

## **CHAPTER 8**

### **SANITARY AND PHYTOSANITARY MEASURES**

#### **Article 8.1: Definitions**

For purposes of this Chapter, the definitions and terms established under the following shall be applied:

- (a) Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement (SPS Agreement);
- (b) Office International des Epizooties (OIE);
- (c) International Plant Protection Convention (IPPC); and
- (d) Codex Alimentarius Commission (CODEX).

#### **Article 8.2: General Provisions**

1. This Chapter applies to all sanitary and phytosanitary measures, which may, directly or indirectly, affect trade between the Parties.
2. The Parties shall, through mutual cooperation, facilitate agricultural, fishing and forest trade without such trade posing a sanitary or phytosanitary risk, and agree to prevent the introduction or spread of pests or diseases, and to enhance plant and animal health and food safety.
3. The framework of rules and disciplines that guide the adoption and enforcement of the sanitary and phytosanitary measures included in this Chapter is deemed to be consistent with the SPS Agreement.
4. Any other sanitary or phytosanitary matter which is not described in this Chapter shall be dealt with in accordance with the SPS Agreement.

#### **Article 8.3: Rights of the Parties**

The Parties may, in accordance with the SPS Agreement:

- (a) adopt, maintain or apply any sanitary or phytosanitary measure whenever it is necessary for the protection of human, animal or plant life or health in their territories in accordance with this Chapter; and
- (b) apply their sanitary or phytosanitary measures to the extent necessary to achieve an appropriate level of protection.

#### **Article 8.4: Obligations of the Parties**

Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies:

- (a) is neither applied in a manner that constitutes a disguised restriction on trade, nor has the purpose or the effect of creating unnecessary obstacles to trade between the Parties;
- (b) is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in Article 5.7 of the SPS Agreement; and
- (c) does not arbitrarily or unjustifiably discriminate between its goods and similar goods of the other Party, or between goods of the other Party and similar goods of any other country, where identical or similar conditions exist.

#### **Article 8.5: International Standards and Harmonization**

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall base its sanitary and phytosanitary measures on relevant international standards, guidelines or recommendations, where they exist, with a view to seeking harmonization.

2. Notwithstanding paragraph 1, the Parties may adopt a sanitary or phytosanitary measure offering a level of protection other than the level that would be achieved through a measure based on an international standard, guideline or recommendation, including a more stringent measure than the foregoing, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection the Party determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

3. For purposes of achieving a higher degree of harmonization, the Parties shall, to the greatest extent possible, cooperate in the development of international standards, guidelines and recommendations to all aspects of sanitary and phytosanitary measures, and follow the standards, guidelines and recommendations set by the following organizations:

- (a) on plant health issues, the IPPC;
- (b) on animal health issues, the OIE; and
- (c) on food safety issues, the CODEX.

4. For matters not covered by the international organizations listed in paragraph 3, the Parties may consider, as agreed by the Parties, the standards, guidelines and recommendations of other relevant international organizations of which both Parties are members.

#### **Article 8.6: Equivalence**

1. Each Party shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if these measures differ from its own measures, if the exporting Party objectively demonstrates to the other Party that its measures achieve the other Party's appropriate level of sanitary or phytosanitary protection.

2. For purposes of ensuring that sanitary and phytosanitary measures of the exporting Party consistently meet the importing Party's requirements, the exporting Party shall, upon request, provide the importing Party with reasonable access to its territory for the verification of its systems or procedures of inspection, testing and other relevant procedures.

## **Article 8.7: Risk Assessment and Determination of Appropriate Sanitary and Phytosanitary Level of Protection**

1. The Parties shall ensure that their sanitary and phytosanitary measures are, as appropriate to the circumstances, based on an assessment of the risks to human, animal or plant life or health, taking into account relevant risk assessment guidelines and techniques developed by the relevant international organizations.
2. The Parties shall, in assessing risks and determining a sanitary or phytosanitary measure, take into account available scientific evidence and other factors, such as:
  - (a) the prevalence of pests or diseases;
  - (b) the existence of pest- or disease-free areas;
  - (c) the relevant ecological and environmental conditions;
  - (d) the effectiveness of eradication or control programs;
  - (e) the structure and organization of sanitary and phytosanitary services; and
  - (f) the control, monitoring, diagnosis and other procedures ensuring the safety of the product.
3. In assessing risks to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of protection from such risks, the Parties shall take into account the following relevant economic factors:
  - (a) the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;
  - (b) the cost of control or eradication in the territory of the importing Party; and
  - (c) the relative cost-effectiveness of alternative approaches to limiting risks.
4. The Parties shall, in establishing their appropriate levels of protection, take into account the objective of minimizing negative trade effects and shall, with the purpose of achieving consistency in the application of such levels of protection, avoid arbitrary or unjustifiable distinctions that may result in discrimination or constitute a disguised restriction on the trade between the Parties.
5. Where a Party determines that available scientific information is insufficient, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including information from relevant international organizations and from sanitary or phytosanitary measures of the other Party and any other countries. The Party shall, once it has the information sufficient to complete the assessment, complete its assessment and, where appropriate, review the provisional sanitary or phytosanitary measure within a reasonable period of time.

## **Article 8.8: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence**

1. The Parties shall adapt its sanitary or phytosanitary measures relating to animal or plant pest or disease to the sanitary or phytosanitary characteristics of the area of origin and destination of the goods. When assessing the characteristics of an area, the Parties shall take into

account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines, which may be developed by the relevant international organizations.

2. The Parties shall recognize, in particular according to relevant international standards, the concepts of pest- or disease-free areas or areas of low pest or disease prevalence. When determining such areas, the Parties shall consider factors, such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

3. The Party declaring that an area in its territory is free from or low prevalence of a specific pest or disease shall provide the necessary evidence thereof in order to demonstrate such a condition objectively and to the satisfaction of the other Party, and give assurances that the area shall remain as such based on protection measures adopted by the authorities responsible for sanitary and phytosanitary services.

4. The Party interested in obtaining the recognition of a pest- or disease-free area or areas of low pest or disease prevalence shall make the request, and provide the relevant scientific and technical information to the other Party. For this purpose, the requesting Party shall provide reasonable access to its territory to the other Party for inspection, testing and other relevant procedures.

5. If the request for recognition is rejected, the rejecting Party shall provide the technical reasons for its decision in writing.

#### **Article 8.9: Control, Inspection and Approval Procedures**

1. The Parties shall, in accordance with this Chapter, apply the provisions in Annex C of the SPS Agreement in relation to control, inspection or approval procedures, including systems for approving the use of additives or for establishing levels of tolerance for contaminants in food, beverages or feedstuffs.

2. The importing Party may verify whether the imported animals, plants and other related products are consistently in compliance with its sanitary and phytosanitary requirements. The Parties shall facilitate proceedings for such verification.

#### **Article 8.10: Transparency**

1. Each Party shall notify through its competent authorities, modification of a sanitary or phytosanitary measure and provide the related information in accordance with the provisions in Annex B of the SPS Agreement.

2. In addition, to ensure the protection of human, animal or plant life or health in the other Party, each Party shall notify:

- (a) changes or modifications to sanitary and phytosanitary measures having a significant effect on trade between the Parties, at least 60 days before the effective date of the new provision, to allow for observations from the other Party. The 60-day period shall not apply to emergency situations, as established in Annex B of the SPS Agreement;
- (b) changes occurring in the animal health field, such as the appearance of exotic diseases and those in List A of the OIE, within 24 hours following their provisional diagnosis;
- (c) changes occurring in the phytosanitary field, such as the appearance of a quarantine pest and spread of a pest under official control, within 24 hours following verification of the pest;
- (d) food control emergency situations where there is a clearly identified risk of serious adverse health effects associated with the consumption of certain food, within 24 hours of the identification of the risk; and
- (e) discoveries of epidemiological importance and significant changes related to diseases and pests not included in subparagraphs 2(b) and (c) that may affect trade between the Parties, within a maximum period of ten days following the verification of such diseases and pests.

#### **Article 8.11: Committee on Sanitary and Phytosanitary Measures**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures ("Committee"), comprising representatives of each Party, who are responsible for sanitary and phytosanitary issues in the fields of animal and plant health, food safety and trade.
2. The Committee shall be set up not later than 30 days after the entry into force of this Agreement.
3. The Committee shall carry out the functions necessary to implement the provisions of this Chapter, including, but not limited to:
  - (a) coordinating the application of the provisions of this Chapter;
  - (b) facilitating consultations on specific matters related to sanitary or phytosanitary measures;
  - (c) establishing and determining the scope and mandate of the sub-committees;
  - (d) promoting technical cooperation between the Parties, including cooperation in the development, adoption and enforcement of sanitary and phytosanitary measures; and
  - (e) monitoring the compliance with the provisions of this Chapter.
4. The Committee shall establish, if the need arises and the Parties so agree, the following sub-committees: Sub-Committees on Animal Health, Plant Protection and Food Safety. The members of these sub-committees shall be designated by the relevant authorities in their respective fields.
5. The sub-committees shall carry out the following functions, including, but not limited to:
  - (a) preparing terms of reference for their activities within the scope of their competence and informing results thereof to the Committee;

- (b) concluding specific agreements on matters of interest, involving higher technical-operating details, to be submitted to the Committee; and
- (c) establishing expeditious information exchange mechanisms to deal with consultations between the Parties.

6. The Committee shall meet once every two years, except as otherwise agreed. If an additional meeting is requested by a Party, it will be held in the territory of the other Party. The sub-committees shall meet, upon request of a Party. The meetings may also be held by telephone, video conference or other means, upon the agreement of both Parties.

7. The Committee shall report annually to the Commission on the implementation of this Chapter.

#### **Article 8.12: Technical Consultations**

1. A Party may initiate consultations with the other Party if uncertainty arises with regard to the application or interpretation of the content of a sanitary or phytosanitary measure under this Chapter.

2. Where a Party requests consultations and so notifies the Committee, the Committee shall facilitate consultations, and may refer the matter at issue to an *ad hoc* working group or another forum, for providing non-binding technical assistance or recommendations to the Parties.

3. A Party asserting that the interpretation or application of a sanitary or phytosanitary measure of the other Party is inconsistent with the provisions of this Chapter shall bear the burden to prove such inconsistency.

4. Where the Parties, pursuant to this Article, have carried out consultations without reaching satisfactory results, such consultations, if so agreed by the Parties, shall constitute consultations under Article 19.4.