

## CHAPTER 6

### SANITARY AND PHYTOSANITARY MEASURES

#### ARTICLE 6.1 Definitions

1. For the purposes of this Chapter, the definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, mutatis mutandis. Those definitions adopted under the auspices of the Codex Alimentarius Commission (hereinafter referred to as the “Codex”), the World Organization for Animal Health (hereinafter referred to as the “WOAH”) and the International Plant Protection Convention (hereinafter referred to as the “IPPC”) shall also apply.

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

**competent authority** means a governmental body of each Party listed in Annex 6-A responsible for measures and matters referred to in this Chapter;

**emergency measure** means a sanitary or phytosanitary measure that is applied by the importing Party to a good of the exporting Party to address an urgent problem of human, animal, or plant life or health protection that arises or threatens to arise in the importing Party;

**contact point** means the designated representative of a competent authority of each Party designated pursuant to Article 6.5;

**Sanitary MOU** means the Memorandum of Understanding Between the New Zealand Ministry for Primary Industries and the United Arab Emirates Ministry of Climate Change and Environment on the Sanitary Conditions for the Trade in Food, Feed and Animal By-Products, and its implementing annexes, signed in Auckland on 18 March 2016 contained in Annex 6-B, and any amendments thereto;

**Sanitary and Phytosanitary MOU** means the Memorandum of Understanding Between the New Zealand Ministry for Primary Industries and the United Arab Emirates Ministry of Climate Change and Environment on the Sanitary Conditions for the Trade in Plant Products and Processed Food, and its implementing annexes, signed in Auckland on 18 March 2016 contained in Annex 6-C, and any amendments thereto.

**ARTICLE 6.2**  
**Objectives**

The objectives of this Chapter are to:

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

**ARTICLE 6.3**  
**Scope**

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

**ARTICLE 6.4**  
**General Provisions**

The Parties affirm their rights and obligations under the SPS Agreement.

**ARTICLE 6.5**  
**Contact Points and Competent Authorities**

1. Upon the entry into force of this Agreement, each Party shall designate a contact point or contact points to facilitate communication on matters covered by this Chapter and promptly notify the other Party, in any case no later than 30 days after the entry into force of this Agreement.
2. For the purposes of implementing this Chapter, the competent authorities of the Parties shall be those listed in Annex 6-A.
3. Each Party shall keep the information on contact points and competent authorities up to date and shall promptly inform the other Party of any change.

**ARTICLE 6.6**  
**Equivalence**

1. The Parties recognise that the principle of equivalence as provided for under Article 4 of the SPS Agreement has mutual benefits for the Parties.
2. In determining the equivalence of a sanitary and phytosanitary measure, standards, group of measures, or equivalence on a systems-wide basis, the Parties shall follow the procedures developed by the WTO SPS Committee and relevant international standard-setting bodies in accordance with Annex A of the SPS Agreement, *mutatis mutandis*.
3. At the request of the exporting Party, the importing Party shall, within a reasonable period of time, 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.
4. If an equivalence assessment does not result in an equivalence determination by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.
5. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection (hereinafter referred to as "ALOP") in relation to human, animal or plant life and health.
6. If an importing Party amends a sanitary or phytosanitary measure and considers an equivalence determination specified in this Chapter may be affected it shall:
  - (a) objectively consider whether the previous equivalence determination remains sufficient to meet its ALOP; and
  - (b) consult with the exporting Party and then decide whether the equivalence determination may continue with or without any special conditions.

**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 regionalisation, is an important means to facilitate trade.
2. When making a determination regarding adaptation to regional conditions, each Party shall take into account the standards, guidelines and recommendations developed

by the WTO SPS Committee and relevant international standard-setting bodies in accordance with Annex A of the SPS Agreement.

3. When an importing Party receives a request for a determination of regional conditions from an 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.

4. 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.

5. 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.

6. The 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 status.

7. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognise pest- or disease- free areas, or areas of low pest or 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 shall cooperate to assess whether the determination can be reinstated.

## **ARTICLE 6.8**

### **Emergency Measures**

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

2. If a Party requests technical consultations to address the emergency sanitary or phytosanitary measure, technical consultations between the competent authorities shall be held within 15 days of the notification of the emergency sanitary or phytosanitary measure.

3. The importing Party shall, in a timely manner, consider information provided by the exporting Party when making decisions with respect to consignments that, at the time of adoption of the emergency measure, are being transported between the Parties.

4. If a Party adopts an emergency sanitary or phytosanitary measure, it shall review the scientific basis of that measure as soon as practically possible, and no later than six months from notification of the measure, and make available the results of the review to the other Party on request. If the Party maintains the emergency sanitary or phytosanitary measure after the review because the reason for its adoption remains, the Party shall review the measure periodically.

## **ARTICLE 6.9**

### **Transparency and Exchange of Information**

1. The Parties recognise 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, each Party shall take into account the standards, guidelines and recommendations of the WTO SPS Committee and relevant international standard-setting bodies in accordance with Annex A of the SPS Agreement.

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 WTO SPS notification submission system as a means of notification.

4. The Parties shall exchange information on proposed or actual sanitary and phytosanitary measures which affect, or are likely to affect, trade between them and information relating to each Party's sanitary and phytosanitary regulatory system. To the extent that a Party desires to provide written comments on a proposed sanitary and phytosanitary measure by the other Party, the Party shall provide those comments in a timely manner.

5. A Party that proposes to adopt a sanitary or phytosanitary measure shall, on request of the other Party, discuss 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.

6. Each Party shall notify the other Party of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Each Party shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures.

7. An exporting Party shall notify the importing Party through the contact points, in a timely and appropriate manner, if it has knowledge of:
  - (a) a significant or urgent situation of sanitary or phytosanitary risk 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.
8. A Party shall provide to the other Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.
9. 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 6.10 Technical Consultations**

1. The Parties will work expeditiously to address any specific sanitary or phytosanitary trade-related issue and commit to carry out the necessary technical level discussions in order to resolve any such issue.
2. At any time, a Party may raise a specific sanitary or phytosanitary issue with the other Party through the competent authorities and contact point and may request additional information related to the issue. The other Party shall respond in a timely manner.
3. If an issue is not resolved through the information exchanged pursuant to Article 6.9, upon request of either Party through its contact point, the Parties shall meet in a timely manner to discuss the specific sanitary or phytosanitary issue to avoid a disruption in trade, or to reach a mutually acceptable solution. The Parties shall meet either in person or using available technological means. If travel is required, the Party requesting the meeting shall travel to the territory of the other Party, unless otherwise agreed.

#### **ARTICLE 6.11 Cooperation**

1. The Parties shall cooperate to facilitate the implementation of this Chapter.
2. Consistent with the objectives of this Chapter, the Parties shall explore opportunities for further cooperation, collaboration, and information exchange between

the Parties on sanitary and phytosanitary matters of mutual interest related to the implementation of the SPS Agreement. Those opportunities may include trade facilitation initiatives and technical assistance.

3. The Parties may promote cooperation on matters related to the implementation of the SPS Agreement, and in relevant international standard-setting bodies such as the Codex, the IPPC, and the WOA, as appropriate.

4. If there is mutual interest, and with the objective of establishing a common risk-based foundation for each Party's regulatory approach, the competent authorities of the Parties are encouraged to:

- (a) share best practices; and
- (b) cooperate on joint scientific data collection.

**ARTICLE 6.12**  
**Sanitary MOU and Sanitary and Phytosanitary MOU**

The Sanitary MOU and the Sanitary and Phytosanitary MOU, and their Implementing Annexes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

**ARTICLE 6.13**  
**Sanitary and Phytosanitary Measures Sub-Committee**

1. The Sanitary and Phytosanitary Measures Sub-Committee (hereinafter referred to as "SPS Sub-Committee") established under Article 19.4 (Establishment of Sub-Committees) for the purposes of the effective implementation and operation of this chapter shall be composed of the representatives of the competent authorities.

2. The objectives of the SPS Sub-Committee are to facilitate safe bilateral trade in goods for which sanitary or phytosanitary measures may apply, to explore areas of cooperation such as AMR and any other topics of mutual interest, and to achieve this by effectively implementing to this Chapter.

3. The SPS Sub-Committee shall consider any matters relating to the implementation of this Chapter.

4. Notwithstanding paragraph XV of the Sanitary MOU, the SPS Subcommittee shall consider any matters relating to the implementation of the Sanitary MOU.

5. Notwithstanding paragraph XIV of the Sanitary and Phytosanitary MOU, the SPS Subcommittee shall consider any matters relating to the implementation of the Sanitary and Phytosanitary MOU.

6. The SPS Sub-Committee may:
  - (a) serve as a forum to resolve specific trade concerns where the Parties have been unable to reach a mutually acceptable solution through technical consultations;
  - (b) take any other action as the Parties may agree;
  - (c) develop Annexes recording mutual determinations and incorporate these under this Chapter;
  - (d) make any amendments mutually agreed by the Parties to Annexes under this Chapter; and
  - (e) make any amendment mutually agreed by the Parties to the Sanitary MOU and Sanitary and Phytosanitary MOU.
  
7. The SPS Sub-Committee shall meet within one year of the entry into force of this Agreement and at least annually thereafter, or as mutually agreed by the Parties. It may meet in person, by video conference, or through any other means, as mutually agreed by the Parties. The SPS Sub-Committee may also address issues through correspondence.
  
8. The SPS Sub-Committee may agree to establish technical working groups, consisting of expert-level representatives of the Parties, to identify and address technical and scientific issues arising from this Chapter. When additional expertise is needed, the membership of these groups need not be restricted to representatives of the Parties.