

## **CHAPTER 6**

### **SANITARY AND PHYTOSANITARY MEASURES**

#### **Article 6.1 Definitions**

1. For the purposes of this Chapter:

“relevant international organisations” means organisations referred to in Annex A, paragraph 3 of the SPS Agreement;

“SPS measure” means a “sanitary or phytosanitary measure” as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions); and

“the SPS Committee” means the Committee on Sanitary and Phytosanitary Measures.
2. The definitions set out in Annex A to the SPS Agreement shall apply.
3. The Parties shall take into consideration the glossaries and definitions of the 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 glossaries 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) protect human, animal and plant life and health in the territory of the Parties while facilitating trade between them;
- (b) ensure that the Parties' SPS measures do not create unjustified barriers to trade;
- (c) reinforce and build upon the implementation of the SPS Agreement;
- (d) promote greater transparency and understanding on the application of each Party's SPS measures;

- (e) strengthen communication and cooperation on relevant SPS issues; and
- (f) promote resolution of SPS issues that may affect trade 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**

#### **Science and Risk Assessment**

1. The Parties recognise the importance of ensuring that their respective SPS measures are based on scientific principles.
2. The Parties shall ensure that their SPS measures are based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement, and taking into account risk assessment techniques developed by the relevant international organisations.

### **Article 6.6**

#### **Adaption to Regional Conditions**

1. The Parties acknowledge that adaptation of SPS measures to recognise regional conditions, including through application of concepts such as pest or disease free areas, areas of low pest or disease prevalence, zoning, compartmentalisation, pest free places of production, and pest free production sites, is an important means of facilitating trade.
2. Each Party shall apply the concepts set out in paragraph 1 in accordance with the SPS Agreement and take into account relevant international standards,

guidelines and recommendations, and relevant guidance of the WTO SPS Committee.

3. The Parties shall endeavour to cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for the recognition of regional conditions.
4. When undertaking a risk assessment that will establish or maintain an SPS measure applicable to the exporting Party, the importing Party shall take into consideration a regionalisation determination of the exporting Party where this information is provided to them, including:
  - (a) for sanitary measures applicable to the exporting Party, considering where zones proposed by the exporting Party have the status of disease-free officially recognised by the OIE or when the status has been recovered after an outbreak;
  - (b) for phytosanitary measures applicable to the exporting Party, taking into account, *inter alia*, the pest status of an area, pest free areas, pest free places of production, pest free production sites, or areas of low pest prevalence that the exporting Party has established.
5. When making an assessment, the importing Party shall base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement and international standards, guidelines and recommendations, and any other information it considers appropriate.
6. Where the importing Party determines that the information provided by the exporting Party with its request is sufficient it shall initiate an assessment and make a decision within a reasonable period of time as to whether it can accept the exporting Party's determination of regional conditions.
7. Where the importing Party has accepted the exporting Party's determination of regional conditions the exporting Party shall notify the importing Party of any modification to those regional conditions. Following any such notification the importing Party may continue to accept the exporting country's determination of regional conditions and allow trade to continue, provided that the importing Party is satisfied that its appropriate level of protection will be maintained. The importing Party may apply any other measure or measures, in accordance with the SPS Agreement, to meet its appropriate level of protection.
8. If the importing Party adopts a measure that recognises specific regional conditions of an exporting Party, the importing Party shall implement the measure within a reasonable period of time and inform the exporting party when trade can commence without undue delay.

9. If the evaluation of the evidence provided by the exporting Party does not result in a decision to recognise the regional conditions of the exporting Party, the importing Party shall provide the exporting Party with the rationale for its determination within a reasonable period of time.
10. If there is an incident that results in the importing Party modifying or revoking a decision recognising the regional conditions of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

### **Article 6.7 Equivalence**

1. The Parties acknowledge that recognition of the equivalence of SPS measures is an important means of facilitating trade. In determining equivalence of an individual measure, group of measures, or measures on a systems-wide basis, each Party shall consider the relevant international standards, guidelines and recommendations.
2. The importing Party shall recognise the equivalence of SPS measures, even if the measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measures achieve the importing Party's appropriate level of protection. The final determination of equivalence rests with the importing Party.
3. In order to strengthen cooperation on equivalence the Parties may, pursuant to paragraph 3(a) of Article 6.16 (Committee on SPS Measures), consider establishing a procedure for recognition of equivalence based on relevant international standards, guidelines and recommendations, and guidance of the WTO SPS Committee. Such a procedure may include, *inter alia*, the consultation process, information requirements, appropriate timeframes, and the respective responsibilities of the importing and exporting parties. The Parties shall determine the most appropriate form of any such procedure.

### **Article 6.8 Trade Conditions**

1. The importing Party shall make publicly available its general SPS import requirements and, upon request, make available to the exporting Party all SPS import requirements relating to the import of specific goods unless such information is publicly available.
2. For the purpose of establishing specific SPS import conditions, the exporting Party shall, at the request of the importing Party, provide all relevant information required by the importing Party

3. Each Party shall ensure that all SPS control, inspection, assessment, and approval procedures are undertaken and completed without undue delay including, if needed, audits, and the necessary legislative or administrative measures to complete the approval procedure. Each Party shall, in particular, avoid unnecessary or unduly burdensome information requests, and take into account information already available in the importing Party, such as on the legislative framework and audit reports of the exporting Party
4. Subject to its laws and regulations, when a risk assessment is required in the process of determining import conditions, a Party shall, upon request, provide the other Party with the outcomes of that risk assessment within a reasonable period of time of the risk assessment being finalised.
5. The importing Party shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection where it has determined that the establishment or facility meets its relevant SPS requirements.

#### **Article 6.9 Audit and Verification**

1. For the purpose of attaining and maintaining confidence in an exporting Party's ability to provide required assurances and to comply with the SPS import requirements and related control measures of the importing Party, the importing Party shall have the right to carry out an audit or verification<sup>1</sup> of all or part of the control system of the competent authority of the exporting Party.
2. If possible, an audit or verification shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.
3. In undertaking an audit or verification a Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines and recommendations.
4. The Parties shall endeavour to agree the conditions under which an audit or verification is to be carried out in advance. Prior to the commencement of an audit or verification, the importing Party shall notify the exporting Party of its intention, and state the basis for undertaking the audit or verification, which may include:
  - (a) the reason it is required;

---

<sup>1</sup> For greater certainty, an audit or verification may include desk assessments and virtual, remote, or physical audits.

- (b) the objectives and scope of the assessment;
  - (c) the criteria or requirements against which the exporting Party will be assessed; and
  - (d) the procedures for conducting the assessment, including the method or methods of verification.
5. The Parties shall endeavour to limit the frequency and number of audit visits. In case of a subsequent audit related to the same good, the importing Party shall carry out an audit only in duly justified circumstances and provide the exporting Party with an explanation as to the reason for the audit.
  6. The importing Party may appoint a governmental body, non-governmental body, or a person with the necessary relevant expertise to carry out all or part of an audit or verification on its behalf.
  7. The importing Party shall provide the exporting Party with a draft audit or verification report, including its findings, conclusions and recommendations, and shall provide the exporting Party with the opportunity to comment on the draft report. The importing Party shall consider any comments that have been provided within a reasonable period of time, before finalising its assessment.
  8. The importing Party shall provide the exporting Party with a final report setting out its conclusions in writing within a reasonable period of time. If necessary to meet its appropriate level of protection, the importing Party may implement SPS measures prior to the completion of the audit or verification provided that such measures are not inconsistent with the SPS Agreement or this Agreement.
  9. The costs incurred by the importing Party to conduct an audit or verification shall be borne by the importing Party, unless the Parties agree otherwise.
  10. Measures taken by the importing Party as a consequence of its audit or verification shall be supported by objective evidence, 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. Nothing in this paragraph prevents a Party taking an emergency measure consistent with Article 6.12 (Emergency SPS Measures).

#### **Article 6.10 Certification**

1. If a Party requires import certification, it shall ensure that the SPS requirement for certification is applied only to the extent necessary to meet its SPS objectives and shall take into account guidance of the WTO SPS

Committee and relevant international standards, guidelines and recommendations.

2. The Parties may enter into consultations through the SPS Committee, with the aim of agreeing principles, guidelines, or specific requirements for certification.
3. The Parties shall progress the implementation of paperless trade through electronic SPS certification and provide updates on implementation through the SPS Committee.

#### **Article 6.11 Import Checks and Fees**

1. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with imports. These checks shall be carried out without undue delay and with minimum trade disrupting effects.
2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party must be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's appropriate level of protection.
3. The importing Party shall notify the importer of a non-compliant consignment, or its representative, of the reason for non-compliance, and, subject to its law, provide them with an opportunity for a review of the decision. The importing Party shall consider any relevant information submitted to assist in the review.

#### **Article 6.12 Emergency SPS Measures**

1. If a Party adopts an emergency SPS measure necessary for the protection of human, animal or plant life or health, the Party shall notify the other Party of that measure through its contact point as soon as possible, and in any case no later than 48 hours after the decision to adopt the measure.
2. On the request of the other Party, a Party adopting an emergency SPS measure shall engage in technical consultations under Article 6.15 (Technical Consultations). The Parties shall endeavour to hold technical consultations within 10 days of the receipt of the request, and in any case consultations must be held as soon as possible following receipt of the request. The Party that adopts the emergency SPS measure shall take into consideration any information provided by the other Party in response to the notification and during technical consultations.

3. The importing Party shall consider, in a timely manner, information that was provided by the exporting Party when it makes its decision with respect to consignments that, at the time of adoption of the emergency SPS measure, are being transported between the Parties, in order to avoid unnecessary disruptions to trade.
4. If a Party adopts an emergency SPS measure, it shall commence a science-based review of the measure within a reasonable period of time. The Party shall then review the need for the emergency SPS measure as required, and if it remains in place provide, on request, the justification for maintaining the emergency SPS measure.

### **Article 6.13 Cooperation**

The Parties shall cooperate to strengthen collaboration between the Parties in their involvement in the work of relevant international organisations that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

### **Article 6.14 Transparency, Notification and Information Exchange**

1. The Parties acknowledge the value of exchanging information in a timely manner relating to their respective SPS measures and ensuring transparency in the implementation of such measures. To this end, each Party shall facilitate the exchange of information on their respective sanitary and phytosanitary regimes.
2. Each Party shall promptly notify the other Party of a:
  - (a) significant change to pest or disease status; and
  - (b) significant food safety issue related to a good traded between the Parties.
3. In particular, each Party shall, through the contact points designated under Article 6.17 (Competent Authorities and Contact Points), on request, provide information to the other Party of any new or revised SPS measures, including measures imposed in response to an urgent threat to human, animal or plant life or health.
4. Where the information referred to in paragraphs 2 and 3 has been made available via notification to the WTO's Central Registry of Notifications, or



to the relevant international organisations, the requirements in those paragraphs shall be deemed to be fulfilled.

#### **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 through the contact point.
2. The responding Party shall provide a written reply to the requesting Party within 30 days of the receipt of a request. The Parties shall enter into technical consultations within 30 days of the requesting Party's receipt of the reply, unless the Parties agree otherwise. Such consultations may be conducted via teleconference, videoconference or any other means agreed by the Parties.
3. The Parties shall endeavour to provide all relevant information necessary to avoid disruption to trade and to reach a mutually acceptable solution within a reasonable period of time.
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.

#### **Article 6.16 Committee on SPS Measures**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (the "SPS Committee"), composed of government representatives of each Party responsible for SPS matters.
2. The functions of the SPS Committee shall include:
  - (a) monitoring implementation and considering any matter related to this Chapter;
  - (b) providing an opportunity for the identification, prioritisation, discussion, and resolution of SPS issues;
  - (c) recommending any mutually agreed proposals for amendments to this Chapter to the Joint Committee; and
  - (d) providing a forum to exchange information on each Party's SPS regulatory system.

3. The SPS Committee may, among other things:
  - (a) identify opportunities for greater cooperation activities relevant to this Chapter, including trade facilitation initiatives and further work on eliminating unnecessary SPS barriers to trade between the Parties;
  - (b) discuss, at an early stage, a change to, or a proposed change to, a SPS measure being considered;
  - (c) facilitate improved understanding between the Parties on the implementation of the SPS Agreement, and promote cooperation between the Parties on SPS issues in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures, and relevant international organisations, as appropriate; and
  - (d) provide opportunities to identify initiatives to strengthen bilateral technical cooperation relevant to this Chapter.
4. The SPS Committee may establish technical working groups to address specific SPS issues with the aim of reaching a mutually acceptable resolution with the least disruption to trade. Any technical working group established shall report to the SPS Committee on progress of its work.
5. A Party may refer any SPS issue to the SPS Committee. The SPS Committee shall consider the issue as expeditiously as possible. If the SPS Committee is unable to resolve an issue it shall, at the request of a Party, report to the Joint Committee.
6. The SPS Committee shall meet within one year of the date of entry into force of this Agreement, and on annual basis, unless the Parties agree otherwise.
7. The SPS Committee may decide to meet by videoconference or teleconference or by any such means as may be agreed by the Parties, and it may also address issues by correspondence.
8. The SPS Committee shall take decisions and make recommendations by consensus.
9. The SPS Committee shall report, as needed, on its activities and work programme to the Joint Committee.

**Article 6.17**  
**Competent Authorities and Contact Points**

1. Each Party shall notify to the other Party a list of its competent authorities on entry into force of this Agreement. The notification shall include contact information of these authorities.
2. Each Party shall also designate and notify a contact point to facilitate the exchange of information and any communication between the Parties relating to this Chapter on entry into force of this Agreement.
3. Each Party shall promptly notify the other Party of any change of its competent authorities, the contact information of its competent authorities, or its contact point.

**Article 6.18**  
**Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.