

## CHAPTER 7

### SANITARY AND PHYTOSANITARY MEASURES

#### **Article 73**            **Definitions**

For the purposes of this Chapter, the definitions in Annex A of the SPS Agreement and the relevant definitions developed by the relevant international organizations and other definitions agreed between the Parties apply to the implementation of this Chapter. In addition:

**Implementing Arrangements** means subsidiary documents to this Chapter which set out the mutually determined mechanisms for applying, or outcomes derived from applying, the principles and processes outlined in this Chapter;

**Joint Management Committee** means the Committee established under Article 88;

**SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement.

#### **Article 74**            **Objectives**

The objectives of this Chapter are to:

- (a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organizations;
- (b) provide a mechanism for enhancing the Parties' implementation of the SPS Agreement, including risk analysis, adaptation to regional conditions, equivalence and technical assistance, and for enhancing the Parties' cooperation in these and other areas;
- (c) facilitate trade between the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties; and
- (d) provide a means to improve communication and consultation on sanitary and phytosanitary issues.

## **Article 75            Scope**

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

## **Article 76            International Obligations**

Nothing in this Chapter or Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

## **Article 77            Implementing Arrangements**

1. The Parties may conclude Implementing Arrangements setting out details for the implementation of this Chapter.
2. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to do so within a reasonable period of time as mutually determined by the Parties.
3. The Implementing Arrangements referred to in paragraph 1 shall include the following:

Chapter 7 A	List of Competent Authorities and Sanitary and Phytosanitary Contact Points.
Chapter 7 B(1)	Risk Analysis – list of market access requests of each Party, in priority order.
Chapter 7 B(2)	Risk Analysis – principles and guidelines for establishing and managing timelines for completion of risk analysis.
Chapter 7 C(1)	Adaptation to Regional Conditions – principles, criteria and processes for recognition of pest or disease-free areas or areas of low pest or disease prevalence.
Chapter 7 C(2)	Adaptation to Regional Conditions – list of the prevalence of specific pests or diseases by region or area and sanitary or phytosanitary measures to ensure effective risk management.
Chapter 7 D(1)	Determination of Equivalence – principles, criteria and processes for determination of equivalence.

Chapter 7 D(2)	Determination of Equivalence – agreed equivalence decisions and related measures.
Chapter 7 E	Verification – list of conditions under which to carry out audit and verification procedures.
Chapter 7 F	Certificates – principles and/or guidelines for certification and model sanitary or phytosanitary certificates and attestations to accompany products.
Chapter 7 G	Import Checks – lists the frequency of import checks.
Chapter 7 H	Cooperation – record of understandings on technical assistance and cooperation projects.

## **Article 78                      Competent Authorities and Contact Points**

1. The competent authorities of the Parties are the authorities competent in the Parties for the implementation of the measures referred to in this Chapter, as identified in *Implementing Arrangement: Chapter 7 A*.
2. The contact point for each Party is set out in *Implementing Arrangement: Chapter 7 A*.
3. The Parties shall inform each other of any significant changes in the structure, organization and division of responsibility within its competent authorities or contact point.

## **Article 79                      Risk Analysis**

1. The Parties recognise that risk analysis is an important tool for ensuring that sanitary or phytosanitary measures have a sound scientific basis.
2. The Joint Management Committee shall establish for each Party a priority order for consideration of market access requests of the other Party including the undertaking of risk analyses. These priorities shall be recorded in *Implementing Arrangement: Chapter 7 B(1)*.
3. The Parties shall endeavour to expedite market access requests from each other and in particular any risk analysis process associated with such requests. The Parties shall jointly determine principles and guidelines for establishing and managing timelines for completion of risk analyses. Such principles and guidelines shall be included in *Implementing Arrangement: Chapter 7 B(2)* and applied accordingly.

4. To facilitate the consideration of market access requests and risk analyses:

- (a) The Parties shall establish direct contact between their risk analysis units and/or experts so as to strengthen communication and understanding of each other's working procedures, applied methods and criteria. The Parties will take account of relevant risk analyses already undertaken so as to facilitate the risk analysis process.
- (b) At the initial stage of the risk analysis process, the Party considering a market access request shall inform, to the maximum extent possible, the applicant Party of the technical information required. Where additional information is needed, the applicant Party shall be informed in clear terms as early as possible. To the extent possible, the risk analysis process shall be continued while additional information is being prepared and submitted by the applicant Party.
- (c) To speed up the risk analysis process, good working relationships established between the Parties and their trust in each other's sanitary and phytosanitary system shall be taken into account.

## **Article 80                      Adaptation to Regional Conditions**

1. In order to facilitate trade between the Parties, where a Party objectively demonstrates an area or part of its territory to be free of a pest or disease or an area to be of low pest prevalence, following an assessment by the other Party, the Parties may agree to recognise this status.

2. The Parties shall jointly develop principles, criteria and processes regarding adaptation to regional conditions and record these in *Implementing Arrangement: Chapter 7 C(1)*. Recognition of the status shall be in accordance with the principles, criteria and processes recorded in this Implementing Arrangement.

3. The Parties, through the Joint Management Committee, shall decide on the status as described in paragraph 1 and the measures to be taken to maintain this status and may also decide in advance the risk management measures that will apply to trade between the Parties in the event of a change in the status. These decisions on status and measures shall be recorded in *Implementing Arrangement: Chapter 7 C(2)*.

4. Decisions recorded in *Implementing Arrangement: Chapter 7 C(2)* shall be applied to trade between the Parties.

## **Article 81                    Equivalence**

1.     The Parties recognise that the application of equivalence is an important tool for trade facilitation. A determination of equivalence may be made in relation to partial or full equivalence of sanitary and phytosanitary measures and systems.
2.     The determination of equivalence requires an objective, risk-based assessment or evaluation by the importing Party of the existing, revised or proposed measures. The legislative and administrative systems, other factors such as the performance of the relevant competent authorities and any other necessary assessments or tests may be considered.
3.     The importing Party shall accept the sanitary and phytosanitary measures of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party's appropriate level of sanitary and phytosanitary protection. To facilitate a determination of equivalence, a Party shall on request advise the other Party of the objective of any relevant sanitary or phytosanitary measures.
4.     The Parties shall jointly develop principles, criteria and processes regarding determination of equivalence and record these in *Implementing Arrangement: Chapter 7 D(1)*. In reaching a decision on equivalence, the Parties shall apply these principles, criteria and processes.
5.     The Parties shall take into account guidance provided by relevant international standard-setting organizations and by the WTO Committee on Sanitary and Phytosanitary Measures, where relevant to the particular case as well as experience already acquired.
6.     *Implementing Arrangement: Chapter 7 D(2)* records equivalence decisions, including any additional conditions to be applied in the case of partial equivalence. This Implementing Arrangement may also record any action required of either Party to facilitate progress towards full equivalence.
7.     Equivalence decisions recorded in *Implementing Arrangement: Chapter 7 D(2)* shall be applied to trade between the Parties.
8.     The consideration by a Party of a request from the other Party for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question.

## **Article 82    Verification**

1.     In order to maintain confidence in the effective implementation of this Chapter, each Party shall have the right to carry out audit and verification

procedures of the exporting Party, which may include an assessment of all or part of the competent authorities' total control programme, including, where appropriate:

- (a) reviews of the inspection and audit programmes; and
- (b) on-site checks.

These procedures shall be carried out in accordance with *Implementing Arrangement: Chapter 7 E*.

2. Each Party shall also have the right to carry out import checks for the purposes of implementing sanitary and phytosanitary measures on consignments on importation consistent with Article 84, the results of which form part of the verification process.

3. A Party may:

- (a) share the results and conclusions of its audit and verification procedures and checks with countries that are not party to this Agreement;
- (b) use the results and conclusions of the audit and verification procedures and checks of countries that are not party to this Agreement.

### **Article 83 Certification**

Each consignment of animals, animal products, plants, plant products or other related goods will be accompanied, where required, by the relevant official sanitary or phytosanitary certificate using the model in *Implementing Arrangement: Chapter 7 F* and conforming with other relevant provisions of the Implementing Arrangements. The Parties may jointly determine principles or guidelines for certification. Any such principles shall be included in *Implementing Arrangement: Chapter 7 F*.

### **Article 84 Import Checks**

1. The import checks applied to imported animals, animal products, plants and plant products or other related goods traded between the Parties shall be based on the risk associated with such importations. They shall be carried out in a manner that is least trade-restrictive and without undue delay.

2. The frequencies of import checks on such importations shall be made available on request. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks in the event of

change in the import risk. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

3. The Parties may record frequencies of import checks in *Implementing Arrangement: Chapter 7 G* and in that case they shall be applied accordingly. The Joint Management Committee may amend the frequencies of those import checks as a result of experience gained through import checks or otherwise, or as a result of actions or consultations provided for in this Chapter.

4. In the event that the import checks reveal non-conformity with the relevant standards and/or requirements, the action taken by the importing Party should be proportionate to the risk involved.

5. At the request of the exporting Party, the importing Party shall to the maximum extent ensure that officials of the exporting Party or their representatives are given the opportunity to contribute any relevant information to assist the importing Party in taking a final decision. If necessary, a joint testing of the preserved samples will be carried out by the Parties.

## **Article 85 Cooperation**

1. Consistent with the objectives of this Chapter, the Parties shall explore opportunities for further cooperation in sanitary and phytosanitary matters of mutual interest.

2. In areas of mutual interest, the Parties through the Joint Management Committee agree to:

- (a) share knowledge and experience including possible exchanges of officials;
- (b) coordinate positions in the activities of regional and international organizations, and jointly develop, formulate and implement relevant standards and programmes;
- (c) carry out joint research and share the results of such research in important areas, such as:
  - (i) animal and plant disease surveillance;
  - (ii) animal and plant pest and disease prevention and control;
  - (iii) detection methods for pathogenic micro-organisms in food;
  - (iv) surveillance and control of harmful substances and agricultural and veterinary medicine residues and other food safety issues;

- (v) any other food safety, phytosanitary and zoosanitary issues of mutual interest;
  - (d) carry out other forms of cooperation including those in relation to activities of the enquiry points established under Annex B of the SPS Agreement.
3. The Parties recognise that it is of significant importance to carry out technical assistance and capacity building so as to further strengthen bilateral sanitary and phytosanitary cooperation, and promote bilateral trade in agricultural products and food.
4. Understandings on technical assistance and cooperation projects reached by the Joint Management Committee will be recorded in *Implementing Arrangement: Chapter 7 H* and applied accordingly.

#### **Article 86                      Notification**

1. The Parties shall inform each other through the contact points in a timely and appropriate manner when:
- (a) there is a significant change in health status, including the distribution and host preference of diseases or pests in *Implementing Arrangement: Chapter 7 C(2)*, to ensure continued confidence in the competence of the Party with respect to the management of any risks of transmission of disease or pest to the other Party which may arise as a consequence;
  - (b) there are scientific findings of importance with respect to diseases or pests which are not in *Implementing Arrangement: Chapter 7 C(2)*, or new diseases or pests;
  - (c) any additional measures beyond the basic requirements of their respective sanitary or phytosanitary measures are taken to control or eradicate diseases or pests or to protect human health, and any changes in preventative policies, including vaccination policies.
2. In cases of serious and immediate concern with respect to human, animal or plant life or health, oral notification shall be made with urgency to the contact points and written confirmation should follow within 24 hours.
3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 14 days unless otherwise agreed between the Parties. Each Party shall endeavour in such situations to

provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution.

4. Where there is a non-compliance of imported consignments for products subject to sanitary or phytosanitary measures, the importing Party shall notify as soon as possible the exporting Party of the non-compliance.

5. Without prejudice to the preceding paragraphs of this Article and in particular paragraph 3, a Party may, on serious human, animal or plant life or health grounds, take provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified in writing within 24 hours to the other Party and, on request, consultations regarding the situation shall be held within 8 days unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

## **Article 87                      Exchange of Information**

1. The Parties, through the contact points, shall exchange information relevant to the implementation of this Chapter on a uniform and systematic basis, to provide assurance, engender mutual confidence and demonstrate the efficacy of the programmes controlled. Where appropriate, achievement of these objectives may be enhanced by exchanges of officials.

2. The information exchange on changes in the respective sanitary and phytosanitary measures, and other relevant information, shall include:

- (a) opportunity to consider proposals for changes in regulatory standards or requirements which may affect this Chapter in advance of their finalisation. Where either Party considers it necessary, proposals may be dealt with in accordance with Article 88;
- (b) briefing on current developments affecting trade;
- (c) information on the results of the verification procedures provided for in Article 82;
- (d) relevant sanitary and phytosanitary publications of the competent authorities.

3. Each Party shall facilitate the consideration in its relevant scientific forums of scientific papers or data submitted by the other Party to substantiate that Party's views or claims. Such submissions shall be evaluated by relevant scientific forums in a timely manner, and the results of that examination shall be made available to the Parties.

## **Article 88                      Joint Management Committee**

1. The Parties shall establish a Joint Management Committee which shall include representatives from the competent authorities of the Parties. The Committee shall be co-chaired by competent authorities' representatives of each Party. At the first meeting of the Committee, it will establish its rules of procedure.

2. The objective of the Committee is to facilitate bilateral trade in goods affected by sanitary or phytosanitary measures and to achieve this by giving practical effect to this Chapter, including through the establishment and monitoring of the application of Implementing Arrangements.

3. The Committee shall consider any matters relating to the implementation of this Chapter including:

- (a) establishing, monitoring and reviewing work plans;
- (b) establishing technical working groups as appropriate;
- (c) initiating, developing, reviewing and modifying Implementing Arrangements which further elaborate the provisions of this Chapter;
- (d) exchanging sanitary and phytosanitary information on bilateral trade;
- (e) coordinating positions on important sanitary and phytosanitary issues in the WTO Committee on Sanitary and Phytosanitary Measures and in relevant international standards setting bodies;
- (f) consulting with a view to resolving sanitary and phytosanitary issues arising in bilateral trade.

4. This Committee shall meet within one year of the entry into force of this Agreement and at least annually thereafter or as mutually determined by the Parties. It may meet in person, teleconference, video conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence.

5. The Committee may agree to establish technical working groups consisting of expert-level representatives of the Parties, which shall 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.

6. Notwithstanding paragraph 5, the competent authorities may consult on and resolve issues. Where they consider it appropriate, they may discuss the

establishment of a working group and the scope of its work for a possible recommendation to the Committee.