

CHAPTER 5
SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 5.1: OBJECTIVES

The objectives of this Chapter are to:

- (a) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;
- (b) deepen mutual understanding of each Party's regulations and procedures relating to sanitary and phytosanitary measures;
- (c) strengthen cooperation between Australian and Chinese government agencies with responsibility for sanitary and phytosanitary matters; and
- (d) enhance implementation of the SPS Agreement.

ARTICLE 5.2: SCOPE

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

ARTICLE 5.3: DEFINITIONS

For the purposes of this Chapter,

- (a) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* contained in Annex 1A of the World Trade Organization Agreement; and
- (b) **sanitary and phytosanitary measure** means any measure referred to in paragraph 1 of Annex A of the SPS Agreement.

ARTICLE 5.4: INTERNATIONAL OBLIGATIONS

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

第五章 卫生和植物卫生措施

第五条第一款：目标

本章的目标是：

- (a) 促进两国在食品、植物和动物及其产品方面的双边贸易，同时保护每一方领土上的人类、动物或植物生命或健康；
- (b) 深化每一方在卫生和植物卫生措施方面的法规和程序的相互理解；
- (c) 加强澳大利亚和中国负责卫生和植物卫生事务的政府机构之间的合作；以及
- (d) 提高SPS协定的实施。

第五条第二款：范围

本章适用于缔约方所有可能直接或间接影响缔约方之间贸易的卫生和植物卫生措施。

文章 5.3：定义

就本章而言，

- (a) SPS协定是指世界贸易组织协定附件1A中包含的《卫生和植物卫生措施应用协定》；以及
- (b) 卫生和植物卫生措施是指《SPS协定》附件A第1段中提到的任何措施。

ARTICLE 5.4: INTERNATIONAL OBLIGATIONS

缔约方确认其根据SPS协定相互享有的权利和义务。

ARTICLE 5.5: TRANSPARENCY

1. The Parties acknowledge the importance of transparency in the application of sanitary and phytosanitary measures, including through, *inter alia*, the exchange of information on their respective sanitary and phytosanitary measures in a timely manner.
2. Each Party shall provide notification, consistent with the notification requirements under the SPS Agreement, to the enquiry point of the other Party of new or revised sanitary and phytosanitary measures, including measures imposed in response to an urgent threat to human, animal or plant life or health.
3. Upon request by a Party, the notifying Party shall provide the full text of the notified sanitary and phytosanitary measures to the enquiry point of the other Party within 7 days.
4. Whenever an international standard, guideline or recommendation does not exist, or the content of a proposed sanitary or phytosanitary measure is not substantially the same as the content of an international standard, guideline or recommendation, and if the measure may have a significant effect on trade of the other Party, the Party should normally allow at least 60 days for the other Party to make comments in writing, shall discuss these comments upon request, and shall take the comments and the results of the discussions into account.
5. Where urgent problems of health protection arise, or threaten to arise, for a Party, the Party is not required to provide an opportunity for the other Party to make comments in writing prior to the entry into force of the measure. However, the Party shall observe the provisions of paragraphs 3 and 4, shall allow the other Party to make comments in writing, shall discuss these comments upon request, and shall take the comments and the results of the discussions into account.
6. Where there is non-compliance of an imported consignment with sanitary and phytosanitary measures, the relevant government agency of the importing Party shall notify the relevant government agency of the exporting Party of the non-compliance without undue delay.

ARTICLE 5.6: COOPERATION

1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary and phytosanitary matters at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter, including through:
 - (a) cooperating on work in relevant international bodies and regional organisations engaged in food safety and human, animal or plant life or health issues;

文章 5.5: 透明度

1. 缔约方承认卫生和植物卫生措施应用透明的重要性，包括通过交换各自卫生和植物卫生措施的信息，特别是及时交换。
2. 每一方应根据 SPS协定的通知要求，将新的或修订的卫生和植物卫生措施通知另一方的咨询点，包括为应对对人类、动物或植物生命或健康的紧急威胁而采取的措施。
3. 应一方的要求，通知方应在7天内将通知的卫生和植物卫生措施全文提供给另一方的咨询点。
4. 当不存在国际标准、指南或建议，或者拟议的卫生或植物卫生措施的内容与国际标准、指南或建议的内容基本不一致，并且该措施可能对另一方的贸易产生重大影响时，该方通常应至少允许另一方有60天的时间提交书面意见，应根据要求讨论这些意见，并将意见和讨论结果纳入考虑。
5. 当某一缔约方出现或威胁出现卫生保护紧急问题时，该缔约方无需在措施生效前为另一方提供书面意见的机会。但是，该缔约方应当遵守第3段和第4段的规定，允许另一方提出书面意见，在收到请求时进行讨论，并将意见和讨论结果纳入考虑。
6. 当进口货物不符合卫生和植物卫生措施时，进口方相关政府机构应当及时通知出口方相关政府机构。

ARTICLE 5.6: COOPERATION

1. 缔约方应当在本章节规定范围内，在双边、区域和多边层面探索卫生和植物卫生事务方面的进一步合作与协作机会，包括通过：
 - (a) 在从事食品安全和人类、动物或植物生命或健康问题相关国际机构和区域组织中合作开展工作；

- (b) strengthening technical cooperation and communication on import risk analysis principles and processes so as to avoid undue delay; and
 - (c) conducting possible joint research projects on diseases and pest prevention, surveillance and control strategies and on other scientific issues, including in the area of food safety, relating to SPS measures.
2. The Committee on Sanitary and Phytosanitary Measures established in accordance with Article 5.11 shall consider proposals for cooperation and collaboration to give effect to this Article.

ARTICLE 5.7: REGIONALISATION AND EQUIVALENCE

Each Party shall accept the regionalisation and equivalence provisions of the SPS Agreement, and consider the relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

ARTICLE 5.8: CONTROL, INSPECTION AND APPROVAL PROCEDURES

1. Each Party shall implement its control, inspection and approval procedures in accordance with its rights and obligations under the SPS Agreement.
2. On request of a Party, the Parties shall exchange views and information on their control, inspection and approval procedures.
3. Each Party shall, on request of the other Party, accept the control, inspection and approval procedures of the other Party as equivalent, provided that it is satisfied that these achieve the importing Party's appropriate level of sanitary and phytosanitary protection.

ARTICLE 5.9: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. The Parties recognise that cooperation, information sharing, capacity building and technical assistance are important elements in promoting the objectives of this Chapter.
2. The Parties shall give full consideration to the provisions on technical assistance and special and differential treatment in the SPS Agreement, and the possible difficulties that the Parties may encounter in the implementation of this Chapter. The Parties agree to take such reasonable measures, as may be available, to enhance capacity building by providing technical assistance.

- (b) 加强关于进口风险分析原则和流程的技术合作与沟通，以避免不当延误；以及 (c) 在疾病和害虫预防、监测和控制策略以及其他科学问题（包括与 SPS措施相关的食品安全领域的问题）上开展可能的联合研究项目。

2. 卫生与植物卫生措施委员会根据第5.11条设立，应考虑合作与协作提案以实施本条。

第5.7条：区域化和等效性

每个缔约方应接受SPS协定的区域化和等效性规定，并考虑相关的国际标准、指南和建议，以促进缔约方之间的贸易。

第5.8条：控制、检验和审批程序

1. 每个缔约方应根据其在SPS协定下的权利和义务实施其控制、检验和审批程序。
2. 应一方请求，缔约方应就其控制、检验和审批程序交换意见和信息。
3. 每一方在另一方请求时，应接受另一方的控制、检验和审批程序，前提是其满意这些程序能够实现进口方适当的卫生和植物卫生保护水平。

文章 5.9：技术援助和能力建设

1. 缔约方认识到合作、信息共享、能力建设和技术援助是促进本章目标的重要要素。
2. 缔约方应当充分考虑到SPS协定中关于技术援助和特殊和差别待遇的规定，以及缔约方在实施本章时可能遇到的困难。缔约方同意采取一切可行的合理措施，通过提供技术援助来增强能力建设。

3. Consistent with the objectives of this Article, the Parties shall jointly consider technical assistance projects in the field of sanitary and phytosanitary measures for the purposes of implementing this Article. Such technical assistance projects may include, but are not limited to:

- (a) sharing knowledge, experience or research results in areas such as:
 - (i) animal and plant pests and diseases;
 - (ii) food safety;
 - (iii) agri-chemicals and veterinary medicines; and
 - (iv) other areas agreed by the Parties; and
- (b) consulting on positions in regional and international organisations and on relevant standards and programs.

4. The Parties shall explore opportunities for other forms of technical assistance or cooperation that the Parties jointly decide upon, including strengthening cooperation between their SPS enquiry points, sharing available translations of SPS notifications and related documents, and exchanging experience and information on SPS notifications.

ARTICLE 5.10: CONSULTATION AND DISPUTE SETTLEMENT

1. The Parties shall endeavour to resolve any matter arising under this Chapter through cooperative mechanisms under this Chapter.
2. Neither Party shall have recourse to the dispute settlement provisions in Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 5.11: COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

1. The Parties note the high level consultative mechanism established under the *Memorandum of Understanding on Cooperation in Sanitary and Phytosanitary Matters between the Australian Department of Agriculture, Fisheries and Forestry and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China*.
2. The Parties hereby establish the Committee on Sanitary and Phytosanitary Measures (the "Committee"), comprising representatives of each Party.

3. 与本章目标一致，缔约方应当共同考虑在卫生和植物卫生措施领域实施本章的技术援助项目。此类技术援助项目可能包括但不限于：

- (a) 分享知识、经验或研究成果，例如：(i) 动植物病虫害；(ii) 食品安全；(iii) 农业化学品和兽药；以及 (iv) 缔约方同意的其他领域；以及 (b) 就在区域和国际组织中的立场、相关标准和项目进行磋商。

4. 缔约方应探讨双方共同决定的其他形式的技术援助或合作机会，包括加强其SPS咨询点之间的合作、分享可用的SPS通报和相关文件翻译，以及就SPS通报交流经验和信息。

文章 5.10：磋商和争端解决

1. 缔约方应通过本章节下的合作机制努力解决根据本章节产生的任何事项。
2. 任何一方不得就根据本章节产生的任何事项援引第15章（争端解决）中的争端解决条款。

文章 5.11：卫生与植物卫生措施委员会

1. 缔约方注意到，根据澳大利亚农业、渔业和林业部与中华人民共和国国家质量监督检验检疫总局签署的关于卫生与植物卫生事务合作的谅解备忘录，已建立高级别协商机制。
2. 各缔约方 hereby 设立 卫生与植物卫生措施委员会（“委员会”），由各缔约方的代表组成。

3. For the purposes of this Article, the Committee shall be coordinated by:
- (a) for Australia, the Department of Agriculture or its successor; and
 - (b) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.
4. The Committee shall meet at least once every two years unless the Parties agree otherwise. The Committee's functions shall include:
- (a) promoting the objectives set out in Article 5.1;
 - (b) reviewing and monitoring the implementation of this Chapter;
 - (c) determining areas for cooperation and collaboration;
 - (d) considering proposals for technical assistance and capacity building under this Chapter;
 - (e) reviewing progress on and, as appropriate, seeking to address through mutual consent, sanitary and phytosanitary matters that may arise between the Parties;
 - (f) as appropriate, reporting its findings and the outcomes of its discussions to the FTA Joint Commission; and
 - (g) carrying out other functions as may be delegated to it by the FTA Joint Commission.
5. Each Party shall ensure that appropriate representatives with responsibility for sanitary and phytosanitary measures and food standards participate in meetings of the Committee.
6. The Committee may agree to establish technical working groups on human, animal and plant health or food safety, as necessary, including regionalisation and equivalence, to address issues arising from the implementation of this Chapter.
7. Each Party shall establish a contact point which shall have responsibility for coordinating the implementation of this Chapter. The contact points will be:
- (a) for Australia, the Department of Agriculture or its successor; and
 - (b) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.

3. 为本 文章 的目的, 委员会 shall 由以下人员协调:
- (a) 对于澳大利亚, 农业部门或其继任者; 以及 (b) 对于中国, 中华人民共和国国家质量监督检验检疫总局或其继任者。
4. 委员会应每两年至少召开一次会议, 除非缔约方另有约定。委员会的职能应包括:
- (a) 促进第5.1条中规定的目标; (b) 审查和监督本章的实施; (c) 确定合作和协作领域; (d) 审议本章下技术援助和能力建设提案; (e) 审查缔约方之间可能出现的卫生和植物卫生事项的进展, 并适当通过相互协商寻求解决; (f) 适当情况下, 向自由贸易协定联合委员会报告其发现及其讨论结果; 以及 (g) 执行自由贸易协定联合委员会授予的其他职能。
5. 每一方应确保负责卫生和植物卫生措施和食品安全标准的适当代表参加委员会会议。
6. 委员会可以根据需要同意成立技术工作组, 涉及人类、动物和植物健康或食品安全, 包括区域化和等效性, 以解决实施本章时出现的问题。
7. 每一方应设立一个联络点, 该联络点负责协调本章的实施。联络点如下:
- (a) 对于澳大利亚, 农业部门或其继任机构; 以及 (b) 对于中国, 中华人民共和国国家质量监督检验检疫总局或其继任机构。