

CHAPTER 7

SANITARY AND PHYTOSANITARY MEASURES

Article 7.1: Definitions

1. For the purposes of this Chapter:

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

2. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

3. The relevant definitions developed by the international organisations *International Office of Epizootics* (OIE), *International Plant Protection Convention* (IPPC), and *Codex Alimentarius* Commission apply in the implementation of this Chapter.

Article 7.2: Objectives

The objectives of this Chapter are to:

- (a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organizations (OIE, IPPC and *Codex Alimentarius* Commission);
- (b) expand trade opportunities through facilitation of trade among the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties;
- (c) provide a means to improve communication, cooperation and resolution of sanitary and phytosanitary issues; and
- (d) establish a mechanism for the recognition of equivalence of sanitary and phytosanitary measures and regionalisation practices maintained by the Parties consistent with the protection of human, plant and animal life or health.

Article 7.3: Scope

1. This Chapter shall apply to all sanitary or phytosanitary measures of a Party that may, directly or indirectly, affect trade among the Parties.
2. Nothing in this Chapter or Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 7.4: Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (the Committee) which shall include representatives of the competent authorities of the Parties.
2. 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. The Committee shall establish its rules of procedure at its first meeting. It shall 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.
3. 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. When additional expertise is needed, the membership of these groups need not be restricted to representatives of the Parties.
4. The Committee shall consider any matters relating to the implementation of the Chapter including:
 - (a) establishing, monitoring and reviewing work plans; and
 - (b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which further elaborate the provisions of this Chapter in order to facilitate trade among the Parties.
5. The Implementing Arrangements referred to in Paragraph 4(b) shall include the following:
 - (a) Competent Authorities and Contact Points (Implementing Arrangement 1);
 - (b) Diseases and Pests for which Regionalisation Decisions can be Taken (Implementing Arrangement 2);

- (c) Criteria for Regionalisation Decisions (Implementing Arrangement 3);
- (d) Recognition of Measures (Implementing Arrangement 4);
- (e) Guidelines for Conducting an Audit (Implementing Arrangement 5);
- (f) Certification (Implementing Arrangement 6);
- (g) Import Checks (Implementing Arrangement 7); and
- (h) Equivalence: Procedures for Determination (Implementing Arrangement 8).

6. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to implement such Arrangement within three months following its adoption, unless otherwise agreed by the relevant Parties.

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

Article 7.5: Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in Implementing Arrangement 1. The contact points that have the responsibilities relating to notification are also set out in Implementing Arrangement 1.

2. The Parties shall inform each other of any significant changes in the structure, organisation and division of the competency of its competent authorities or contact points.

Article 7.6: Adaptation to Regional Conditions

1. Where a Party has an area or part of its territory free of a disease or pest, the Parties may agree in accordance with Implementing Arrangement 3, to list this status and the measures in place in Implementing Arrangement 2 to ensure that the disease or pest free status will be maintained in the event of an incursion.

2. In the event of an incursion of a disease or pest specified in Implementing Arrangement 2, the importing Party shall recognise the exporting Party's measures specified in Implementing Arrangement 2 for the purpose of facilitating trade among the Parties.

3. The Parties may agree to list additional diseases or pests in Implementing Arrangement 2, in accordance with the criteria specified in Implementing Arrangement 3.

4. Where one of the Parties considers that it has a special status with respect to a specific disease or pest, it may request recognition of this status. The Party concerned may also request specific guarantees in respect of imports of animals and animal products, plants and plant products, and other related goods appropriate to the agreed status. The guarantees for specific diseases and pests shall be specified in Implementing Arrangement 4.

Article 7.7: Equivalence

1. Equivalence may be recognised by the Parties in relation to an individual measure and/or groups of measures and/or systems applicable to a sector or part of a sector as specified in Implementing Arrangement 4. The equivalence determinations recorded in Implementing Arrangement 4 shall be applied to trade among the relevant Parties in animals and animal products, plants and plant products, or as appropriate to related goods.

2. The recognition of equivalence requires an assessment and acceptance of:

- (a) the legislation, standards and procedures, as well as the programmes in place to allow control and to ensure domestic and importing country requirements are met;
- (b) the documented structure of the competent authority(ies), their powers, their chain of command, their *modus operandi* and the resources available to them; and
- (c) the performance of the competent authority in relation to the control and assurance programmes.

In this assessment, the Parties shall take account of experience already acquired.

3. The importing Party shall accept the sanitary or phytosanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection. In reaching a determination of whether a sanitary or phytosanitary measure applied by an exporting Party achieves the importing Party's appropriate level of protection, those Parties shall follow the process specified in Implementing Arrangement 8. The Parties may add to or amend the steps in the process in the future as the Parties' experience in regard to the determination of equivalence process increases.

4. Where equivalence has not been recognised or where an application is pending, trade shall take place under the conditions required by the importing Party to meet its appropriate level of protection. These conditions shall be as set out in Implementing Arrangement 4 where such conditions have been agreed. If conditions have not been agreed and incorporated in Implementing Arrangement 4, then the conditions to be met by the exporting Party shall be those specified by the importing Party. The exporting Party may agree to meet the importing Party's conditions, without affecting the result of the process set out in Implementing Arrangement 8.

5. Implementing Arrangement 4 may list :

- (a) those individual measures and/or groups of measures and/or systems applicable to a sector or part of a sector, for which the respective sanitary or phytosanitary measures are recognised as equivalent for trade purposes;
- (b) actions to enable the assessment of equivalence to be completed in accordance with the process set out in Implementing Arrangement 8, and by the date indicated in Implementing Arrangement 4, or if not indicated, as specified by the importing Party; or
- (c) the specific guarantees related to recognition of special status provided for Article 7.6(4); and
- (d) may also list those sectors, or parts of sectors, for which the Parties apply differing sanitary or phytosanitary measures and have not concluded the determination provided for in Paragraph 3.

6. Unless otherwise agreed among the relevant Parties, an official sanitary or phytosanitary certificate will be required for each consignment of animals and animal products, plants and plant products, or other related goods intended for import and for which equivalence has been recognised. The model attestation for such certificates will be prescribed in Implementing Arrangement 6. The Parties may jointly determine principles or guidelines for certification, which shall be included in Implementing Arrangement 6.

Article 7.8: Verification

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to carry out audit and verification of the procedures of the exporting Party, which may include an assessment of all or part of the competent authorities' total control programme, including, where appropriate:

- (a) reviews of the inspection and audit programmes; and
- (b) on-site checks.

These procedures shall be carried out in accordance with the provisions of Implementing Arrangement 5.

2. Each Party shall also have the right to carry out import checks for the purposes of implementing sanitary and phytosanitary measures on consignments on importation, consistent with Article 7.9, the results of which form part of the verification process.

3. With the consent of the importing and exporting Parties, a Party may:

- (a) share the results and conclusions of its audit and verification procedures and checks with non-Parties; or
- (b) use the results and conclusions of the audit and verification procedures and checks of non-Parties.

Article 7.9: Import Checks

1. The import checks applied to imported animals and animal products, plants and plant products, or other related goods shall be based on the risk associated with such importations. They shall be carried out without undue delay and with a minimum effect on trade between the Parties.

2. The frequencies of import checks on such importations shall be made available on request and where set out in Implementing Arrangement 7 shall be applied accordingly. The Parties may amend the frequencies, within their responsibilities, as appropriate, as a result of progress made in accordance with Implementing Arrangement 4, or as a result of other actions or consultations provided for in this Chapter.

3. 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 based on an assessment of the risk involved. Wherever possible, the importer or their representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision.

Article 7.10: Notifications

1. The Parties shall notify each other in writing through the contacts points set out in Implementing Arrangement 1 of:

- (a) significant changes in health status including the presence and evolution of diseases or pests in Implementing Arrangement 2, in a timely and appropriate manner so as to ensure continued confidence in the competence of the Party with respect to the management of any risks of transmission to one of the other Parties which may arise as a consequence;
- (b) scientific findings of importance with respect to diseases or pests which are not in Implementing Arrangement 2 or new diseases or pests without delay; and
- (c) any additional measures beyond the basic requirements of their respective sanitary or phytosanitary measures taken to control or eradicate diseases or pests or to protect public health, and any changes in preventive policies, including vaccination policies.

2. In cases of serious and immediate concern with respect to human, animal or plant life or health, immediate oral notification shall be made to the contact points and 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 13 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 in the case of products subject to sanitary or phytosanitary measures, there is non-conformity with the relevant standards and/or requirements, the importing Party shall notify the exporting Party as soon as possible of the non-conformity as set out in Implementing Arrangement 7.

Article 7.11: Provisional Measures

Without prejudice to Article 7.10, and in particular Article 7.10(3), any Party may, on serious human, animal or plant life or health grounds, adopt provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Parties and, on request, consultations regarding the situation shall be held within 13 days unless

otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

Article 7.12: Exchange of Information

1. The Parties, through the contacts points set out in Implementing Arrangement 1, 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, achievements of these objectives may be enhanced by exchanges of officials.

2. The information exchange on changes in the respective sanitary or 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;
- (b) briefing on current developments affecting trade; and
- (c) information on the results of the verification procedures provided for in Article 7.8.

3. The Parties may provide for the sharing of scientific papers or data to relevant scientific forums on sanitary or phytosanitary measures and related matters.

Article 7.13: Technical Consultation

1. A Party may initiate consultations with another Party with the aim of resolving issues on the application of measures covered in this Chapter or interpretation of the provisions of this Chapter.

2. Where a Party requests consultations, these consultations shall take place as soon as practicable.

3. If a Party considers it necessary, it may request that the Committee facilitate such consultations. The Committee may refer the issues to an ad hoc working group for further discussion. The ad hoc working group may make a recommendation to the Committee on the resolution of the issues. The Committee shall discuss the recommendation with a view to resolving the issue without undue delay.

4. Such consultations are without prejudice to the rights and obligations of the Parties under Chapter 15 (*Dispute Settlement*).

Article 7.14: Cooperation

1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary or phytosanitary matters of mutual interest consistent with the provisions of this Chapter.
2. The Parties acknowledge that the provisions of Chapter 16 (*Strategic Partnership*) and its accompanying Implementing Arrangement relating to primary industry matters will be of relevance to the implementation of this Chapter.
3. The Parties agree to cooperate together to facilitate the implementation of this Chapter, and in particular the development of this Chapter's Implementing Arrangements.