

CHAPTER 5 SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Definitions

1. 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.

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

3. The relevant definitions developed by the *Codex Alimentarius Commission* (hereinafter referred to as “Codex”), the *World Organization for Animal Health* (hereinafter referred to as “WOAH”) and the *International Plant Protection Convention* (hereinafter referred to as “IPPC”) apply to this Chapter.

Article 5.2: Objectives

The objectives of this Chapter are to:

- (a) facilitate implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by the relevant international organizations defined by the SPS Agreement;
- (b) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;
- (c) increase mutual understanding of each Party’s regulations and procedures relating to the implementation of sanitary and phytosanitary measures;
- (d) provide a means to improve communication and cooperation on sanitary and phytosanitary issues, and
- (e) provide means to resolve issues on sanitary and phytosanitary arising from the implementation of this Agreement.

Article 5.3: Scope and Coverage

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

Article 5.4: General Obligations

1. The Parties reaffirm their rights and obligations with respect to each other under the SPS Agreement.
2. The Parties shall cooperate in relevant international bodies engaged in work on sanitary and phytosanitary related issues, including the WTO SPS Committee, Codex, WOHAI, and IPPC.

Article 5.5: Transparency and Exchange of Information

1. The Parties recognize the value of transparency in the adoption and application of sanitary and phytosanitary measures and the importance of sharing information about such measures on an ongoing basis.
2. In implementing this Chapter, the Parties confirm their commitment to the transparency provisions set out in Article 7, Annex B of the SPS Agreement and relevant Decisions and Recommendations on transparency adopted by the WTO Committee on Sanitary and Phytosanitary Measures, taking into account relevant international standards, guidelines, and recommendations.
3. Each 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 SPS Agreement notification submission system as a means of notification. To table text on providing written responses to comments in a timely manner.
4. 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 concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.
5. The exporting Party shall notify in writing to the importing Party in a timely and appropriate manner if it has knowledge of:

- (a) a significant change or urgent situation of a sanitary or phytosanitary risk or status in its territory that may affect current trade between the Parties, or
- (b) significant changes in food safety, pest, or disease management, control, or eradication policies or practices that may affect current trade between the Parties.

6. A Party shall promptly provide, upon request of the other Party, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.

7. Each Party shall provide, upon request of the other Party, information on results of import checks in case of rejected or non-compliant consignments, including the scientific basis for such rejections.

Article 5.6: Adaptation to Regional Conditions

1. The Parties recognize that the principle of adaptation to regional conditions, including pest-free areas and areas of low pest disease prevalence, as provided for under Article 6 of the SPS Agreement, has mutual benefits for both Parties.

2. The Parties shall strengthen cooperation on recognition of regional conditions and follow the procedures in accordance with the decisions adopted by the WTO SPS Committee and relevant international standards, guidelines and recommendations in accordance with Annex A of the SPS Agreement.

3. For these purposes, the Parties may agree in advance specific procedures or protocols.

Article 5.7: Equivalence

1. The Parties recognize that the principle of equivalence, as set out in Article 4 of the SPS Agreement, is an important tool for facilitating trade for the mutual benefit of the Parties.

2. Compliance by an exported product with SPS measures or standards of the exporting Party that has been accepted as equivalent to SPS measures and standards of the importing Party shall not remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.

3. The Parties shall follow the procedures for determining the equivalence of sanitary and phytosanitary measures and standards developed by the WTO SPS Committee and relevant international standard-setting bodies in accordance with Annex A of the SPS Agreement, *mutatis mutandis*.

Article 5.8: Risk Analysis

1. The Parties recognize the principle of risk assessment, as set out in Article 5 of the SPS Agreement. Sanitary and phytosanitary measures adopted by the Parties shall be based on assessment of risk for human, animal health and infectious diseases of animals and pests of plants in accordance with the risk assessment techniques adopted by the relevant international standard-setting bodies.
2. The initiation of a risk assessment process should not interrupt the existing bilateral trade of that product, except in the case of a justified emergency situation.
3. When conducting a risk assessment process, each Party shall consider the Decisions and Recommendations adopted by the WTO SPS Committee and international standards, guidelines and recommendations from Codex, WOH and IPPC.
4. Each Party shall select a risk management option that is not more trade restrictive than required to achieve the sanitary or phytosanitary objective.

Article 5.9: Subcommittee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Subcommittee on Sanitary and Phytosanitary Measures (“SPS Subcommittee”) with the objective of ensuring the implementation of this Chapter. The SPS Subcommittee shall be comprised of representatives of each Party who have responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures.
2. The SPS Subcommittee shall seek to enhance cooperation between the Parties’ agencies with responsibility for sanitary and phytosanitary measures.
3. For the purposes of the effective implementation and operation of this Chapter, the functions of the SPS Subcommittee shall be to provide a forum for:
 - (a) enhancing mutual understanding of each Party’s sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
 - (b) discussion on matters related to the development or application of sanitary and phytosanitary measures that affect or may affect trade between the Parties;
 - (c) consulting on issues relating to the meetings of the WTO SPS Committee, Codex, WOH and IPPC;

- (d) coordinating technical cooperation programs on sanitary and phytosanitary measures;
 - (e) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement;
 - (f) addressing any bilateral issues arising from the implementation of sanitary and phytosanitary measures between the Parties, and
 - (g) reviewing progress on addressing sanitary and phytosanitary measures that may arise between the competent authorities.
4. The SPS Subcommittee shall meet annually, unless otherwise agreed.
5. The SPS Subcommittee shall establish its own rules of procedure during its first meeting, which shall include the establishment of contact points and responsible competent authorities for the implementation of this Chapter.

Article 5.10: Cooperation

1. The Parties shall cooperate to facilitate the implementation of this Chapter.
2. The Parties shall explore opportunities for further cooperation and collaboration on sanitary or phytosanitary measures of mutual interest, in a manner consistent with the provisions of this Chapter.