

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health through the development, adoption and enforcement of sanitary and phytosanitary measures while minimising their negative effects on trade between the Parties;
- (b) promote cooperation between the Parties on the implementation of the SPS Agreement; and
- (c) provide means for improving communication and cooperation between the Parties, a framework for addressing matters related to the implementation of sanitary and phytosanitary measures, and means for achieving mutually acceptable solutions.

ARTICLE 6.2

Scope of application

This Chapter applies to all sanitary and phytosanitary measures of the Parties under the SPS Agreement that may, directly or indirectly, affect trade between the Parties.

ARTICLE 6.3

Definitions

1. For the purposes of this Chapter,
 - (a) the definitions set out in Annex A to the SPS Agreement apply; and
 - (b) the relevant definitions adopted under the auspices of the Codex Alimentarius Commission (hereinafter referred to as "Codex Alimentarius"), the World Organisation for Animal Health (hereinafter referred to as "OIE") and the International Plant Protection Convention (hereinafter referred to as "IPPC") apply, unless otherwise agreed by the Committee on Sanitary and Phytosanitary Measures established pursuant to Article 23.3.

In the event of an inconsistency between the definitions set out in the SPS Agreement and the definitions adopted under the auspices of Codex Alimentarius, the OIE and the IPPC, the definitions set out in the SPS Agreement shall prevail.

2. For the purposes of this Chapter, "import conditions" means any sanitary or phytosanitary measures that are required to be fulfilled for the import of products.

ARTICLE 6.4

Relation to the WTO Agreement

The Parties affirm their rights and obligations relating to sanitary and phytosanitary measures under the SPS Agreement. Nothing in this Chapter shall affect the rights and obligations of each Party under the SPS Agreement.

ARTICLE 6.5

Competent authorities and contact points

1. As of the date of entry into force of this Agreement, each Party shall provide the other Party with a description of the competent authorities for the implementation of this Chapter and a contact point for communication on all matters covered by this Chapter.
2. Each Party shall inform the other Party of any significant changes in the structure, organisation and division of responsibilities of their competent authorities and ensure that the information on contact points is kept up to date.

ARTICLE 6.6

Risk assessment

The Parties shall ensure that their sanitary and phytosanitary measures are based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement.

ARTICLE 6.7

Import conditions, import procedures and trade facilitation

1. Import conditions shall be established by the importing Party in order to achieve the appropriate level of protection, subject to and taking into account consultations between the Parties when necessary.
2. Without prejudice to the rights and obligations of each Party under the SPS Agreement, the importing Party should, if requested by the exporting Party, apply the import conditions for products to the entire territory of the exporting Party in a consistent manner.

3. Paragraphs 1 and 2 shall not affect the import conditions existing between the Parties on the date of entry into force of this Agreement. The Parties shall give consideration to any request for a review of those import conditions.

4. Each Party shall ensure, with respect to any import procedures to check and ensure the fulfilment of sanitary or phytosanitary measures, including those for the approval and clearance, that:

- (a) such procedures are simplified, expedited and completed without undue delay, in accordance with the SPS Agreement;
- (b) such procedures are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party;
- (c) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; and
- (d) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for the approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs.

5. Taking into account the applicable standards developed under the IPPC, the Parties shall maintain adequate information on their pest status, including surveillance, eradication and containment programmes and their results, in order to support the categorisation of pests and to justify phytosanitary import conditions.

6. Each Party shall establish lists of regulated pests for commodities¹ where phytosanitary concerns exist. The lists shall contain, as appropriate:

- (a) the quarantine pests not known to occur within any part of its territory;

¹ For greater certainty, for the purposes of this Chapter, "commodities" is understood in accordance with the Glossary of Phytosanitary Terms (International Standards for Phytosanitary Measures No.5) produced by the Secretariat of the IPPC.

- (b) the quarantine pests which are known to occur within any part of its territory but are not widely distributed and under official control; and
- (c) any other regulated pest for which phytosanitary measures may be taken.

For commodities for which phytosanitary concerns exist, import conditions shall be limited to measures ensuring the absence of regulated pests of the importing Party. The importing Party shall make available its list of regulated commodities and the phytosanitary import requirements for all regulated commodities. This information shall include, as appropriate, the specific quarantine pests and additional declarations on phytosanitary certificates as prescribed by the importing Party.

7. Where it is necessary to establish import conditions to respond to a request of the exporting Party:

- (a) the importing Party shall take all necessary steps to allow the import of the products concerned without undue delay; and
- (b) the exporting Party shall:
 - (i) provide all relevant information required by the importing Party; and
 - (ii) give reasonable access to the importing Party for audit and other relevant procedures.

8. Where a range of alternative sanitary or phytosanitary measures are available to attain the appropriate level of protection of the importing Party, the Parties shall, on request of the exporting Party, consider selecting a more practicable and less trade-restrictive solution.

9. Where a certificate issued by the exporting Party is required for sanitary or phytosanitary objectives, the format of the certificate and its contents shall be agreed by the Parties, taking into account international standards, guidelines or recommendations of the Codex Alimentarius, OIE or IPPC.

10. Each Party shall promote the implementation of electronic certification and other technologies to facilitate trade.

11. The purpose of the verifications by officials of the importing Party in the territory of the exporting Party should be to facilitate new trade. Those verifications should not become a permanent measure. The importing Party shall replace an existing verification measure by an alternative measure which verifies compliance with the agreed requirements for phytosanitary measures by the exporting Party, if so requested by the exporting Party and accepted without undue delay by the importing Party.

12. Consignments of regulated commodities shall be accepted on the basis of adequate assurances by the exporting Party, without specific import authorisations in the form of a licence or permit, except where an official consent for import is necessary, based on the relevant standards, guidelines and recommendations of the IPPC.

13. Pest risk analysis shall begin as promptly as possible and shall be concluded without undue delay.

14. Any fees imposed for the procedures on imported products from the exporting Party shall be equitable in relation to any fees charged on like domestic products and should be no higher than the actual cost of the service, in accordance with subparagraph 1(f) of Annex C to the SPS Agreement.

ARTICLE 6.8

Audit

1. In order to attain and maintain confidence in the effective implementation of this Chapter, the Parties shall assist each other to carry out audits of:

- (a) all or parts of the exporting Party's inspection and certification system; and
- (b) the results of the controls carried out under the exporting Party's inspection and certification system.

The Parties shall carry out those audits in accordance with the SPS Agreement, taking into account the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE or IPPC.

2. The importing Party may conduct audits by requesting information from the exporting Party or by audit visits to the exporting Party.
3. An audit visit shall be carried out under the conditions agreed in advance by the Parties.
4. The importing Party shall provide the exporting Party with the opportunity to comment in writing on the findings of the audit. The importing Party shall take any such comments into account before reaching its conclusions and taking any action thereon. The importing Party shall, without undue delay, provide the exporting Party with a written report setting out its conclusions.
5. The costs for an audit visit shall be borne by the importing Party unless otherwise agreed by the Parties.

ARTICLE 6.9

Procedure for listing of establishments or facilities

1. When required by the importing Party, the competent authorities of the exporting Party shall ensure that lists of establishments and facilities which comply with the importing Party's import conditions are drawn up, kept updated and communicated to the importing Party.
2. The importing Party may request the exporting Party to provide information which is necessary to consider the lists referred to in paragraph 1. Unless additional information is required to verify the entries on the lists, the importing Party shall take the necessary measures to allow imports from the listed establishments and facilities without undue delay. Without prejudice to Article 6.13, such measures shall not include prior inspection unless such inspection is required by each Party's laws and regulations or otherwise agreed by the Parties.

3. The importing Party may conduct audits in accordance with Article 6.8.
4. The importing Party shall make the lists referred to in paragraph 1 publicly available as appropriate.
5. A Party shall notify the other Party of its intention to introduce new laws and regulations within the scope of this Article and allow the other Party to provide comments thereon.

ARTICLE 6.10

Adaptation to regional conditions

1. With regard to animals, animal products and animal by-products, the Parties recognise the concept of zone and compartment specified in the OIE Terrestrial Animal Health Code and the OIE Aquatic Animal Health Code.
2. When establishing or maintaining sanitary import conditions on the request of the exporting Party, the importing Party shall recognise the zones or compartments established by the exporting Party as a basis for consideration towards the determination of allowing or maintaining the import.
3. The exporting Party shall identify its zones or compartments referred to in paragraph 2 and, on request of the importing Party, provide a full explanation and supporting data based on the OIE Terrestrial Animal Health Code or the OIE Aquatic Animal Health Code, or in other ways as deemed appropriate by the Parties on the basis of the knowledge acquired through experience of the exporting Party's competent authorities.
4. Each Party shall ensure that the procedures and obligations established by paragraphs 2 and 3 are carried out without undue delay.
5. Unless the Parties agree otherwise, the Parties will, through the Committee on Sanitary and Phytosanitary Measures, exchange information on a way to establish and maintain mutual recognition of health status, based on the OIE Terrestrial Animal Health Code and recommendations adopted by the OIE.

6. Each Party may establish the zones or compartments referred to in paragraph 2 for diseases not covered by the OIE Terrestrial Animal Health Code or the OIE Aquatic Animal Health Code and agree with the other Party to apply such zones or compartments in the trade between the Parties.
7. With regard to plants and plant products, the Parties recognise the concepts of pest free areas, pest free places of production, pest free production sites and areas of low pest prevalence specified in the International Standards for Phytosanitary Measures developed under the IPPC.
8. When establishing or maintaining phytosanitary import conditions on request of the exporting Party, the importing Party shall recognise the pest free areas, pest free places of production, pest free production sites and areas of low pest prevalence established by the exporting Party as a basis for consideration towards the determination to allow or maintain the import.
9. The exporting Party shall identify its pest free areas, pest free places of production, pest free production sites and areas of low pest prevalence. If requested by the importing Party, the exporting Party shall provide a full explanation and supporting data based on the relevant International Standards for Phytosanitary Measures developed under the IPPC, or in other ways as deemed appropriate by the Parties, based on the knowledge acquired through experience of the exporting Party's relevant phytosanitary authorities.
10. In implementing paragraphs 7 to 9, technical consultations and audits may be carried out. Technical consultations shall take place in accordance with Article 6.12. The audits shall be carried out in accordance with Article 6.8, taking into account the biology of the pest and the commodity concerned.
11. Each Party shall ensure that the procedures and obligations set out in paragraphs 8 to 10 are carried out without undue delay.

ARTICLE 6.11

Transparency and exchange of information

1. Each Party shall, in accordance with Article 7 of the SPS Agreement and Annexes B and C to the SPS Agreement:

- (a) ensure transparency as regards:
 - (i) sanitary and phytosanitary measures, including import conditions; and
 - (ii) control, inspection and approval procedures, including complete details about the mandatory administrative steps, expected timelines and the authorities in charge of receiving import applications and of processing them;
- (b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and their application; and
- (c) on a reasonable request of the other Party and as soon as possible, provide information on its sanitary and phytosanitary measures and their application, including:
 - (i) import conditions that apply to the import of specific products;
 - (ii) the state of progress of applications for authorisation of specific products;
 - (iii) the frequency of import checks carried out on products from the other Party; and
 - (iv) matters related to the development and application of its sanitary and phytosanitary measures, including the progress concerning new available scientific evidence, that affect or may affect trade between the Parties with a view to minimising their negative effects.

2. When the information referred to in subparagraphs 1(a) and (c) has been made available by notification of a Party under the SPS Agreement, or when such information has been made available on an official, publicly accessible and free of charge website of that Party, the information referred to in subparagraphs 1(a) and (c) shall be considered to have been provided.

ARTICLE 6.12

Technical consultations

1. Where a Party has significant concerns regarding human, animal or plant life or health, or measures proposed or implemented by the other Party, that Party may request technical consultations.
2. The other Party shall respond to such a request without undue delay and shall engage in the technical consultations to address those concerns.
3. Each Party shall endeavour to provide the information necessary to avoid a disruption in trade or to reach a mutually acceptable solution.
4. Where the Parties have already established other mechanisms than those referred to in this Article to address the concerns, they shall make use of them to the extent possible in order to avoid unnecessary duplication.
5. Each Party may terminate technical consultations by notifying the other Party in writing at any time no less than 90 days after the date of receipt of the response by the other Party referred to in paragraph 2, or any other time period as agreed by the Parties.

ARTICLE 6.13

Emergency measures

1. A Party may adopt emergency measures that are necessary for the protection of human, animal or plant life or health. When adopting such emergency measures the competent authority of that Party shall:
 - (a) immediately notify the competent authorities of the other Party of such emergency measures;
 - (b) allow the other Party to submit comments in writing;
 - (c) engage, if necessary, in technical consultations as referred to in Article 6.12; and
 - (d) take into account the comments referred to in subparagraph (b) and the results of technical consultations referred to in subparagraph (c).
2. In order to avoid unnecessary disruptions to trade, the importing Party shall consider information provided in a timely manner by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties.
3. The importing Party shall ensure that any emergency measure referred to in paragraph 1 is not maintained without scientific evidence. In cases where scientific evidence is insufficient, the importing Party may provisionally adopt emergency measures on the basis of available pertinent information, including that from the relevant international organisation. The importing Party shall review the emergency measure with a view to minimising its negative effect on trade by either repealing that measure or replacing it by a permanent measure.

ARTICLE 6.14

Equivalence

1. The importing Party shall accept sanitary and phytosanitary measures of the exporting Party as equivalent if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of protection. For that purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.
2. The Parties shall, on request of either Party, enter into consultations with the aim of achieving arrangements determining the equivalence of specified sanitary and phytosanitary measures.
3. In determining the equivalence of sanitary and phytosanitary measures, the Parties shall take into account the relevant guidance of the WTO Committee on Sanitary and Phytosanitary Measures, in particular its Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures¹ and international standards, guidelines and recommendations of the Codex Alimentarius, OIE or IPPC.
4. Where equivalence has been determined, the Parties may agree on alternative import conditions and simplified certificates, taking into account international standards, guidelines or recommendations of the Codex Alimentarius, OIE or IPPC.

ARTICLE 6.15

Committee on Sanitary and Phytosanitary Measures

1. The Committee on Sanitary and Phytosanitary Measures established pursuant to Article 23.3 shall be responsible for the effective implementation and operation of this Chapter.
2. The objectives of the Committee on Sanitary and Phytosanitary Measures are to:

¹ WTO Document G/SPS/19/Rev.2, dated 23 July 2004, as may be revised.

- (a) enhance each Party's implementation of this Chapter;
- (b) consider sanitary and phytosanitary matters of mutual interest; and
- (c) enhance communication and cooperation on sanitary and phytosanitary matters of mutual interest.

3. The Committee on Sanitary and Phytosanitary Measures:

- (a) shall provide a forum to improve the Parties' understanding of sanitary and phytosanitary matters that relate to the implementation of the SPS Agreement;
- (b) shall provide a forum to enhance mutual understanding of each Party's sanitary and phytosanitary measures and the related regulatory processes;
- (c) shall monitor, review and exchange information on the implementation and operation of this Chapter;
- (d) shall serve as a forum to address the concerns referred to in paragraph 1 of Article 6.12 with a view to reaching mutually acceptable solutions provided that the Parties have first attempted to address them through the technical consultations pursuant to Article 6.12 and other topics agreed by the Parties;
- (e) shall determine the appropriate means, which may include *ad hoc* working groups, to undertake specific tasks related to the functions of the Committee on Sanitary and Phytosanitary Measures;
- (f) may identify and consider technical cooperation projects between the Parties in relation to the development, implementation and application of sanitary and phytosanitary measures; and
- (g) may consult on matters and positions for the meetings of the WTO Committee on Sanitary and Phytosanitary Measures and meetings held under the auspices of the Codex Alimentarius, OIE and IPPC.

4. The Committee on Sanitary and Phytosanitary Measures shall be composed of representatives of the Parties who are in charge of sanitary and phytosanitary measures with the relevant expertise.
5. The Committee on Sanitary and Phytosanitary Measures shall establish its rules of procedure and may revise those rules as necessary.
6. The Committee on Sanitary and Phytosanitary Measures shall hold the first meeting within one year of the date of entry into force of this Agreement.

ARTICLE 6.16

Dispute settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 22.