

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

Article 6.1: Definitions

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

Article 6.2: Scope

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

Article 6.3: Reaffirmation of Rights and Obligations Under the WTO

1. Parties reaffirm their rights and obligations under the WTO SPS Agreement.
2. Nothing in this Agreement shall affect the rights and obligations that each Party has under the SPS Agreement.

Article 6.4: 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 and expanding trade;
- (b) reinforce and build on the SPS Agreement;
- (c) strengthen communication, consultation and cooperation between the Parties, their competent authorities and government representatives;
- (d) ensure that SPS measures implemented by a Party do not create a disguised restriction on trade;
- (e) enhance transparency in, and understanding of, the application of each Party's SPS measures; and

- (f) encourage the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties.

Article 6.5: Committee on SPS Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on SPS Measures (Committee), composed of government representatives of each Party responsible for SPS matters.
2. The objectives of the Committee are to:
 - (a) enhance each Party's implementation of this Chapter;
 - (b) consider SPS matters of mutual interest; and
 - (c) enhance communication and cooperation on SPS matters.
3. The Committee:
 - (a) shall provide a forum to improve the Parties' understanding of SPS issues that relate to the implementation of the WTO SPS Agreement and this Chapter;
 - (b) shall provide a forum to enhance mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures;
 - (c) shall exchange information on the implementation of this Chapter;
 - (d) shall determine the appropriate means to undertake specific tasks related to the functions of the Committee;
 - (e) may identify and develop cooperation projects between the Parties on SPS measures;
 - (f) may serve as a forum for either Party to share information on and discuss an SPS issue that has arise between them; and
 - (g) may consult on matters and positions for the meetings of the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement (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.

4. The Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

5. The 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. The Committee may meet face to face, via videoconference, teleconference, or any other means as agreed by the Parties.

Article 6.6: 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 is an important means to facilitate trade.

2. The Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. The Parties may cooperate 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 followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

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

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

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment of the exporting Party's request for a determination of regional conditions.

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

8. If the evaluation of the information provided by the exporting Party does not result in a determination to recognise regional conditions, the importing Party shall provide the exporting Party with the rationale for its determination.

Article 6.7: Equivalence

1. The Parties acknowledge that recognition of the equivalence of SPS measures is an important means to facilitate trade. Further to Article 4 of the WTO SPS Agreement, the Parties shall apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific SPS measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.
2. 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.
3. In determining the equivalence of an SPS measure, an importing Party shall take into account available knowledge, information and relevant experience, as well as the regulatory competence of the exporting Party.
4. When an importing Party adopts a measure that recognises the equivalence of an exporting Party's specific SPS measure, group of measures or measures on a systems-wide basis, the importing Party shall communicate the measure it has adopted to the exporting Party in writing and implement the measure within a reasonable period of time.

Article 6.8: Science and Risk Analysis

1. The Parties recognise the importance of ensuring that their respective SPS measures are based on scientific principles.
2. Each Party shall ensure that its SPS measures either conform to the relevant international standards, guidelines or recommendations or, if its SPS measures do not conform to international standards, guidelines or recommendations, that they are based on documented and objective scientific evidence that is rationally related to the measures, while recognising the Parties' obligations regarding assessment of risk under Article 5 of the SPS Agreement.
3. 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 an SPS measure on a provisional basis.

4. Each Party shall conduct its risk analysis in a manner that is documented and that provides the other Party an opportunity to comment, in a manner to be determined by the Party conducting the risk analysis¹.

5. Each Party shall 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.

6. If the importing Party requires a risk analysis to evaluate a request from the 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.

7. 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.

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

Article 6.9: Transparency

1. The Parties recognise the value of sharing information about their SPS measures on an ongoing basis, and of providing the other Party with the opportunity to comment on their proposed SPS measures.

2. Each Party shall notify the other Party of a proposed SPS measure that may have a significant 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.

3. 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

¹ 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.

comments on the proposed measure after it makes the notification under paragraph 2. If feasible and appropriate, the Party should allow more than 60 days. The Party shall consider any reasonable request from the other Party to extend the comment period. On request of the other Party, the Party shall respond to the written comments of the other Party in an appropriate manner.

Article 6.10: Contact Points

1. The Parties designate the following contact points on SPS Measures to facilitate communications between the Parties on any matter covered by this Chapter:

- (a) for Australia, the Department of Agriculture and Water Resources, or its successor; and
- (b) for Peru, the Vice Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism, or its successor.

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 6.11: Cooperation

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

2. The Parties shall give positive consideration to further cooperation through:

- (a) exchanging views and information at a bilateral level and in relevant international bodies engaged in food safety and human, animal or plant life or health issues;
- (b) facilitating the timely exchange of information on their respective SPS measures; and
- (c) promoting the implementation of electronic certification and other technologies to facilitate trade.

3. The Parties shall cooperate and may jointly identify work on SPS matters with the goal of eliminating unnecessary obstacles to trade between the Parties.

Article 6.12: Technical Consultations

1. When a Party considers that an SPS measure of the other Party is or might be inconsistent with this Chapter, such Party may request technical consultations, with the aim of resolving the matter.
2. The technical consultations shall be held within 60 days of receiving the request, unless otherwise agreed by the Parties, and may be conducted via teleconference, video-conference, or through any other means mutually agreed upon by the Parties.
3. Neither Party shall recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.