

CHAPTER 4

SANITARY AND PHYTOSANITARY MEASURES

Article 4.1

Objectives

The objective of this Chapter is to protect human, animal and plant life and health in the territory of the Parties while facilitating trade between them, by:

- (a) ensuring full transparency as regards sanitary and phytosanitary (hereinafter referred to as “SPS”) measures applicable to trade;
- (b) establishing a mechanism for the recognition of equivalence of sanitary or phytosanitary measures maintained by a Party;
- (c) recognition of the health status of each Party and applying the principle of regionalisation zoning and compartmentalisation;
- (d) further implementing the principles of the WTO SPS Agreement;
- (e) using existing standards established under the World Organisation for Animal Health (hereinafter referred to as “WOAH”), the Codex Alimentarius and the International Plant Protection Convention (hereinafter referred to as “IPPC”);
- (f) establishing mechanisms and procedures for trade facilitation; and
- (g) improving communication, consultation and cooperation between the Parties on SPS measures.

Article 4.2

Affirmation of WTO SPS Agreement

Each Party affirms its rights and obligations with respect to the other Parties under the WTO SPS Agreement. Nothing in this Agreement shall affect the rights and obligations that each Party has under the WTO SPS Agreement.

Article 4.3

Scope

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

Article 4.4
Internal Harmonisation

Each Party shall ensure that animals, animal products, plants and plant products lawfully put on the market can move freely within its territory provided that they comply with the relevant SPS requirements of the market at the point of entry.

Article 4.5
Competent Authorities

1. The Parties shall exchange names, addresses and competences of their competent authorities responsible for the implementation of this Chapter.
2. In accordance with Article 4.16, the Parties shall inform each other about any significant changes in such information.

Article 4.6
Recognition of Pest and Disease Area Status

The Parties recognise the concepts of zoning, compartmentalisation and regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence. The Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.

Article 4.7
Determination of Equivalence

1. Equivalence may be determined for an individual measure, groups of measures, or systems related to a certain commodity or categories of commodities.
2. The consideration of equivalence by the importing Party upon request of the exporting Party for recognition of its measures shall not be a reason to disrupt trade or suspend ongoing imports from the exporting Party.
3. Within a reasonable period of time after conclusion of its assessment, the importing Party shall notify the exporting Party in writing about the equivalence determination. The importing Party shall implement the measure within a reasonable period of time. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.
4. The decision of recognition, non-recognition, withdrawal or suspension of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework taking into account the guidelines, standards, and recommendations of the WOA, IPPC and the Codex Alimentarius.

5. If the importing Party formally recognises equivalence, it shall promptly adopt measures to give effect to the equivalence and enable trade between the Parties.

Article 4.8
Verifications

1. In order to obtain or maintain confidence in the effective implementation of this Chapter, each Party, within the scope of this Chapter, shall have the right to carry out audits and verifications of the competent authorities' control programs or procedures of any other Party.
2. The process shall be carried out in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, WOH and IPPC. In particular, verification activities shall concentrate primarily on evaluating the effectiveness of the official inspection and certification systems rather than on specific commodities or establishments in order to determine the ability of the exporting Party's competent authority to control and deliver the required assurances to the importing Party.
3. The frequency of verifications shall depend on the results of previous verifications.
4. If the importing Party decides to carry out a verification visit in the exporting Party, the importing Party shall notify the exporting Party of the verification visit at least two months prior to such visit, except in emergency cases or if the Parties agree otherwise. Any modification concerning the verification visit shall be agreed by the Parties concerned.

Article 4.9
Import Checks and Certification Procedures

1. Each Party shall ensure that its control, inspection and approval procedures, including, inter alia, procedures for sampling, testing and certification are in accordance with Annex C of the WTO SPS Agreement and this Article.
2. Each Party shall ensure that animals and animal products, plants and plant products, or other related goods– exported to another Party comply with the SPS requirements set out in the certificates of the importing Party.
3. The importing Party shall ensure that its import conditions for products imported from another Party are applied in a non-discriminatory manner and proportional to the risk associated with such products.
4. Import checks applied to imported products shall be carried out without undue delay and in the least trade-restrictive manner.
5. Information about the frequencies of import checks on such importations shall be made available upon request.

6. If goods are rejected at a port of entry due to a verified sanitary or phytosanitary issue, the importing Party shall inform the exporting Party's competent authority as soon as possible.
7. If the importing Party finds that certain goods are not in compliance with its requirements, it may put such goods under official detention and, in consultation with the exporter or its representative, decide to subject such goods to appropriate measures as defined in its domestic law. In taking these decisions, the importing Party shall take into account any information available to it or information submitted to it in a timely manner depending upon the risk, including submissions from the exporter or its representative. The persons responsible for the consignment shall be liable for the costs incurred by the importing Party for these activities.
8. Each Party shall ensure that the exporter or its representative shall have the right of appeal against decisions, and that he or she is provided with information about his or her rights of appeal, the applicable procedure and time limits.
9. This Article shall be without prejudice to the right of the competent authorities to promptly take an appropriate decision concerning emergency measures for the protection of human, animal or plant life or health taken to address serious risks for human, animal or plant life or health. The circumstances leading to the decision shall be explained to the exporter or its representative.
10. Inspection fees shall be equitable in relation to fees charged for the inspection of like domestic products.
11. Without prejudice to each Party's right to import controls, the importing Party shall accept certificates issued by the relevant competent authority in the exporting Party in compliance with the regulatory requirements of the importing Party.

Article 4.10
Risk Assessment

1. The Parties shall strengthen cooperation on risk assessment in accordance with the WTO SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
2. When conducting a risk assessment, the importing Party shall ensure that the risk assessment is documented and that it provides the concerned exporting Party or Parties with an opportunity to comment, in a manner to be determined by the importing Party.
3. Upon request by the exporting Party, the importing Party shall inform the exporting Party about the progress of the specific risk assessment request and any delay that may occur during the process.

4. Without prejudice to emergency measures, no Party shall stop the importation of a good of another Party solely for the reason that the importing Party is undertaking a review of an existing SPS measure.

Article 4.11

Emergency Measures

1. If a Party adopts an emergency measure which is necessary for the protection of human, animal, plant life or health and that may have an effect on trade, it shall immediately notify the exporting Parties concerned in writing through the contact points established under Article 4.16 or already established communication channels of the Parties.
2. The exporting Parties concerned may request discussions with the Party adopting an emergency measure according to paragraph 1. Such discussions shall be held as soon as practicable. Each Party shall endeavour, as part of these discussions, to provide relevant information. Each Party involved in the discussions shall take due account of any information provided through the discussions.
3. If a Party adopts an emergency measure, it shall review that measure within a reasonable period of time or upon request of the exporting Party. The importing Party may, if necessary, request relevant information and the exporting Party shall endeavour to provide the relevant information to assist the importing Party in the review of the adopted emergency measure. The importing Party shall provide the result of the review to the exporting Party upon request. If the emergency measure is maintained after the review, the importing Party shall review the measure periodically based on the most recent available information and, upon request of the exporting Party, shall explain the reason for the continuation of the emergency measure.

Article 4.12

Transparency

1. The Parties recognise the importance of transparency as set out in Annex B of the WTO SPS Agreement.
2. The Parties recognise the importance of exchanging information on the development, adoption and application of SPS measures that may have significant effects on trade between or among the Parties.
3. In implementing this Article, each Party shall take into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
4. Each Party shall notify proposed measures or changes to existing SPS measures that may have a significant effect on its trade with the other Parties through the WTO SPS online submission system or contact points established under

Article 4.16, or through already established communication channels of the Parties.

5. Unless urgent problems of health arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow a period of at least 60 days for other Parties to provide written comments after it makes a notification pursuant to paragraph 4. A Party shall consider reasonable requests from another Party to extend the comment period.
6. Upon reasonable request from another Party, a Party shall provide relevant information and clarification regarding any SPS measure to the requesting Party, within a reasonable period of time, including:
 - (a) the SPS requirements that apply for the import of specific products;
 - (b) the status of the Party's application; and
 - (c) procedures for authorising the import of specific products.
7. An importing Party shall provide timely and appropriate information to Parties concerned through contact points established under Article 4.16, or through already established communication channels of the Parties, where there is:
 - (a) significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments identified by the importing Party;
 - (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Party considered necessary to protect human, animal or plant life or health within the importing Party.

Article 4.13 ***Information Exchange***

1. The Parties shall exchange information which is relevant for the implementation of this Chapter systematically, with a view to provide assurance, to strengthen mutual confidence and to demonstrate the efficacy of the programmes controlled. Where appropriate, this exchange of information may include exchange visits of officials. Upon request, notifications not covered by the WTO SPS Agreement shall be made to the contact points established under Article 4.16 in English. However, in case a Party wishes to notify in any other WTO language, an English translation shall be made available to the Parties.
2. Without prejudice to the WTO SPS Agreement, as regards notification of measures, the Parties may also exchange information on other relevant topics, including:
 - (a) any serious or significant human, animal or plant life or health risk, including any food emergencies; and

- (b) sanitary and phytosanitary import requirements and their amendments, including the models for the official certificates or attestations, as prescribed by the importing Party.
- 3. An information exchange shall be considered to have taken place, in accordance with this Article if the information referred to in this Article has been made available:
 - (a) by a notification to the WTO in accordance with its relevant rules; or
 - (b) on the Parties' official and publicly accessible websites free of charge.

Article 4.14
Review Clause

Upon request of a Party, the Parties shall without undue delay negotiate an arrangement extending to each other equivalent treatment related to SPS measures which all Parties have agreed with a non-Party.

Article 4.15
Sub-Committee on Sanitary and Phytosanitary Measures

- 1. A Sub-Committee on sanitary and phytosanitary measures (hereinafter referred to as the "Sub-Committee on SPS") is hereby established under the Joint Committee, consisting of government representatives of the Parties.
- 2. The Sub-Committee on SPS shall consider any matter arising under this Chapter, including:
 - (a) monitoring and reviewing the implementation of this Chapter;
 - (b) encouraging discussions, cooperation and the exchange of information between the competent authorities on matters related to this Chapter;
 - (c) the preparation of recommendations and reports to the Joint Committee as necessary; and
 - (d) any other matter as referred to it by the Joint Committee.
- 3. The Sub-Committee on SPS shall act by consensus.
- 4. The Sub-Committee on SPS shall normally meet every two years unless otherwise agreed by the Parties. Such meetings may be conducted in any agreed manner on a case-by-case basis. The meetings of the Sub-Committee on SPS shall be chaired jointly by an EFTA State and India.

Article 4.16
Contact Points

1. Each Party shall designate a contact point responsible for coordinating the implementation of this Chapter
2. Each Party shall provide the other Parties with the contact details of its contact point and shall promptly notify the other Parties of any change in contact point.

Article 4.17
Consultations

If a Party has taken a measure which is likely to create, or has created an obstacle to trade between the Parties, another Party may request consultations. Such consultations shall be initiated as early as possible and conducted by the competent authorities of the Parties concerned in a mutually agreed manner. The outcome of the consultations shall be reported to the Sub-Committee on SPS.

Article 4.18
Cooperation

1. The Parties shall strengthen their cooperation with a view to facilitate the implementation of this Chapter. In their cooperation, the Parties shall work to identify, develop and promote trade facilitating measures which may include:
 - (a) training and exchange of experience programmes for government officials and technical staff in relation to inspection, certification, testing procedures, verifications, meeting regulatory and market requirements;
 - (b) development and improvement of risk assessment procedure;
 - (c) forums such as seminars and workshops for the exchange of views and best practices on 'the Parties' SPS regimes; and
 - (d) international standardisation activities and activities of the relevant international organisations.
2. The Parties may cooperate on any matter of mutual interest under this Chapter, including sector-specific proposals.