and animal by-product:
 - (a) the Parties recognise the concept of zoning and they have decided to apply this concept to the diseases listed in Annex 5-B;
 - (b) if the Parties decide on principles and guidelines to recognise regional conditions, they shall include them in Annex 5-C;

- (c) for the purpose of subparagraph (a), the importing Party shall base its sanitary measure applicable to the exporting Party whose territory is affected by a disease listed in Annex 5-B on the zoning decision made by the exporting Party, provided that the importing Party is satisfied that the exporting Party's zoning decision is in accordance with the principles and guidelines that the Parties set out in Annex 5-C, and is based on relevant international standards, guidelines, and recommendations. The importing Party may apply any additional measure to achieve its appropriate level of sanitary protection;
 - (d) if a Party considers that it has a special status with respect to a disease not listed in Annex 5-B, it may request recognition of that status. The importing Party may request additional guarantees for imports of live animals, animal products, and animal by-products appropriate to the agreed status recognised by the importing Party, including the special conditions identified in Annex 5-E; and
 - (e) the Parties recognise the concept of compartmentalisation and agree to cooperate on this matter.
2. With respect to a plant and plant product:
- (a) when the importing Party establishes or maintains its phytosanitary measure, it shall take into account, among other things, the pest status of an area, such as a pest-free area, pest-free place of production, pest-free production site, an area of low pest prevalence and a protected zone that the exporting Party has established; and
 - (b) if the Parties decide on principles and guidelines to recognise regional conditions, they shall include them in Annex 5-C.

Article 5.6

Equivalence

1. The importing Party shall accept the SPS measure of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of SPS protection.
2. Annex 5-D sets out principles and guidelines to determine, recognise, and maintain equivalence.
3. Annex 5-E sets out:
 - (a) the area for which the importing Party recognises that an SPS measure of the exporting Party is equivalent to its own; and
 - (b) the area for which the importing Party recognises that the fulfilment of the specified special condition, combined with the exporting Party's SPS measure, achieves the importing Party's appropriate level of SPS protection.
4. For the purposes of this Chapter, Article 1.7 (Reference to laws) applies subject to this Article, Annex 5-D and the General Notes under Annex 5-E.

Article 5.7

Trade conditions

1. The importing Party shall make available its general SPS import requirements for all commodities. If the Parties jointly identify a commodity as a priority, the importing Party shall establish specific SPS import requirements for that commodity, unless the Parties decide otherwise. In identifying which commodities are priorities, the Parties shall cooperate to ensure the efficient management of their available resources. The specific import requirements should be applicable to the total territory of the exporting Party.
2. Pursuant to paragraph 1, the importing Party shall undertake, without undue delay, the necessary process to establish specific SPS import requirements for the commodity that is identified as a priority. Once these specific import requirements are established, the importing Party shall take the necessary steps, without undue delay, to allow trade on the basis of these import requirements.

3. For the purpose of establishing the specific SPS import requirements, the exporting Party shall, at the request of the importing Party:
 - (a) provide all relevant information required by the importing Party; and
 - (b) give reasonable access to the importing Party to inspect, test, audit and perform other relevant procedures.
4. If the importing Party maintains a list of authorised establishments or facilities for the import of a commodity, it shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection of that establishment or facility if:
 - (a) the exporting Party has requested such an approval for the establishment or facility, accompanied by the appropriate guarantees; and
 - (b) the conditions and procedures set out in Annex 5-F are fulfilled.
5. Further to paragraph 4, the importing Party shall make its lists of authorised establishments or facilities publicly available.
6. A Party shall normally accept a consignment of a regulated commodity without pre-clearance of the commodity on a consignment basis, unless the Parties decide otherwise.
7. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrate, to the satisfaction of the importing Party, that the import requirements may be fulfilled or are fulfilled.
8. The Parties should follow the procedure set out in Annex 5-G on the specific import requirements for plant health.

Article 5.8

Audit and verification

1. For the purpose of maintaining confidence in the implementation of this Chapter, a Party may carry out an audit or verification, or both, of all or part of the control programme of the competent authority of the other Party. The Party shall bear its own costs associated with the audit or verification.
2. If the Parties decide on principles and guidelines to conduct an audit or verification, they shall include them in Annex 5-H. If a Party conducts an audit or verification, it shall do so in accordance with any principles and guidelines in Annex 5-H.

Article 5.9

Export certification

1. When an official health certificate is required to import a consignment of live animals or animal products, and if the importing Party has accepted the SPS measure of the exporting Party as equivalent to its own with respect to such animals or animal products, the Parties shall use the model health attestation prescribed in Annex 5-I for such certificate, unless the Parties decide otherwise. The Parties may also use a model attestation for other products if they so decide.
2. Annex 5-I sets out principles and guidelines for export certification, including electronic certification, withdrawal or replacement of certificates, language regimes and model attestations.

Article 5.10

Import checks and fees

1. Annex 5-J sets out principles and guidelines for import checks and fees, including the frequency rate for import checks.

2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party must be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's appropriate level of sanitary or phytosanitary protection.
3. Whenever possible, the importing Party shall notify the importer of a non-compliant consignment, or its representative, of the reason for non-compliance, and provide them with an opportunity for a review of the decision. The importing Party shall consider any relevant information submitted to assist in the review.
4. A Party may collect fees for the costs incurred to conduct frontier checks, which should not exceed the recovery of the costs.

Article 5.11

Notification and information exchange

1. A Party shall notify the other Party without undue delay of a:
 - (a) significant change to pest or disease status, such as the presence and evolution of a disease listed in Annex 5-B;
 - (b) finding of epidemiological importance with respect to an animal disease, which is not listed in Annex 5-B, or which is a new disease; and
 - (c) significant food safety issue related to a product traded between the Parties.
2. The Parties endeavour to exchange information on other relevant issues including:
 - (a) a change to a Party's SPS measure;
 - (b) any significant change to the structure or organisation of a Party's competent authority;
 - (c) on request, the results of a Party's official control and a report that concerns the results of the control carried out;
 - (d) the results of an import check provided for in Article 5.10 in case of a rejected or a non-compliant consignment; and
 - (e) on request, a risk analysis or scientific opinion that a Party has produced and that is relevant to this Chapter.
3. Unless the Joint Management Committee decides otherwise, when the information referred to in paragraph 1 or 2 has been made available via notification to the WTO's Central Registry of Notifications or to the relevant international standard-setting body, in accordance with its relevant rules, the requirements in paragraphs 1 and 2, as they apply to that information, are fulfilled.

Article 5.12

Technical consultations

If a Party has a significant concern with respect to food safety, plant health, or animal health, or an SPS measure that the other Party has proposed or implemented, that Party may request technical consultations with the other Party. The Party that is the subject of the request should respond to the request without undue delay. Each Party shall endeavour to provide the information necessary to avoid a disruption to trade and, as the case may be, to reach a mutually acceptable solution.

Article 5.13

Emergency SPS measures

1. A Party shall notify the other Party of an emergency SPS measure within 24 hours of its decision to implement the measure. If a Party requests technical consultations to address the emergency SPS measure, the technical consultations must be held within 10 days of the notification of the emergency SPS measure. The Parties shall consider any information provided through the technical consultations.

2. The importing Party shall consider the information that was provided in a timely manner by the exporting Party when it makes its decision with respect to a consignment that, at the time of adoption of the emergency SPS measure, is being transported between the Parties.

Article 5.14

Joint Management Committee for Sanitary and Phytosanitary Measures

1. The Joint Management Committee for Sanitary and Phytosanitary Measures (the 'Joint Management Committee'), established under Article 26.2.1(d), comprises regulatory and trade representatives of each Party responsible for SPS measures.

2. The functions of the Joint Management Committee include:

- (a) to monitor the implementation of this Chapter, to consider any matter related to this Chapter and to examine all matters which may arise in relation to its implementation;
- (b) to provide direction for the identification, prioritisation, management and resolution of issues;
- (c) to address any request by a Party to modify an import check;
- (d) at least once a year, to review the annexes to this Chapter, notably in the light of progress made under the consultations provided for under this Agreement. Following its review, the Joint Management Committee may decide to amend the annexes to this Chapter. The Parties may approve the Joint Management Committee's decision, in accordance with their respective procedures necessary for the entry into force of the amendment. The decision enters into force on a date agreed by the Parties;
- (e) to monitor the implementation of a decision referred to in subparagraph (d), above, as well as the operation of measures referred to under subparagraph (d) above;
- (f) to provide a regular forum to exchange information that relates to each Party's regulatory system, including the scientific and risk assessment basis for an SPS measure; and
- (g) to prepare and maintain a document that details the state of discussions between the Parties on their work on recognition of the equivalence of specific SPS measures.

3. The Joint Management Committee may, among other things:

- (a) identify opportunities for greater bilateral engagement, including enhanced relationships, which may include an exchange of officials;
- (b) discuss at an early stage, a change to, or a proposed change to, an SPS measure being considered;
- (c) facilitate improved understanding between the Parties on the implementation of the SPS Agreement, and promote cooperation between the Parties on SPS issues under discussion in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures and international standard-setting bodies, as appropriate; or
- (d) identify and discuss, at an early stage, initiatives that have an SPS component, and that would benefit from cooperation.

4. The Joint Management Committee may establish working groups comprising expert-level representatives of the Parties, to address specific SPS issues.

5. A Party may refer any SPS issue to the Joint Management Committee. The Joint Management Committee should consider the issue as expeditiously as possible.

6. If the Joint Management Committee is unable to resolve an issue expeditiously, it shall, at the request of a Party, report promptly to the CETA Joint Committee.

7. Unless the Parties decide otherwise, the Joint Management Committee shall meet and establish its work programme no later than 180 days following the entry into force of this Agreement, and its rules of procedure no later than one year after the entry into force of this Agreement.
8. Following its initial meeting, the Joint Management Committee shall meet as required, normally on an annual basis. The Joint Management Committee may decide to meet by videoconference or teleconference, and it may also address issues out of session by correspondence.
9. The Joint Management Committee shall report annually on its activities and work programme to the CETA Joint Committee.
10. Upon entry into force of this Agreement, each Party shall designate and inform the other Party, in writing, of a contact point to coordinate the Joint Management Committee's agenda and to facilitate communication on SPS matters.

CHAPTER SIX

Customs and trade facilitation

Article 6.1

Objectives and principles

1. The Parties acknowledge the importance of customs and trade facilitation matters in the evolving global trading environment.
2. The Parties shall, to the extent possible, cooperate and exchange information, including information on best practices, to promote the application of and compliance with the trade facilitation measures in this Agreement.
3. Measures to facilitate trade shall not hinder mechanisms to protect a person through effective enforcement of and compliance with a Party's law.
4. Import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve a legitimate objective.
5. Existing international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, except if these instruments and standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objective pursued.

Article 6.2

Transparency

1. Each Party shall publish or otherwise make available, including through electronic means, its legislation, regulations, judicial decisions and administrative policies relating to requirements for the import or export of goods.
2. Each Party shall endeavour to make public, including on the internet, proposed regulations and administrative policies relating to customs matters and to provide interested persons an opportunity to comment prior to their adoption.
3. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries.

Article 6.3

Release of goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties and reduce costs for importers and exporters.