

## **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 authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary ("SPS") measures within that Party;
  - (c) an **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 ("OIE") and the International Plant Protection Convention ("IPPC"). In the event of an inconsistency between these 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 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 affirm 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 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.
3. When the importing Party establishes or maintains an SPS measure applicable to the exporting Party, 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. When 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 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 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 a Party modifying or revoking a determination recognising regional conditions of the other Party, and if the other Party requests, the Parties shall cooperate to assess whether the determination can be reinstated.

### **Article 6.6 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. Where a Party has concluded an equivalence determination of the other Party's measures, that Party shall notify the other Party in writing. If it does not recognise the other Party's measures as equivalent, it shall provide reasons for that determination.
3. The importing Party shall recognise the equivalence of an individual SPS measure, group of measures or systems 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.
4. In determining equivalence, the importing Party shall take into account available knowledge, information and experience as well as the regulatory competence of the exporting Party.
5. A Party shall, upon request, enter into consultation with the aim of achieving bilateral recognition arrangements of equivalence on the specified SPS measures.

6. 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.
7. 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.
8. 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 or products in question.
9. 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.
10. 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 goods that are the subject of an equivalence arrangement between the Parties, it shall notify the other Party and indicate its likely effect on recognition of equivalence.
11. 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 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.
12. 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.
13. The final determination of equivalence rests with the importing Party which shall adhere to international guidelines, standards and recommendations.

## **Article 6.7** **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; and
  - (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.
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 6.8** **Transparency and Exchange of Information**

1. Each Party shall, in accordance with the transparency obligations contained in the SPS Agreement, notify the contact point 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 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 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 and 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, 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 6.9 Certification**

1. The Parties shall work cooperatively to promote the implementation of paperless trade through electronic SPS certification.
2. 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.
3. Each Party shall apply certification requirements 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.
4. The importing Party shall accept certificates issued by the competent authorities of the exporting Party that are in compliance with the regulatory requirements of the importing Party.

### **Article 6.10 Audits**

1. Each Party shall undertake audits 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. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Party 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 provide the exporting Party with an opportunity to comment on the findings of an audit and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a report or its summary, setting out its conclusions in writing, to the exporting Party within a reasonable period of time. The importing Party shall inform the exporting Party if a request is required to provide such report or summary.
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 6.11 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. The import checks shall be carried out in a manner that is least trade-restrictive and without undue delay.
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. The importing Party shall ensure that plants and plant products, animal products and other goods, and their packaging are inspected by using appropriate risk-based sampling methodologies.
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, if the importing Party considers necessary, the exporting Party, of such non-compliance.

5. 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.
6. Unless there is a clearly identified high risk, the importing Party shall provide means other than destruction to manage the risk, such as treatment, where available, or re-export.

### **Article 6.12 Cooperation and Capacity Building**

1. The Parties 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 6.13 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. 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 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 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.
4. The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the Parties.

## **Article 6.14** **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 6.7 (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 under Article 6.13 (Technical Consultations).
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 6 months with the aim of 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, the importing Party shall review the measure at least every 6 months thereafter periodically based on the most recent available information, and upon request, shall explain the reasons for the continuation of the emergency measure. 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 6.13 (Technical Consultations).

## **Article 6.15** **Subcommittee on SPS Matters**

1. The Parties hereby establish a Subcommittee on SPS Measures (“SPS Subcommittee”), consisting of representatives from relevant government agencies of each Party.
2. The SPS Subcommittee shall review the progress made by the Parties in implementing their commitments under this Chapter and may establish subsidiary working groups to consider specific issues relating to the implementation of this Chapter.
3. The SPS Subcommittee shall provide a forum to enable either Party to raise any SPS matter related to trade between the Parties, and for further discussion and information exchange, including on request for recognition of

equivalence or of regional conditions, or on specific requirements and innovations for certification, to facilitate trade between the Parties.

4. The SPS Subcommittee shall meet within 1 year after 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.
5. The SPS Subcommittee shall report to the Joint Committee.

**Article 6.16**  
**Non-application of Dispute Settlement**

Neither Party shall have recourse to Chapter 13 (Dispute Settlement) for any matter arising under this Chapter.