

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

Article 6.1: Definitions

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

2. In addition, for the purposes of this Chapter:

competent authority means a government body of each Party responsible for measures and matters referred to in this Chapter;

emergency measure means a sanitary or phytosanitary measure that is applied by an importing Party to the other 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.

Article 6.2: Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health in the territories of the Parties while facilitating trade;
- (b) enhance transparency in, and the understanding of, the application of each Party's sanitary and phytosanitary measures;
- (c) ensure that the Parties' sanitary and phytosanitary measures do not create unjustified barriers to trade;
- (d) strengthen communication, consultation and cooperation between the Parties; and
- (e) enhance the implementation of and build on the SPS Agreement.

Article 6.3: Scope

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

Article 6.4: General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.
2. Nothing in this Agreement shall limit the rights and obligations that each Party has under the SPS Agreement.
3. Each Party shall take into account the relevant guidance of the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement (“WTO SPS Committee”) and international standards, guidelines and recommendations.

Article 6.5: Equivalence

1. The Parties acknowledge that recognition of the equivalence of sanitary and phytosanitary measures is an important means to facilitate trade. Further to Article 4 of the SPS Agreement, the Parties shall apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate.
2. On request of the exporting Party, the importing Party shall explain the objective and rationale of its sanitary or phytosanitary measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.
3. When an importing Party receives a request for an equivalence assessment and determines that the information provided by the exporting Party is sufficient, it shall initiate the equivalence assessment within a reasonable period of time.
4. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party’s measure:
 - (a) achieves the same level of protection as the importing Party’s measure; or
 - (b) has the same effect in achieving the objective as the importing Party’s measure.¹
5. When the equivalence assessment results in the recognition of equivalence, the importing Party shall communicate this to the exporting Party in writing and shall apply this recognition to trade from the exporting Party within a reasonable period of time.

¹ Neither Mexico nor Singapore shall have recourse to dispute settlement under Chapter 23 (Dispute Settlement) for this subparagraph between them.

6. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision within a reasonable period of time.

Article 6.6: Risk Analysis

1. Recognising the Parties' rights and obligations under the relevant provisions of the SPS Agreement, nothing in this Chapter shall be construed to prevent a Party from:

- (a) establishing the level of protection, it determines to be appropriate;
- (b) establishing or maintaining an approval procedure that requires a risk analysis to be conducted before the Party grants a product access to its market; or
- (c) adopting or maintaining a sanitary or phytosanitary measure on a provisional basis.

2. Each Party shall ensure that its sanitary and phytosanitary measures either conform to the relevant international standards, guidelines or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, that they are based on documented and objective scientific evidence as appropriate to the circumstances, of the risk to human, animal, or plant life or health, while recognising the Parties' obligations regarding assessment of risk under Article 5 of the SPS Agreement.

3. When conducting its risk analysis, each Party shall:

- (a) conduct its risk analysis in a manner that is documented and that provides interested persons and the other Party an opportunity to comment, in a manner to be determined by that Party;²
- (b) ensure that each risk assessment it conducts is appropriate to the circumstances of the risk at issue and takes into account reasonably available and relevant scientific data, including qualitative and quantitative information;
- (c) ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail in its own territory and that of the other Party;

² For greater certainty, this subparagraph applies only to a risk analysis for a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

- (d) consider risk management options that are not more trade restrictive³ than required, including the facilitation of trade by not taking any measure, to achieve the level of protection that the Party has determined to be appropriate; and
- (e) select a risk management option that is not more trade restrictive than required to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

4. If an importing Party requires a risk analysis to evaluate a request from an exporting Party to authorise importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the required information from the exporting Party, the importing Party shall endeavour to facilitate the evaluation of the request for authorisation by scheduling work on this request in accordance with the procedures, policies, resources, and laws and regulations of the importing Party.

5. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.

6. An exporting Party may submit scientific evidence and mitigation proposals, to support the importing Party's risk assessment procedure.

7. If the importing Party, as a result of a risk analysis, adopts a sanitary or phytosanitary measure that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.

8. Without prejudice to Article 6.12, no Party shall stop the importation of a good of the other Party solely for the reason that the importing Party is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the other Party when the review was initiated.

Article 6.7: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise that adaptation to regional conditions, including regionalization, zoning and compartmentalisation, is an important means to facilitate trade.

2. The Parties may work cooperatively on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures

³ For the purposes of subparagraphs (d) and (e), a risk management option is not more trade-restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

followed by each Party for the recognition of pest- or disease-free areas and areas of low pest or disease prevalence.

3. If an importing Party receives a request for a determination of regional conditions and determines that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time.

4. When an importing Party commences an assessment of a request for a determination of regional conditions under paragraph 3, the Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

5. When an importing Party adopts an SPS measure that recognises specific regional conditions of an exporting Party, the importing Party shall communicate that measure to the exporting Party in writing and implement it within a reasonable period of time.

6. The importing and exporting Parties involved in a particular determination may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

7. If the evaluation of the evidence provided by the exporting Party does not result in a recognition of pest- or disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

8. If there is an incident that results in the importing Party modifying or revoking the determination recognising regional conditions, on request of the exporting Party, the Parties involved shall cooperate to assess whether the determination can be reinstated.

Article 6.8: Transparency⁴

1. A Party shall notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of the other Party, including any that conforms to international standards, guidelines or recommendations, by using the WTO SPS notification submission system.

2. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow at least 60 days for interested persons and the other Party to provide written comments on the proposed measure after it makes the notification under paragraph 1. If feasible and appropriate, the Party should allow more than 60 days.

3. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with the other Party, on request and if appropriate and feasible, any scientific or trade concern that the other

⁴ For greater certainty, this Article applies only to a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

4. If feasible and appropriate, a Party should provide an interval of more than six months between the date it publishes the final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to address urgent problem of human, animal or plant life or health, or the measure is of a trade facilitating nature.

5. Each Party shall publish, by electronic means, a notice of a final sanitary or phytosanitary measure in an official journal or website.

6. An exporting Party shall inform the importing Party through the contact points referred to in Article 6.17 in a timely and appropriate manner:

- (a) if it has knowledge of a significant sanitary or phytosanitary risk related to the export of a good from its territory;
- (b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;
- (c) of significant changes in the status of a regionalised pest or disease;
- (d) of new scientific findings of importance which affect the regulatory response with respect to food safety, pests or diseases; and
- (e) of significant changes in food safety, pest or disease management, control or eradication policies or practices that may affect current trade.

Article 6.9: Information Exchange

1. The Parties recognise that the exchange of information is an important means of enhancing the management of sanitary and phytosanitary measures and facilitating trade.

2. A Party may request information from the other Party on a matter arising under this Chapter. A Party that receives a request for information shall endeavour to provide available information to the requesting Party within a reasonable period of time and, if possible, by electronic means.

Article 6.10: Import Checks

1. Each Party shall ensure that its import programmes are based on the risks associated with importations, and the import checks are carried out without undue delay.⁵

2. An importing Party shall provide to the other Party, on request, information regarding the analytical methods, quality controls, sampling procedures and facilities that the importing Party uses to test a good. The importing Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample, and the analytical methods used on the test sample.

3. An importing Party shall ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure, is limited to what is reasonable and necessary and is rationally related to the available science.

4. If an importing Party prohibits or restricts the importation of a good of the other Party on the basis of an adverse result of an import check, the importing Party shall provide a notification about the adverse result to at least one of the following: the importer or its agent; the exporter; the manufacturer; or the exporting Party.

5. When an importing Party provides a notification pursuant to paragraph 4, it shall:

(a) include:

(i) the reason for the prohibition or restriction;

(ii) the legal basis or authorisation for the action; and

(iii) information on the status of the affected goods and, if appropriate, on their disposition;

(b) do so in a manner that is consistent with its laws, regulations and requirements as soon as possible, after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration; and

(c) if the notification has not already been provided through another channel, transmit the notification by electronic means, if practicable.

6. An importing Party that prohibits or restricts the importation of a good of the other Party on the basis of an adverse result of an import check shall provide an opportunity for a review of the decision and consider any relevant information submitted to assist in the review. The review

⁵ For greater certainty, nothing in this Article prohibits a Party from performing import checks to obtain information to assess risk or to determine the need for, develop or periodically review a risk-based import programme.

request and information should be submitted to the importing Party within a reasonable period of time.⁶

7. If an 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.

Article 6.11: Audits⁷

1. To determine an exporting Party's ability to provide the required assurances and meet the sanitary and phytosanitary measures of the importing Party, the importing Party shall have the right, subject to this Article, to audit the exporting Party's competent authorities and associated or designated inspection systems. That audit may include an assessment of the competent authorities' control programmes, including, if appropriate, reviews of the inspection, audit programmes and on-site inspection of facilities or establishments.

2. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale and decide the objectives and scope of the audit, the criteria or requirements against which the exporting Party will be assessed, and the itinerary and procedures for conducting the audit.

3. The importing Party shall provide the exporting Party the opportunity to comment on the findings of the audit and take any such comments into account before the importing Party makes its conclusions and takes any action. The importing Party shall provide a report setting out its conclusions in writing within a reasonable period of time.

4. Without prejudice to Article 6.12, the Parties shall not interrupt the trade of a good of the other Party solely due to a delay of the importing Party in carrying out an audit, where the importation of the good of that Party is permitted when the audit is initiated.

5. An audit shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

Article 6.12: Emergency Measures

⁶ For greater certainty, nothing in this Article prevents an importing Party from disposing of goods which are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal or plant life or health in the Party's territory.

⁷ For greater certainty, nothing in this Article prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the Party shall promptly notify the other Party of that measure through the competent authorities and the relevant contact point referred to in Article 6.17. The Party that adopts the emergency measure shall take into consideration any information provided by the other Party in response to the notification.

Article 6.13: Certification

1. The Parties recognise that assurances with respect to sanitary or phytosanitary requirements may be provided through means other than certificates and that different systems may be capable of meeting the same sanitary or phytosanitary objective.⁸
2. If an importing Party requires certification for trade in a good, the Party shall ensure that the certification requirement is applied, in meeting the Party's sanitary or phytosanitary objectives, only to the extent necessary to protect human, animal or plant life or health.
3. An importing Party shall limit attestations and information it requires on the certificates to essential information that is related to the sanitary or phytosanitary objectives of the importing Party.
4. An importing Party should provide to the other Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.
5. The Parties may agree to work cooperatively to develop model certificates to accompany specific goods traded between the Parties.
6. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

Article 6.14: Cooperation

1. The Parties shall cooperate to facilitate the implementation of this Chapter.
2. The Parties shall explore opportunities for further cooperation, collaboration and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter. Those opportunities may include trade facilitation initiatives, and cooperation in multilateral fora on sanitary and phytosanitary matters.

⁸ For greater certainty, nothing in this article prohibits a Party from requiring certification where it is necessary for the protection of human, animal or plant life or health.

3. The Parties may cooperate and jointly identify work on sanitary and phytosanitary matters with the goal of eliminating unnecessary obstacles to trade between the Parties.
4. Further to Article 3 of the SPS Agreement, the Parties are encouraged to promote cooperation in the development and application of international standards, guidelines and recommendations.

Article 6.15: Cooperative Technical Consultations

1. A Party, at any time, may request cooperative technical consultations with the other Party to resolve trade concerns related to the application of sanitary and phytosanitary measures.
2. Where a Party receives a written request from the other Party for technical consultations under this Chapter, the Parties shall initiate consultations within 30 days of the request being received, or as otherwise agreed, with the aim of resolving the matter.
3. The consulting Parties shall ensure the appropriate involvement of relevant trade and regulatory agencies in meetings held pursuant to this Article.
4. The consultations may be held in person, via videoconference, teleconference, or any other means as agreed by the Parties concerned.

Article 6.16: Administration of this Chapter

1. Matters relating to administration of this Chapter shall be considered by the Parties through the Trade in Goods Committee established under Article 22.5(a) (Establishment of Cross-Cutting Committees).
2. The Trade in Goods Committee shall have the following additional functions under this Chapter:
 - (a) providing a forum to improve the Parties' understanding of sanitary and phytosanitary issues that relate to the implementation of the SPS Agreement and this Chapter;
 - (b) providing a forum to enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
 - (c) exchanging information on the implementation of this Chapter;
 - (d) discussing mechanisms to facilitate the exchange of information regarding the import requirements for specific products and communicate the status on the applications for its authorisation;
 - (e) to initiate discussions on the making of a notification pursuant to Article 6.10.4; and

- (f) determining the appropriate means to undertake specific tasks related to the functions of the Committee;

3. The Trade in Goods Committee may also have the following additional functions under this Chapter:

- (a) identify and develop technical assistance and cooperation projects between the Parties on sanitary and phytosanitary measures;
- (b) serve as a forum for a Party to share information on a sanitary or phytosanitary issue that has arisen between it and the other Party, provided that the Parties between which the issue has arisen have first attempted to address the issue through discussions between themselves; and
- (c) consult on matters and positions for the meetings of the WTO SPS Committee, and meetings held under the auspices of the *Codex Alimentarius* Commission, the World Organisation for Animal Health and the International Plant Protection Convention.

Article 6.17: Competent Authorities and Contact Points

Each Party shall provide the other Party with a written description of the sanitary and phytosanitary responsibilities of its competent authorities and shall designate and notify its contact points for matters arising under this Chapter 60 days after the entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to its competent authorities and contact points.