

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

Article 6.1 Definitions

1. For the purposes of this Chapter:
 - (a) the definitions set out in Annex A to the SPS Agreement shall apply;
 - (b) “**competent authorities**” mean those national government authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary (“SPS”) measures within that Party;
 - (c) “**emergency measure**” means a sanitary or phytosanitary measure that is applied by the importing Party to the products of the exporting 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; and
 - (d) “**SPS Agreement**” means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, set out in Annex 1A to the WTO Agreement.
2. The Parties shall take into consideration the terms and definitions of relevant international organisations, such as the Codex Alimentarius Commission (“Codex”), the World Organisation for Animal Health (“WOAH”) and the International Plant Protection Convention (“IPPC”). In the event of an inconsistency between those terms and definitions and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

Article 6.2 Objectives

The objectives of this Chapter are to:

- (a) reaffirm the rights and obligations of both Parties under the SPS Agreement, while supporting its enhanced implementation;

- (b) provide a framework and mechanisms to facilitate bilateral trade between the Parties, while protecting human, animal or plant life or health;
- (c) enhance transparency and deepen mutual understanding of each Party's regulations and procedures relating to SPS measures, and ensure that such measures do not create unjustified barriers to trade; and
- (d) strengthen cooperation, communication and consultation between the Parties.

Article 6.3 Scope

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

Article 6.4 Affirmation of the SPS Agreement

1. The Parties reaffirm their rights and obligations with respect to each other under the SPS Agreement.
2. Nothing in this Chapter shall affect the rights and obligations of each Party under the SPS Agreement.

Article 6.5 Risk Assessment

1. Each Party shall base its sanitary and phytosanitary measures with respect to trade with the other Party on relevant international standards, guidelines or recommendations, where they exist, except as otherwise provided in the SPS Agreement.
2. The Parties shall strengthen their cooperation on risk assessment in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
3. When conducting a risk assessment specific to trade between them, the importing Party shall:
 - (a) on request, inform the exporting Party of the progress, including the reason for any delays;

- (b) consider options that are not more trade-restrictive than required to achieve its appropriate level of protection, taking into account technical and economic feasibility; and
 - (c) provide an opportunity for the exporting Party to comment.
- 4. Based on mutually agreed priorities, each Party shall endeavour to progress requested risk assessments for products and, once completed, endeavour to ensure trade is facilitated without undue delay.
- 5. Without prejudice to emergency measures, the importing Party shall not stop the importation of a product 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 product of the other Party at the time of the initiation of the review.

Article 6.6 Adaptation to Regional Conditions

- 1. The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, as set out in Article 6 of the SPS Agreement and that the adaptation of SPS measures to recognise regional conditions is an important means of facilitating trade. In developing SPS measures based on regionalisation, the Parties shall take into account the relevant decisions of the WTO SPS Committee and relevant international standards, guidelines and recommendations.
- 2. The 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. In doing so, the Parties may promote information sharing in this area and on related matters. The Parties may agree to recognise regionalisation decisions, including official control programmes, zones and compartments, and the associated certification variations, including for WOHAI or IPPC recognised treatments, ahead of changes to their regional animal or plant health status.
- 3. If the importing Party adopts or maintains an SPS measure applicable to the exporting Party, and the exporting Party establishes officially controlled regional conditions, the exporting Party may request the importing Party recognise its regional conditions for any relevant pest or disease.
- 4. When the importing Party has received such a request for recognition of regional conditions from the exporting Party and has determined that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time. If the

exporting Party so requests, the importing Party shall also explain the process it undertakes for recognising regional conditions.

5. Reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures for the assessment.
6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.
7. If the importing Party adopts a measure that recognises specific regional conditions of the exporting Party, the importing Party shall communicate that decision to the exporting Party in writing and implement the measure 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 of the exporting Party, the importing Party shall provide the exporting Party the rationale for its decision in writing within a reasonable period of time.
9. If there are circumstances that result in the importing Party modifying or revoking a determination recognising regional conditions of the exporting Party, the importing Party shall notify the exporting Party as soon as possible. On request of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

Article 6.7 Equivalence

1. The Parties shall strengthen cooperation on equivalence in accordance with the SPS Agreement, taking into account relevant decisions of the WTO SPS Committee and relevant international standards, guidelines and recommendations, in order to facilitate trade between them.
2. The importing Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent even if these measures differ from their own or from those used by other countries, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of protection or that its measures have the same effect in achieving the objective as the importing Party's measures. The Parties recognise that equivalence can be accepted for a specific measure or measures related to certain product or categories of products or on a system-wide basis.

3. In determining equivalence, the importing Party shall take into account available information and experience as well as the knowledge of the regulatory competence of the exporting Party.
4. A Party shall, upon request, enter into consultations with the aim of achieving bilateral recognition agreements or arrangements of equivalence on the specified SPS measures.
5. As part of consultations, 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 in order for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall, upon request, without undue delay explain the process and plan for making an equivalence determination.
7. The consideration by the importing Party of a request from the exporting 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 exporting Party.
8. When the importing Party has concluded its assessment, it shall notify the equivalence determination to the exporting Party in writing. If an equivalence determination does not result in recognition by the exporting Party, the importing Party shall provide the exporting Party with the rationale for its decision.
9. If a Party proposes to adopt, modify, amend, repeal or remove an SPS measure which it considers may have a significant impact on trade in products that are the subject of an equivalence agreement or arrangement between the Parties, it shall notify the other Party and indicate its likely effect on recognition of equivalence.
10. Following such a notification from the exporting Party, the importing Party shall continue to apply its determination of equivalence unless it considers that the equivalence agreement or arrangement is no longer sufficient to meet its appropriate level of protection. If the importing Party considers that equivalence can be maintained under new or revised conditions it shall consult with the exporting Party on their development.
11. If the importing Party considers that equivalence cannot be maintained and it can no longer apply its determination of equivalence, the exporting Party may request consultations with the aim of once again

achieving a bilateral recognition arrangement of equivalence, consistent with the provisions of this Article.

Article 6.8
Certification, Import Permits and Approval Procedures

1. Each Party shall ensure measures related to certification, import permit and approval procedures are in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines or recommendations.
2. The Parties may strengthen cooperation with respect to paragraph 1, including on import permit requirements, with a view to reduce duplication between the Parties.
3. The Parties shall work cooperatively to promote the implementation of paperless trade through electronic SPS certification.
4. Where certification is required for trade in a product, the importing Party shall ensure that such certification is applied, in meeting its SPS objectives, only to the extent necessary to protect human, animal or plant life or health.
5. Where import permits are required for trade in a product, the importing Party shall endeavour to ensure that such permits reflect those requirements that are necessary to meet its appropriate level of protection and are issued without undue delay and on a non-discriminatory basis.
6. The Parties may develop simplified certificate models and attestations where equivalence, regionalisation or other recognitions have been agreed under this Chapter.
7. The Parties may also develop simplified establishment and product approval processes based on the recognition of control, inspection and approval processes already applied in the territory of the other Party.

Article 6.9
Audits

1. Each Party shall undertake audits in accordance with the relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines or recommendations.
2. An audit shall be systems-based and conducted to assess the effectiveness of the official regulatory controls of the competent

authorities of the exporting Party, or apply to individual establishments or facilities where necessary, to provide the required assurances and meet the SPS measures of the importing Party.

3. Prior to the commencement of an audit, the importing Party and the exporting Party shall exchange information and endeavour to agree on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.
4. The importing Party shall set forth its findings, preliminary conclusion and, if applicable, its recommendation in a draft audit report to the exporting Party with an opportunity to comment on it and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a detailed report and its summary, setting out its conclusions in writing, to the exporting Party within a reasonable period of time.
5. Measures taken by the importing Party as a consequence of its audit shall be supported by objective evidence and data, take into account the importing Party's knowledge of, relevant experience with, and confidence in, the exporting Party, and shall not be more trade-restrictive than necessary to achieve the importing Party's appropriate level of protection. Any such objective evidence and data shall be provided to the audited Party, on request.
6. Any costs incurred by the auditing Party shall be borne by the auditing Party, unless the Parties agree otherwise.
7. 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.

Article 6.10 Import Checks

1. Each Party shall undertake import checks in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines or recommendations.
2. Import checks, conducted in accordance with the importing Party's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations from the exporting Party. The import checks shall be carried out in a manner that is not more trade-restrictive than required to achieve its appropriate level of protection and be applied without undue delay using appropriate risk-based sampling methodologies. The Parties may agree to amend the frequency or intensity of import

checks that would normally apply to a commodity class based on the performance of each other's national controls.

3. In the event that import checks reveal a non-compliance, the final decision or action taken by the importing Party shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant product.
4. If an importing Party prohibits or restricts the importation of a good of an exporting Party on the basis of an import check finding sanitary or phytosanitary non-compliance, the importing Party shall notify the importer or its representatives and, where appropriate, the exporting Party and certifying competent authority, of such non-compliance.
5. The importing Party shall provide the importer or its representatives located within the territory of the importing Party and, where appropriate, the exporting Party and certifying competent authority with an opportunity for a review of the decision. If a review is undertaken, the importing Party shall consider any relevant information submitted to assist it in the review, and it shall carry out the review within a reasonable period of time.
6. When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties shall, on request of either Party, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.
7. Unless there is a clearly identified high risk, the importing Party shall provide means other than destruction to manage the risk, such as relabelling, treatment, where available, or re-export.

Article 6.11

Contact Points and Competent Authorities

1. By the date of entry into force of this Agreement, each Party shall:
 - (a) designate a contact point to facilitate communication and the exchange of information between the Parties on matters arising under this Chapter;
 - (b) provide the other Party with a list of its competent authorities responsible for developing and administering SPS measures within its territory, including a description of their structure, organisation and division of functions and responsibilities; and
 - (c) the list of contact points and competent authorities shall be recorded in an implementing arrangement.

2. Each Party shall notify the other Party of any changes to its contact point and significant changes in the structure, organisation and division of responsibility within its competent authorities.

Article 6.12
Transparency and Exchange of Information

1. Each Party shall, in accordance with the transparency obligations contained in the SPS Agreement, notify the contact point referred to in Article 6.11 (Contact Points and Competent Authorities) of the other Party of any new or revised SPS measures that may affect trade between the Parties, including emergency measures imposed to protect human, animal or plant life or health.
2. When the information referred to in paragraph 1 has been made available via notification to the WTO's Central Registry of Notifications, or to the relevant international organisation, the requirements in paragraph 1 shall be deemed to have been fulfilled.
3. A Party shall respond within a reasonable period of time to any request for relevant information or clarification from the other Party regarding its SPS measures, including with respect to model certificates or attestations.
4. In implementing this Chapter, both Parties shall take into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
5. A Party may request relevant information from the other Party on any matter arising under this Chapter, or any other SPS measure of the other Party affecting trade between the Parties, where such information has not already been included in a notification to the SPS Committee or has not otherwise been made publicly available. A Party that receives a reasonable request for information shall provide available information to the requesting Party within a reasonable period of time.
6. If the importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the non-conformity.
7. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of trade facilitating nature, the Party proposing an SPS measure shall normally allow at least 60 days for the other Party to provide written comments on the proposed measure after it makes a notification to the WTO. If feasible and appropriate, the Party proposing the measure may allow more than 60 days. The Party proposing the measure shall consider

any reasonable request from the other Party to extend the comment period.

Article 6.13
Cooperation and Capacity Building

1. The Parties through the Committee on SPS matters shall explore opportunities for further cooperation, collaboration and information exchange, including through their competent authorities, on SPS matters of mutual interest, consistent with the objectives of this Chapter. This may include the provision of technical assistance and capacity building, subject to the availability of appropriate resources.
2. In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional or multilateral work programmes with the objective of avoiding unnecessary duplication and maximising the use of resources.

Article 6.14
SPS Committee

1. The Parties hereby establish a Committee on SPS Measures (“SPS Committee”) under Article 17.5 (Committees and Subsidiary Bodies), consisting of representatives from relevant competent authorities and government agencies of each Party.
2. The SPS Committee shall review the progress made by the Parties in implementing their commitments under this Chapter and may establish ad-hoc subsidiary working groups to consider specific issues relating to the implementation of this Chapter.
3. The SPS Committee shall provide a forum to facilitate information exchange and enable either Party to raise and discuss any SPS matter related to trade, including biosecurity matters, between the Parties. The SPS Committee may also develop action plans including those that may relate to cooperation and capacity building.
4. The Parties may, where mutually agreed, develop bilateral implementing arrangements to set out mutually determined understandings and details for applying this Chapter, including for example those documenting the recognition of: Equivalence; Regionalisation; Product Treatments; Certification, Controls, Inspections and Approval Processes; Import Permits; Audits; Establishment Lists; Import Checks; changes to contact points and competent authorities; the use of CODEX or National Maximum Residue Limits for import; and any other matter as mutually decided.

5. The SPS Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by both the Parties. The SPS Committee shall establish its rules of procedure at its first meeting. All decisions of the SPS Committee shall be made by consensus.
6. The SPS Committee may hold joint meetings with the Biosecurity, Food and Primary Products Committee to consider additional matters within the regulatory authority of the competent authorities. The SPS Committee shall provide any recommendations or report to the Joint Commission as necessary.

Article 6.15 Technical Consultations

1. If a Party has specific trade concerns regarding SPS measures proposed or implemented by the other Party, it may request technical consultations with the other Party. The other Party shall respond promptly to any reasonable request for such consultation.
2. The Parties shall hold such technical consultations within 30 days of the date of the request, unless otherwise agreed by the Parties.
3. Where a Party considers that an SPS measure of the other Party is affecting its trade with the other Party, it may, through the contact points referred to in Article 6.11 (Contact Points and Competent Authorities) or other established communication channels, request a detailed explanation of the SPS measure, including the scientific basis of the measure. The other Party shall respond promptly to any request for such an explanation. The Parties shall endeavour to reach a mutually satisfactory resolution.
4. The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the Parties.

Article 6.16 Emergency SPS 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 between the Parties, that Party shall notify the other Party of that measure through the contact point referred to in Article 6.11 (Contact Points and Competent Authorities) as soon as possible. The importing Party shall take into consideration any information provided by the other Party in response to the notification.

2. On request of the other Party, a Party adopting an emergency SPS measure shall engage in technical consultations within 15 days of the date of such request, unless otherwise agreed by the Parties.
3. The importing Party shall consider any information provided in a timely manner by the exporting Party when making decisions with respect to one or more consignments that, at the time of adoption of an emergency SPS measure, are being transported between the Parties.
4. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months of the date of the adoption of the measure, with the aim of revoking or developing a revised measure that would permit trade to recommence, and provide the results of the review to the other Party on request. If the emergency measure is maintained after the review of the measure, the importing Party shall periodically review the measure at least every six months thereafter based on the most recent available information, and, upon request, shall explain the reasons for the continuation of the emergency measure.
5. If the exporting Party considers, on the basis of scientific evidence, that an emergency measure is being maintained by the importing Party without reasons, it may provide that evidence to the other Party and request the other Party to review the measure or engage in technical consultations under Article 6.15 (Technical Consultations).

Article 6.17
Non-Application of Dispute Settlement

1. Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.
2. The SPS Committee shall undertake a review of the application of dispute settlement under this Chapter four years from the date of entry into force of this Agreement. Following the review, the SPS Committee may submit recommendations to the Joint Commission for their consideration.