

CHAPTER 6 SANITARY AND PHYTOSANITARY MEASURES

Article 6.1 Objectives

The objectives of this Chapter are to:

- (a) uphold and enhance the implementation of the WTO Agreement on Sanitary and Phytosanitary Agreement (“SPS Agreement”);
- (b) ensure transparency as regards sanitary and phytosanitary (“SPS”) measures applicable to trade, and that SPS measures do not create unjustified barriers to trade;
- (c) establish a mechanism for a decision on recognition of equivalence of such measures maintained by a Party consistent with the protection of human, animal and plant life or health in an agreed time-frame;
- (d) recognize the health status of plants and animals of the Parties and apply the principle of compartmentalization; and
- (e) enhance communication, consultation and cooperation between the Parties on SPS measures.

Article 6.2 Scope and Coverage

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

Article 6.3 Definitions

For purposes of this Chapter, the definitions in Annex A to the SPS Agreement shall apply.

Article 6.4 Affirmation of the SPS Agreement

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

Article 6.5 International Standards and Harmonization

1. Each Party shall use international standards, guidelines or recommendations as the basis for its SPS measures, in order to harmonize them.

2. Notwithstanding paragraph 1, the Parties may adopt SPS measures that offer a level of protection higher than that which would be achieved by measures based on an international standard, guideline or recommendation, if there is scientific justification. Provided that, in the event a Party adopts a level of protection different from that which would be achieved by measures based on an international standard, guideline or recommendation, it shall, when requested provide the other Party within thirty working days of such request and explanation of its scientific justification, except confidential data for the reasons for such higher standards.

Article 6.6 Equivalence

1. Parties recognise that the application of equivalence is an important tool for trade facilitation, and shall put in place systems for ensuring determination of equivalence in relation to partial or full equivalence of SPS measures.

2. Both Parties agree that an initial list of products or sectors in respect of which each Party would take a decision on equivalence is attached as Annex 6-1 (List of Products for Request for Equivalence). Consultations shall commence within three months from the entry into force of this Agreement and shall be carried out in accordance with the principles and procedures as set out in paragraphs 4 and 5.

3. For other products or sectors not listed in Annex 6-1 (List of Products for Request for Equivalence), either Party may request for equivalence in respect of such products or sectors. Consultations shall commence within three months from the receipt of such request from the other Party and shall be carried out in accordance with the principles and procedures as set out in paragraphs 4 and 5.

4. All consultations carried out pursuant to paragraphs 2 and 3 shall be guided by the following principles and procedures:

- (a) equivalence can be determined for an individual measure or groups of measures related to a certain commodity or categories of commodities;
- (b) the consideration of equivalence by the importing Party of a request by the exporting Party for recognition of its measures with regards to a specific commodity shall not be a reason to disrupt trade or suspend on-going imports from the exporting Party of the commodity in question;
- (c) the exporting Party shall objectively demonstrate to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection. Objective demonstration and assessment in this context shall be based on international standards, guidelines or recommendations; and
- (d) the final recognition of equivalence of the relevant measures of the exporting Party rests solely with the importing Party. In each case, the importing Party shall provide to the exporting Party, upon request, explanation excluding confidential data for its determination and decision.

5. Unless otherwise mutually agreed, the importing Party shall, within one hundred and eighty working days from the date of receipt of complete application¹ of the exporting Party's demonstration of equivalence, finalise the assessment of equivalence, except for seasonal crops when it is justifiable to delay the assessment to permit verification of phytosanitary measures during a suitable period of growth of a crop.

6. 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. Within sixty working days of receipt of this information, the importing Party shall inform the exporting Party whether or not equivalence would continue to be recognized on basis of the proposed measures;
- (b) 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 recognized; and
- (c) 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 paragraph 5 may be reinitiated, provided that the timelines of paragraph 6 shall be adhered to in any process for re-assessment of equivalence.

7. 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 explanation except confidential data for its determinations and decisions.

Article 6.7 Regionalisation

1. The Parties recognise the concept of regionalisation, zoning and compartmentalisation, as set down in Article 6 of the SPS Agreement, and as elaborated in International Office of Epizootics ("OIE") and International Plant Protection Convention ("IPPC") Standards, which provide, *inter alia*, for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence where the exporting Party objectively demonstrates to the importing Party that such

¹ If application from the exporting Party is incomplete, the importing Party shall request for the balance information within ninety working days of the submission of the application by the exporting Party.

areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively.

2. Within this framework, the Parties may mutually recognise regionalisation, zoning and compartmentalisation at various levels, including farms and processing establishments, as having appropriate biosecurity measures, as mutually agreed.

3. The Parties may mutually decide on the principles, procedures or certification provisions applicable to regionalization, zoning and compartmentalization decision.

Article 6.8 Certification

1. The Parties shall ensure compliance with Annex C of the SPS Agreement, as well as the following principles and criteria in relation to certification procedures:

- (a) certificates shall be drawn up as to ensure a link between the certificate and the consignment;
- (b) both importing and exporting Parties shall introduce such checks and have such control measures taken as are necessary to prevent the issuing of false or misleading certification and the fraudulent production or use of certificates;
- (c) the certificates shall be drawn up in the English language.

2. The Sub-Committee constituted under paragraph (c) of Article 15.2 (Sub-Committees) may through decisions by the competent authority adopt model certificates for specific sectors that shall be used as the basis for certification by the Parties. The Sub-Committee may also agree on rules to be followed in case of online certification, withdrawal or replacement of certificates.

Article 6.9 Verification

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to carry out audit and verification of the procedures of the other Party, which may include an assessment of all or part of the competent authorities' total control programme.

2. The procedures referred to in paragraph 1 shall be carried out in accordance with the following principles:

- (a) verifications should be made in co-operation between the auditor and the auditee, where "auditee" is the Party subject to the verification and "auditor" is the Party carrying on the verification;
- (b) verifications shall be designed for the purpose of checking the auditee's regulatory control system;

- (c) the auditor should prepare a plan that covers the following points:
 - (i) the subject, depth and scope of the verification;
 - (ii) the date and place of the verification, along with a timetable up to and including the issue of the final report;
 - (iii) the language or languages in which the verification will be conducted and the report written, with a provision relating to English translation in the event the report is written in a language other than English; and
 - (iv) a schedule of meetings with officials and visits to establishments or facilities, as appropriate.

This plan shall be reviewed together with the auditee before commencement of verifications;

- (d) the frequency of verifications shall be decided by the importing Party subject to assessment of risk as stipulated under Article 5 of the SPS Agreement and shall be risk-based and reflect performance. Verifications, and the decisions based on them, shall be made in a simple, transparent and consistent manner, and the results and conclusions shall be made available to the other Party; and
- (e) the Party carrying out the verification may share the results and conclusions of its verification with non-Parties only with the prior written consent of the other Party.

3. The Sub-Committee under paragraph (c) of Article 15.2 (Sub-Committees) may specify procedures and documentation requirements for verification, taking into account the work of international organizations in this regard.

Article 6.10 Import Checks

1. The Parties shall ensure that their control, inspection and approval procedures are in accordance with Annex C of the SPS Agreement.

2. 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. They shall be carried out in a manner that is least trade-restrictive and without undue delay, and shall be based on the following principles:

- (a) in carrying out the checks for plant health purposes, the importing Party shall ensure that the plants, plant products and other goods and their packaging are inspected, either in their entirety or by representative sample;

- (b) in the event that the checks reveal non-conformity with the relevant standards or requirements, the importing Party shall take measures appropriate to the risk involved;
- (c) wherever possible, the importer or his representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision concerning the consignment. Such decision shall be appropriate to the risk. Depending upon the gravity of the SPS risks, the importing Party may return, seize or destroy the consignment;
- (d) at the request of the exporting Party, the importing Party shall to the maximum extent ensure that officials of the exporting Party or their representatives are given the opportunity to contribute any relevant information to assist the importing Party in taking a final decision; and
- (e) unless there is a clearly identified risk in holding that consignment, the consignments shall not be destroyed without affording an opportunity to the exporter or his representative to take back the consignment.

3. The frequencies of import checks on importations shall be made available on request. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks in the event of change in the import risk. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

Article 6.11 Goods in Transit

The Parties reaffirm Article V of 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 SPS risks.

Article 6.12 Transparency

1. Upon the entry into force of this Agreement, the importing Party, upon request, shall inform the exporting Party of its SPS import requirements. This information shall include, as appropriate, the models for the official certificates or attestations, as prescribed by the importing Party.

2. Each Party shall ensure translation of all measures, certificates, reports of any control checks or inspection procedures, or import checks or verification, or any records or other document relevant for the implementation of this Chapter, in English.

Article 6.13 Implementation

The Sub-Committee on Sanitary and Phytosanitary Measures established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.

Article 6.14 Technical Consultations

1. Either Party may request technical consultations on issues relating to this Chapter. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within thirty days from the request for technical consultations by e-mail, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties.

2. Where a Party has requested technical consultations on any SPS issues, the Parties may mutually agree to establish a technical working group with a view to identify a workable and practical solution. The Parties may, subject to mutual agreement, establish any mechanisms as deemed necessary to resolve any such issues.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

Article 6.15 Cooperation

1. Consistent with the objectives of this Chapter, the Parties shall explore opportunities for further cooperation, collaboration and information exchange of SPS measures of mutual interest. This may include:

- (a) improvement of monitoring, implementation and enforcement of SPS measures including training and information events for regulatory personnel. Public and private sector partnerships may be supported for the achievement of these objectives;
- (b) establishment of the appropriate arrangements for the sharing of expertise, to address issues of human, animal and plant life or health, as well as training and information events for regulatory personnel and possible exchange of officials;
- (c) carry out joint research and share the results of such research in important areas, such as animal and plant disease surveillance, animal and plant pest and disease prevention and control, detection methods for pathogenic micro-organisms in food, surveillance and control of harmful substances and agri-chemical and veterinary medicine

residues and other food safety issues, and any other food safety, phytosanitary and zoosanitary issues of mutual interest.

Article 6.16
Exchange of Information and Consultations

1. Each Party shall give prompt and positive consideration to any request from the other Party for consultations on issues relating to the implementation of this Chapter.
2. The Parties agree to enhance their communication and exchange of information on issues within the scope of this Chapter and in particular on ways to facilitate compliance with each other's SPS measures and to eliminate unnecessary obstacles to trade in goods between them.
3. Each Party shall respond to any requests for information from the other Party regarding any SPS measures within thirty days of request for such information.