

CHAPTER 4 SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 4.1 Definitions

For the purposes of this Chapter:

1. **“SPS Agreement”** means the Agreement on the Application of Sanitary and Phytosanitary Measures, set out in Annex 1A of the GATT 1994.
2. The definitions under Annex A of the SPS Agreement shall apply.
3. Relevant definitions developed by Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE), and the International Plant Protection Convention (IPPC) shall apply.
4. In the event of any conflict between the definitions under the SPS Agreement and any of the other sources specified in paragraph 3, the definitions under the SPS Agreement shall prevail.
5. **“Competent authorities”** mean those authorities within each Party recognised by the national government as responsible for developing and administering the SPS measures within that Party.
6. An **“emergency measure”** means a sanitary or phytosanitary measure that is applied by a Party to products of the other Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure.

ARTICLE 4.2 Objectives

1. The objectives of this Chapter are to:
 - (a) protect human, animal, or plant life or health in the territories of the Parties while facilitating trade between them;
 - (b) reinforce the SPS Agreement;
 - (c) strengthen communication, consultation, and cooperation between the Parties, and particularly between the Parties' competent authorities;
 - (d) ensure that sanitary or phytosanitary measures implemented by a Party do not create unjustified barriers to trade;
 - (e) enhance transparency in and understanding of the application of each Party's sanitary and phytosanitary measures; and

- (f) encourage the development and adoption of science-based international standards, guidelines, and recommendations, and promote their implementation by the Parties.

ARTICLE 4.3 **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 4.4 **General Provision**

1. The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.
2. This Chapter is subject to Chapter 15 (Dispute Settlement) at the time of entry into force.

ARTICLE 4.5 **Equivalence**

1. Both Parties shall strengthen cooperation on equivalence in accordance with Article 4 of the SPS Agreement while taking into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations, in accordance with Annex A of the SPS Agreement, *mutatis mutandis*.
2. The importing Party shall recognise the equivalence of a sanitary and phytosanitary measure if the exporting Party objectively demonstrates to the importing Party 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 measure.
3. In determining equivalence, the importing Party shall take into account existing knowledge, information and experience as well as the regulatory competence of the exporting Party.
4. A Party shall, upon request, enter into consultation with the aim of achieving bilateral recognition arrangements of equivalence of specified sanitary and phytosanitary measures. The recognition of equivalence may be with respect to a single measure, group of measures or on a systems-wide basis. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.
5. As part of the consultation for equivalence recognition, on request by the exporting Party, the importing Party shall explain and provide:
 - (a) the rationale and objective of its measures; and
 - (b) the specific risks its measures are intended to address.

6. The exporting Party shall provide necessary information for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall without undue delay, upon request, explain the process and plan for making an equivalence determination.

7. The consideration by a Party of a request from the other Party for recognition of equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the Party of the product(s) in question.

8. When the importing Party recognises the equivalence of the exporting Party's specific sanitary and phytosanitary measure, group of measures or measures on a systems-wide basis, the importing Party shall communicate the decision in writing to the exporting Party and implement the measure within a reasonable period of time. The rationale shall be provided in writing by the importing Party in the event that the decision is negative.

9. The importing Party may withdraw or suspend equivalence on the basis of any amendment by one of the Parties of measures affecting equivalence, in accordance with the following provisions:

- (a) the exporting Party shall inform the importing Party of any proposal for amendment of its measures for which equivalence of measures is recognised and the likely effect of the proposed measures on the equivalence which has been recognised;
- (b) within sixty (60) working days or as mutually agreed by both Parties on receipt of this information, the importing Party shall inform the exporting Party whether or not equivalence would continue to be recognised on basis of the proposed measures;
- (c) the importing Party shall inform the exporting Party of any proposal for amendment of its measures on which recognition of equivalence has been based and the likely effect of the proposed measures on the equivalence which has been recognised; and
- (d) in case of non-recognition or withdrawal or suspension of equivalence, the importing Party shall indicate to the exporting Party the required conditions on which the process referred to in paragraphs 4 and 5 may be reinitiated, provided that the timelines of paragraph 6 shall be adhered to in any process for re-assessment of equivalence.

10. The withdrawal or suspension of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework, which shall adhere to the international guidelines, standards and recommendations. The importing Party shall provide to the exporting Party, upon request, an explanation except confidential data for its determinations and decisions.

11. Compliance by an exported product that has been accepted as equivalent to sanitary and phytosanitary measures and standards of the importing Party shall not

remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.

ARTICLE 4.6

Adaptation to Regional Conditions, Including Pest or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Both Parties recognise the concepts of regional conditions, including pest-or disease-free areas and areas of low pest or disease prevalence. Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. Both Parties may cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each other for such recognition.
3. At the request of the exporting Party, the importing Party shall, without undue delay, explain its process and plan for making the determination of regional conditions.
4. When the importing Party has received a request for a determination of regional conditions from the exporting Party, and has determined that the information provided by the exporting Party is sufficient, it shall initiate the assessment within a reasonable period of time.
5. For this assessment, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.
6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.
7. When the importing Party recognises specific regional conditions of an exporting Party, the importing Party shall communicate that decision to the exporting Party in writing and implement the measures within a reasonable period of time.
8. If the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the regional conditions, the importing Party shall provide the exporting Party the rationale for its decision in writing within a reasonable period of time.
9. Where a determination recognising regional conditions is made, the Parties are encouraged, where mutually agreed, to report the outcome to the WTO SPS Committee.

ARTICLE 4.7

Risk Analysis

1. The Parties shall strengthen their cooperation on risk analysis in accordance with the 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 analysis, an importing Party shall:

- (a) ensure that the risk analysis is documented and that it provides the relevant exporting Party with an opportunity to comment, in a manner to be determined by the importing Party;
 - (b) consider risk management options that are not more trade restrictive than required¹ to achieve its appropriate level of sanitary or phytosanitary protection; and
 - (c) select a risk management option that is not more trade restrictive than required to achieve its appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.
3. On request of an exporting Party, an importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.
4. Without prejudice to the Parties' right to take emergency measures consistent with Article 4.9 (Emergency Measures), no Party shall stop the importation of a good of the other Party solely for the reason that the importing Party is undertaking a review of a sanitary or phytosanitary measure, if the importing Party permitted importation of the good of the other Party at the time of the initiation of the review.

ARTICLE 4.8

Audit, Certification and Import Checks

1. The Parties shall ensure that their import procedures comply with Annex C of the SPS Agreement including audit, certification, and import checks.
2. When conducting an audit,² the Parties agree that:
- (a) audits shall be systems based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party. Audits may include an assessment of the competent authorities' control programme, including, where appropriate, reviews of the inspection and audit programmes, and on-site inspections of facilities, without prejudice to the rights of a Party to seek market access on the basis of individual inspection and audits;
 - (b) prior to commencement of an audit, both Parties shall discuss and agree, *inter alia*:
 - (i) the rationale for and the objectives and scope of the audit;

¹ For the purposes of subparagraphs (b) and (c), a risk management option is not more trade restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

² For greater certainty, without affecting the implementation of this Article, nothing in this Article prevents a Party from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

- (ii) the criteria or requirements against which the exporting Party will be assessed; and
 - (iii) the itinerary and procedures for conducting the audit;
 - (c) the auditing Party shall provide the audited Party the opportunity to comment on the finding of an audit and take any such comments into account before making its conclusions and taking any action;
 - (d) any decisions or actions taken by the auditing Party as a result of the audit shall be supported by objective evidence and data which can be verified, taking into account the knowledge, relevant experience, and confidence that the auditing Party has with the audited Party. Any such objective evidence and data shall be provided to the audited Party on request;
 - (e) any costs incurred by the auditing Party shall be borne by the auditing Party, unless the Parties agree otherwise; and
 - (f) the auditing Party and the audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information acquired during the auditing process.
3. When conducting certification, the Parties agree that:
- (a) where certification is required for trade in a product, the importing Party shall ensure such certification is applied, in meeting its sanitary or phytosanitary objectives, only to the extent necessary to protect human, animal and plant life or health;
 - (b) in applying certification requirements, each Party shall take into account relevant decisions from the WTO SPS Committee and international standards, guidelines, and recommendations;
 - (c) the Parties shall promote the implementation of electronic certification and other technologies to facilitate trade; and
 - (d) without prejudice to each Party's right to import controls, the importing Party shall accept certificates issued by the competent authorities in compliance with the regulatory requirements of the importing Party.
4. When conducting import checks, the Parties agree that:
- (a) both Parties shall ensure that their control, inspection and approval procedures are in accordance with Annex C of the SPS Agreement;
 - (b) the import checks applied to imported animals, animal products, plants and plant products traded between the Parties shall be based on the risk associated with such importations. The import checks shall be carried out in a manner that is appropriate to the risk involved, least trade-restrictive and without undue delay; and

- (c) the Parties reaffirm Article V of the GATT 1994 and agree that there shall be freedom of transit for goods in transit. The inspection of goods may be carried out in the event of identifiable sanitary or phytosanitary risks.

ARTICLE 4.9 Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health and that may have an effect on trade, the Party shall promptly notify, in writing in the English language, the other Party of that measure through the relevant contact point referred to in Article 4.13 (Contact Points and Competent Authorities). The importing Party shall take into consideration any information provided by the other Party in response to the notification.
2. If a Party adopts an emergency measure, it shall review measure within six (6) months or any other such time as agreed by the Parties and make available the results of the review to the other Party on request. If the emergency measure is maintained after the review, because the reason for its adoption remains, the Party should review the measure periodically.

ARTICLE 4.10 Transparency

1. The Parties recognise the value of transparency in the adoption and application of sanitary and phytosanitary measures and the importance of sharing information about such measures on an ongoing basis.
2. Each Party shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Parties through the online WTO Sanitary and Phytosanitary Measures Notification Submission System, the contact points designated under Article 4.13 (Contact Points and Competent Authorities), or through already established communication channels of the Parties.
3. In implementing this Article, both Parties shall take into account relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
4. A Party, upon request from the other Party, shall provide relevant information and clarification regarding any sanitary or phytosanitary measure to the requesting Party, within a reasonable period of time, including:
 - (a) the sanitary and phytosanitary requirements that apply for the import of specific products;
 - (b) the status of the Party's application; and
 - (c) the procedures for the authorisation of specific products.
5. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, the Party

proposing a sanitary or phytosanitary measure shall normally allow at least sixty (60) days for the other Party to provide written comments on the proposed measure, after it makes a notification under paragraph 3. If feasible and appropriate, the Party proposing the measure should allow more than sixty (60) days. The Party shall consider any reasonable request from the other Party to extend the comment period. On request of the other Party, the Party proposing the measure shall respond to the written comments of the other Party in an appropriate manner.

6. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with the other Party, on request, and if appropriate and feasible, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

7. The Parties encourage the publication, by electronic means in an official journal or on a website, the proposed sanitary or phytosanitary measure notified under paragraph 3, and the legal basis for the measure.

8. Each Party shall notify the other Party of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Each Party shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official journal or website.

9. An exporting Party shall notify the importing Party through the contact points referred to in Article 4.13 (Contact Points and Competent Authorities) in a timely and appropriate manner:

- (a) if it has identified significant sanitary or phytosanitary risk related to the export of a good from its territory going to the importing Party;
- (b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;
- (c) of significant changes in the status of a regionalised pest or disease;
- (d) of new scientific findings of importance which affect the regulatory response with respect to food safety, pests or diseases; and
- (e) of significant changes in food safety, pest or disease management, control or eradication policies or practices that may affect current trade.

10. Each Party shall provide within a reasonable period of time, appropriate information to the other Party through the contact points established under Article 4.13 (Contact Points and Competent Authorities) or already established communication channels of the Parties, when:

- (a) there is significant or recurring sanitary or phytosanitary non-compliance associated with an exported consignment identified by the importing Party; and

- (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Party is considered necessary to protect human, animal or plant life or health within the importing Party.

11. A Party shall provide to the other Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory in the English language.

ARTICLE 4.11 Cooperation and Capacity Building

1. Both Parties shall explore opportunities for further cooperation between them, including capacity building, technical assistance, collaboration, and information exchange on sanitary and phytosanitary matters of mutual interest, consistent with the provisions of this Chapter.

2. In undertaking cooperative activities, both Parties shall endeavour to coordinate with bilateral, regional or multilateral work programmes with the objective of avoiding unnecessary duplications and eliminating unnecessary obstacles to trade between the Parties and maximising the use of resources.

3. If there is mutual interest and with the objective of establishing a common scientific foundation for each Party's regulatory approach, the competent authorities of the Parties are encouraged to:

- (a) share best practices; and
- (b) cooperate on joint scientific data collection.

ARTICLE 4.12 Technical Discussions

1. Where a Party considers that a sanitary or phytosanitary measure is affecting their trade with the other Party, it may, through the contact points or through other established communication channels, request a detailed explanation of the sanitary or phytosanitary measures including the scientific basis of the measure. The other Party shall respond promptly to any request for such explanation.

2. A Party shall notify the other Party of an emergency measure under this Chapter immediately after adopting its decision to implement the measure. If a Party requests technical consultation to address the emergency SPS measure, the technical consultations must be held within ten (10) days of the notification of the emergency SPS measure. The Parties shall consider any information provided through the technical consultations.

3. A Party may request to hold technical discussions with the other Party in an attempt to resolve any concerns on specific issues arising from the application of the sanitary and phytosanitary measure. The requested Party shall respond promptly to any reasonable request for such consultation.

4. Where a Party requests technical discussion, these shall take place as soon as practicable, unless the Parties agree otherwise.

5. The technical discussions may be conducted via teleconference, videoconference, or through any other means as the Parties mutually agree.

6. Such technical discussions are without prejudice to the rights and obligations of the Parties under Chapter 15 (Dispute Settlement).

ARTICLE 4.13
Contact Points and Competent Authorities

1. Upon entry into force of this Agreement, each Party shall:
 - (a) designate a contact point or contact points to facilitate communication on matters covered under this Chapter;
 - (b) inform the other Party of a contact point or contact points; and
 - (c) when more than one contact point is designated, specify a contact point that serves as the focal point to respond to enquiries by other Parties about the appropriate contact point with which to communicate.
2. A Party shall provide the other Party, through the contact point or contact points, a description of its competent authorities and their division of functions and responsibilities.
3. Both Parties shall notify each other of any changes to the contact points and significant changes in the structure, organisation and division of responsibility within its competent authorities.
4. Both Parties recognise the importance of the competent authorities in the implementation of this Chapter. Accordingly, the competent authorities of Parties may cooperate with each other on matters covered by this Chapter in a manner the Parties mutually agree.

ARTICLE 4.14
Subcommittee on SPS

1. The Parties hereby establish a Subcommittee on Sanitary and Phytosanitary Measures (SPS Subcommittee) under the CTG, consisting of government representatives of each Party's competent authorities.
2. The SPS Subcommittee shall meet within one (1) year from the date of entry into force of this Agreement, and thereafter at such venues and time-period as the Parties mutually determine.
3. The functions of the SPS Subcommittee shall be to:
 - (a) consider any sanitary and phytosanitary matters of mutual interest;
 - (b) coordinate cooperation pursuant to Article 4.11 (Cooperation and Capacity Building) and identify mutually agreed priority sectors for enhanced cooperation;

- (c) monitor the implementation and operation of this Chapter;
- (d) encourage the Parties to share experience regarding implementation of this Chapter; and
- (e) facilitate technical discussions.

4. Meetings may occur in person, by teleconference, by video conference, or through any other means as determined by the Parties.