

CHAPTER 5
SANITARY AND PHYTOSANITARY MEASURES

Article 1: Definitions

1. For the purposes of this Chapter:

Competent Authority means those authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary measures within that Party;

relevant international organisations in the field of sanitary or phytosanitary protection mean the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE) and those operating under the framework of the International Plant Protection Convention (IPPC), as specified in paragraph 3 of Annex A to the SPS Agreement; and

2. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

Article 2: Objectives

1. The objectives of this Chapter are to:

- (a) facilitate trade between the Parties while protecting human, animal or plant life or health in the territory of each Party;
- (b) provide greater transparency in, and enhance understanding of, the application of each Party's sanitary and phytosanitary measures;
- (c) strengthen cooperation between the Parties on sanitary and phytosanitary matters;
- (d) enhance the practical implementation of the SPS Agreement by Parties that are WTO Members; and
- (e) promote the application of the requirements of the SPS Agreement by Parties that are not WTO Members.

2. Recognising the capacity constraints of the developing country Parties, and with a view to increasing their export opportunities, assistance in relation to this Chapter would be provided under Chapter 10 (Development and Economic Cooperation) and the associated Work Programme.

Article 3: Scope

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

Article 4: Basic Rights and Obligations of Parties under this Chapter

1. Nothing in this Chapter shall limit the rights of a Party to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with this Chapter.
2. Parties that are WTO Members affirm their rights and obligations with respect to each other under the SPS Agreement. While reserving their rights under the SPS Agreement, Parties that are WTO Members shall apply the provisions of Article 1 to Article 8 of the SPS Agreement with respect to Parties that are not WTO Members, to the extent that such provisions are not already covered in this Chapter.
3. Notwithstanding that this Chapter applies to developing country Parties that are not WTO Members, where such a Party prepares, adopts or applies a sanitary or phytosanitary measure, such measure shall be based on the SPS Agreement only to the extent of its capacity. On request of a Party with an interest in a product subject to a sanitary or phytosanitary measure applied by such a Party, those Parties shall engage promptly in bilateral technical discussions on the matter in accordance with the procedure under Article 12.

Article 5: Scientific Basis for Non-Discrimination with Respect to and Harmonization of Sanitary and Phytosanitary Measures

1. Each Party shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 5 of this Article.
2. Each Party shall ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties.
3. Wherever possible, each Party shall base its sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health and be presumed to be consistent with this Chapter.
4. A Party may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, provided there is a scientific justification.

5. In cases where relevant scientific evidence is insufficient, a Party may provisionally adopt sanitary or phytosanitary measures on the basis of pertinent information. In such circumstances, Parties shall seek to obtain additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure within a reasonable period of time.

Article 6: Equivalence of Sanitary and Phytosanitary Measures

1. Each Party shall accept the sanitary and phytosanitary measures of other Parties as equivalent, even if the measures of another Party differ from its own or from those of other Parties trading in the same product, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given on request to the importing Party for inspection, testing and other relevant procedures.

2. A Party shall on request enter into negotiations within a reasonable period of time with the aim of achieving bilateral or regional recognition arrangements of the equivalence of specified sanitary or phytosanitary measures.

3. With a view to facilitating appropriate trading opportunities for all of the Parties, particularly the developing country Parties, in respect of requests for recognition of equivalence under paragraphs 1 and 2:

- (a) requests should be processed as expeditiously as possible;
- (b) Parties shall cooperate on the prioritisation of exporting Parties' requests in accordance with each importing Party's laws, regulations and procedures governing the prioritisation of such requests;
- (c) once the importing Party has determined that the information provided by the exporting Party is sufficient, it shall begin the equivalence assessment within a reasonable period of time with a view to completing it as expeditiously as possible.

4. In respect of equivalence determinations, the Parties shall take into account the guidance provided by the relevant international organisations in the field of sanitary or phytosanitary protection.

5. If an exporting Party considers that limitations on its capacity to objectively demonstrate achievement of an importing Party's appropriate level of sanitary or phytosanitary protection constitute an obstacle to acceptance of the case for equivalence, it may request technical discussions with that importing Party in accordance with the procedure under Article 12, with a view to clarifying the matter and identifying any actions that may enhance the capacity of the exporting Party or otherwise assist the acceptance of equivalence.

6. Should the importing Party make a final decision to recognise a measure, a group of measures or a system as equivalent under this Article, the importing Party shall take the necessary actions to allow trade on the basis of the relevant measure, group of measures or system as promptly as possible.

7. Should the importing Party make a final decision to not recognise a measure, a group of measures or a system as equivalent to its own, the importing Party shall provide to the exporting Party an explanation of the reasons for its decision as promptly as possible.

8. To the extent possible, where mutually agreed, the Parties involved in a positive equivalence determination are to report the outcome to other Parties through Contact Points.

Article 7: Adaptation of Sanitary and Phytosanitary Measures to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties may, by mutual agreement, cooperate on adaptation to regional conditions in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade.

2. Importing Parties may make determinations in relation to regionalisation, pest- or disease-free areas, areas of low pest or disease prevalence, zoning and compartmentalisation which shall be consistent with the SPS Agreement, in particular Article 6 of the SPS Agreement.

3. Following a determination assessment, if the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the pest- and disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party the rationale for its decision.

Article 8: Publication of Regulations

1. Each Party shall ensure that all sanitary and phytosanitary regulations (sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally) which have been adopted are published promptly in such a manner as to enable interested Parties and persons to become acquainted with them.

2. Except in urgent circumstances, a Party shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products and methods of production to the requirements of the importing Party. The reasonable interval shall be a period of not less than six months.

Article 9: Competent Authorities and Contact Points

1. Each Party shall provide the other Parties with a description of its Competent Authorities and their division of responsibilities.
2. Each Party shall provide the other Parties with a Contact Point to facilitate distribution of requests and notifications made in accordance with this Chapter.
3. Each Party shall ensure that the information provided under paragraphs 1 and 2 is kept up to date.

Article 10: Notification

1. Each Party shall provide timely and appropriate information directly to the Contact Points of all other Parties where:
 - (a) any new sanitary or phytosanitary measure or amendment to an existing measure that may directly or indirectly have a significant effect on the trade of an exporting Party is prepared;
 - (b) a provisional sanitary or phytosanitary measure against or affecting the exports of another Party is considered necessary to protect human, animal or plant life or health within the importing Party and is applied; or
 - (c) a change in animal or plant health status may affect existing trade.
2. Each exporting Party should, to the extent possible, provide relevant information to the Contact Point of an importing Party where it identifies after exportation a significant sanitary or phytosanitary risk associated with an export consignment destined for that importing Party.
3. If a Party has determined a significant, sustained or recurring pattern of non-compliance with a sanitary and phytosanitary measure, the importing Party shall notify the exporting Party as soon as possible of the non-compliance.
4. On request, the importing Party shall provide the exporting Party with relevant available information on sanitary and phytosanitary-related non-compliant consignments from the exporting Party where there is a significant, sustained or recurring pattern of non-compliance.
5. Further to paragraphs 1(a) and 1(b), if an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on the trade of other Parties, the Party preparing it shall:
 - (a) publish a notice at an early stage in such a manner as to enable interested Parties to become acquainted with the proposal to introduce a particular regulation;

- (b) notify other Parties, at an early stage when amendments can be still be introduced and comments taken into account, of the products to be covered by the proposed regulation, together with a brief indication of the regulation's objective and rationale;
- (c) on request, provide to other Parties through Contact Points electronic copies of the proposed regulation and, whenever possible, identify the parts which deviate in substance from relevant international standards, guidelines or recommendations; and
- (d) without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments on request and take these written comments and the results of these discussions into account;

but, where urgent problems of health protection arise or threaten to arise for that Party, it may omit such steps of subparagraphs (a) to (d) as it finds necessary, provided that the Party:

- (e) immediately notifies other Parties of the particular regulation, the products covered and its objective and rationale, including the nature of the urgent problems, and follows up such notification in writing if necessary;
- (f) on request, provides other Parties with electronic copies of the regulation; and
- (g) allows other Parties to make comments in writing, discusses these comments on request, and takes the comments and the results of these discussions into account.

6. Notifications, requests, comments, responses and other communications for the purposes of paragraph 5 shall be conveyed through Contact Points.

7. Paragraphs 5 and 6 shall apply to proposed amendments to existing sanitary or phytosanitary regulations and to proposed new sanitary or phytosanitary regulations.

Article 11: Cooperation

1. The Parties acknowledge existing cooperation between them on sanitary and phytosanitary matters. Parties shall explore opportunities for further cooperation and information exchange on sanitary and phytosanitary matters of mutual interest or of significant interest to a developing country Party consistent with the objectives of this Chapter.

2. To enhance market access opportunities for the developing country Parties under this Agreement, each developing country Party may establish and maintain an updated list of prioritised products of significant export interest. The lists shall be considered by the developed country Parties in their import standards development work programmes, within the framework of their laws, regulations and procedures governing the prioritisation of market access requests, with a view to facilitating the exports of the developing country Parties.

3. The Parties recognise that capacity constraints may limit the ability of developing country Parties to comply with relevant sanitary and phytosanitary standards and make use of market access opportunities. The Parties also recognise the importance of information exchange on sanitary and phytosanitary matters pursuant to Article 10 for the timely identification of market access issues. Accordingly, where an exporter from a developing country Party is finding it difficult to address a significant, sustained or recurring pattern of non-compliance with an importing Party's requirements, cooperative actions shall be explored by the Parties to address the identified problem.

4. As appropriate in the implementation of this Chapter, each Party shall endeavour to coordinate with regard to regional or multilateral activities with the objective of avoiding unnecessary duplication and to maximise the benefits from the application of resources.

5. Each Party agrees to explore how it can strengthen cooperation on the provision of technical assistance and capacity building, especially in relation to trade facilitation.

Article 12: Technical Discussions

1. A Party may, through Contact Points, request technical discussions with another Party on any sanitary or phytosanitary measure affecting trade between it and that other Party. The other Party shall respond promptly to any such request. The two Parties shall seek to clarify any measure at issue and, where there is any remaining difference of view, shall endeavour to find a mutually acceptable solution, taking into account the objectives of trade facilitation and of minimising the negative trade effects of sanitary and phytosanitary measures. In the case of measures affecting the export interests of a developing country Party, the Parties concerned should seek to resolve any concerns in a timely manner.

2. Parties may, through Contact Points, arrange to undertake technical discussions with each other on sanitary and phytosanitary matters of mutual interest. Technical discussions should be conducted using electronic means. If this is not possible they may be conducted in person or by any other means, as mutually determined by the Parties.

3. The Parties participating in technical discussions or negotiations pursuant to this Chapter may mutually agree to invite another Party or a relevant international or regional organisation in the field of sanitary or phytosanitary protection to participate for the purposes of providing technical advice.

4. If technical discussions on a matter under Article 6.5 have taken place, an importing Party may decline a further request for technical discussions, unless the exporting Party can demonstrate at the time of the request that there has been:

- (a) a material advancement in relevant science, technology or domestic processes; or
- (b) a material improvement in the risk profile of the exporting Party.

5. Without prejudice to the rights and obligations of the Parties under other provisions of this Agreement, where the importing Party declines a request for technical discussions under paragraph 4 it shall provide an explanation of the reasons for its position.

6. Technical discussions held under this Article do not constitute formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

Article 13: Meetings on Sanitary and Phytosanitary Matters

1. The Parties shall, through the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, the Joint Committee or any other relevant subsidiary body, consult as required to consider the implementation of their commitments under this Chapter.

2. The Parties, through the Joint Committee, the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, or any other relevant subsidiary body, shall commence a review of this Chapter within three years of the entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of the entry into force of this Agreement.

Article 14: Special and Differential Treatment

In the preparation and application of sanitary or phytosanitary measures, each Party shall take into account the special needs and interests of the developing country Parties. If the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Parties so as to maintain their opportunities for export. If possible, producers in the developing country Parties shall be given longer time-frames to comply with sanitary and phytosanitary measures.