

CHAPTER 6
SANITARY AND PHYTOSANITARY MEASURES

Article 1
Definitions

For the purposes of this Chapter, the definitions in Annex A of the *Agreement on the Application of Sanitary and Phytosanitary Measures* and the relevant definitions developed by the Codex Alimentarius Commission (“Codex”), the World Organisation for Animal Health (“OIE”) and under the framework of the International Plant Protection Convention (“IPPC”) shall apply to the implementation of this Chapter. In addition:

implementing arrangements means subsidiary documents to this Chapter which set out the mutually determined mechanisms for applying, or outcomes derived from applying, the principles and processes outlined in this Chapter;

Joint Management Committee means the Committee established under Article 16; and

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement.

Article 2

Objectives

The objectives of this Chapter are to:

- (a) uphold and enhance implementation of the SPS Agreement and the use of applicable international standards, guidelines and recommendations developed by Codex, OIE, and under the framework of the IPPC;
- (b) provide a mechanism for enhancing the Parties' implementation of the SPS Agreement and for enhancing the Parties' cooperation in these and other areas;
- (c) facilitate trade between the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the Parties; and
- (d) provide a means to improve communication and consultation on sanitary and phytosanitary issues.

Article 3

Scope

This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 4

International Obligations

Nothing in this Chapter or implementing arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 5

Implementing Arrangements

1. The Parties may conclude implementing arrangements setting out details for the implementation of this Chapter, including in relation to competent authorities, contact points, adaptation to regional conditions, equivalence, verification, certification, and import checks and as provided for in Articles 6, 7, 8, 9, 10, and 11 of this Chapter.
2. Each Party responsible for the implementation of an implementing arrangement shall take all necessary actions to do so within a reasonable period of time as mutually determined by the Parties.
3. Where implementing arrangements have been adopted, they shall be applied to trade between the Parties.

Article 6

Competent Authorities and Contact Points

1. The contact point for and the competent authorities of each Party shall be set out in an implementing arrangement. The competent authorities of the Parties are those authorities that are responsible for an implementation of matters within the scope of this Chapter.

2. The Parties shall inform each other of any significant changes to standards or to other SPS measures relevant to or affecting trade between the Parties.

Article 7

Adaptation to Regional Conditions

1. The Parties may make determinations in relation to regionalisation, pest- or disease-free areas, areas of low pest or disease prevalence, zoning and compartmentalisation which shall be consistent with the SPS Agreement, and in particular Article 6 thereof.
2. The Parties may agree the principles and procedures applicable to the determinations regarding adaptation to regional conditions made in accordance with paragraph 1 of this Article, and any such agreed principles and procedures shall be recorded in an implementing arrangement.
3. Any determinations in relation to regionalisation, pest-free or disease-free areas, areas of low pest or disease prevalence, zoning and compartmentalisation shall be recorded in an implementing arrangement.
4. When the importing Party commences a determination, the Party shall promptly upon request, explain its plan for making the determination of regional conditions, and if the determination is positive, for enabling trade.
5. Upon request, the importing Party shall inform the exporting Party of the progress of their specific determination request. The importing

Party shall also inform the exporting Party of any unexpected delay that may occur during the process.

6. The Parties may also decide in advance the risk management measures that will apply to trade between them in the event of a change in status.
7. Following a determination assessment, if the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the pest-free and disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party the rationale for its decision.

Article 8

Equivalence

1. The Parties recognise that the application of equivalence is an important tool for trade facilitation. A determination of equivalence may be made in relation to partial or full equivalence of sanitary and phytosanitary measures and systems.
2. The determination of equivalence requires an objective, risk-based assessment or evaluation by the importing Party of the existing, revised or proposed measures. In recognising equivalence, the Parties shall take into account existing knowledge and information and the performance of the relevant competent authorities.
3. The importing Party shall accept the sanitary and phytosanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the same level of protection as the importing Party's measure, or that its measure has

the same effect in achieving the objective as the importing Party's measures. To facilitate a determination of equivalence, a Party shall on request advise the other Party of the objective of any relevant sanitary or phytosanitary measure.

4. The Parties may agree the principles and procedures applicable to the determinations of equivalence made in accordance with this Article, and any such agreed principles and procedures shall be recorded in an implementing arrangement.
5. The Parties shall take into account the relevant guidance provided by the international standard-setting organisations, the IPPC for plant health, the OIE for animal health, Codex for food safety; and by the WTO Committee on Sanitary and Phytosanitary Measures, as well as experience already acquired.
6. When an importing Party commences an equivalence assessment, the Party shall promptly upon request, explain its equivalence process and plan for making the equivalence determination and, if the determination is positive, for enabling trade.
7. Upon request, the importing Party shall inform the exporting Party of the progress of their specific determination request. The importing Party shall also inform the exporting Party of any unexpected delay that may occur during the process.
8. Following an equivalence assessment, if the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognize equivalence, the importing Party shall provide the exporting Party the rationale for its decision.

9. Equivalence decisions shall be recorded in an implementing arrangement, including any additional conditions to be applied in the case of partial equivalence. This implementing arrangement may also record any action required of either Party to facilitate progress towards full equivalence.
10. The consideration by a Party of a request from the other Party for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question.

Article 9

Verification

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to audit the exporting Party's competent authority and associated inspection system. Audits shall be commensurate with the associated risk and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party and these audits may include particular establishments in the exporting Party. The scope of the audit may include an assessment of the competent authorities' control system, including, where appropriate, reviews of inspection and verification programmes and on-site checks. These procedures shall be carried out in accordance with provisions agreed and recorded in an implementing arrangement.
2. As mutually agreed, a Party may:
 - (a) share the results and conclusions of its audits with non-Parties to this Agreement; and

- (b) use the results and conclusions of the audits conducted by countries that are not parties to this Agreement.

Article 10

Certification

Each consignment of animals, animal products, plants, plant products or other related goods will be accompanied, where required, by the relevant official sanitary or phytosanitary certificate using the model in the certification implementing arrangement, where agreed, and conforming with other relevant provisions of the implementing arrangements. The Parties may jointly determine principles or guidelines for certification. Any such principles shall be included in the certification implementing arrangement.

Article 11

Import Checks

1. The import checks applied to imported animals, animal products, plants and plant products or other related goods traded between the Parties shall be based on the risk associated with such importations. They shall be carried out in a manner that is least trade-restrictive and without undue delay.
2. The frequencies of import checks on such importations shall be made available on request. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks in the event of change in the import risk. On request, an explanation

regarding amendments shall be given or consultations shall be undertaken.

3. The Parties may record frequencies of import checks in an implementing arrangement and in that case they shall be applied accordingly. The Parties may amend the frequencies of those import checks as a result of experience gained through import checks or otherwise, or as a result of actions or consultations provided for in this Chapter.
4. In the event that the import checks reveal non-conformity with the relevant standards and/or requirements, the action taken by the importing Party should be proportionate to the risk involved.
5. At the request of the exporting Party, the importing Party shall to the maximum extent possible ensure that officials of the exporting Party or their representatives are given the opportunity to contribute any relevant information to assist the importing Party in taking a final decision on the action taken. On request and when mutually agreed, testing of the preserved sample may be carried out in a process jointly agreed by the Parties.

Article 12

Cooperation

Consistent with the objectives of this Chapter, the Parties shall explore opportunities for further cooperation in sanitary and phytosanitary matters of mutual interest.

Article 13

Notification

1. The Parties shall notify each other, in a timely and appropriate manner, in writing through the contact points of any significant food safety issue or change in animal health, plant health or pest status in their jurisdiction relevant to existing trade.
2. In cases of serious and immediate concern with respect to human, animal or plant life or health, notification shall be made with urgency to the contact points and formal written confirmation should follow within 24 hours.
3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 14 days unless otherwise agreed between the Parties. Each Party shall endeavour in such situations to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution.
4. Where there is a non-compliance of imported consignments for products subject to sanitary or phytosanitary measures, the importing Party shall notify as soon as possible the exporting Party of the non-compliance.

Article 14

Emergency Measures

A Party may, on serious human, animal or plant life or health grounds, take provisional measures necessary for the protection of human, animal

or plant life or health. These measures shall be notified in writing within 48 hours to the other Party and, on request, consultations regarding the situation shall be held within 14 days unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

Article 15

Exchange of Information

1. The Parties, through the contact points, shall exchange information relevant to the implementation of this Chapter on a uniform and systematic basis, to provide assurance, engender mutual confidence and demonstrate the efficacy of the programmes controlled. Where appropriate, achievement of these objectives may be enhanced by exchanges of officials.
2. The information exchange on changes in the respective sanitary and phytosanitary measures, and other relevant information, shall include:
 - (a) opportunity to consider proposals for changes in regulatory standards or requirements which may affect this Chapter in advance of their finalisation. Where either Party considers it necessary, proposals may be dealt with in accordance with Article 16;
 - (b) briefing on current developments affecting trade;
 - (c) information on the results of the verification procedures provided for in Article 10; and

(d) relevant sanitary and phytosanitary publications of the competent authorities.

3. Each Party shall facilitate the consideration in its relevant scientific forums of scientific papers or data submitted by the other Party to substantiate that Party's views or claims. Such submissions shall be evaluated by relevant scientific forums in a timely manner, and the results of that examination shall be made available to the Parties.

Article 16

Joint Management Committee

1. The Parties shall establish a Joint Management Committee which shall include representatives from the competent authorities of the Parties. The Committee shall be co-chaired by competent authorities' representatives of each Party. At the first meeting of the Committee, it will establish its rules of procedure.
2. The objective of the Committee is to facilitate bilateral trade in goods affected by sanitary or phytosanitary measures and to achieve this by giving practical effect to this Chapter, including through the establishment and monitoring of the application of implementing arrangements.
3. The Committee shall consider any matters relating to the implementation of this Chapter including:
 - (a) establishing, monitoring and reviewing work plans;
 - (b) establishing technical working groups as appropriate;

- (c) initiating, developing, reviewing and modifying implementing arrangements which further elaborate the provisions of this Chapter;
 - (d) exchanging sanitary and phytosanitary information on bilateral trade;
 - (e) discussing positions on important sanitary and phytosanitary issues in the WTO Committee on Sanitary and Phytosanitary Measures and in relevant international standards setting bodies; and
 - (f) consulting with a view to resolving sanitary and phytosanitary issues arising in bilateral trade.
4. The Committee shall meet within one year of the entry into force of this Agreement and at least annually thereafter or as mutually determined by the Parties. It may meet in person, teleconference, video conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence.
5. The Committee may agree to establish technical working groups consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from this Chapter. Where additional assistance is needed, these groups may decide, by mutual agreement, to request expert advice from non-Party individuals or groups.
6. Notwithstanding paragraph 5, the competent authorities may consult on and resolve issues. Where they consider it appropriate, they may

discuss the establishment of a working group and the scope of its work for a possible recommendation to the Committee.