

## CHAPTER 5

### SANITARY AND PHYTOSANITARY MEASURES

#### **Article 5.1: Definitions**

1. For the purposes of this Chapter:

**SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, set out in Annex 1A to the WTO Agreement; and

**WTO SPS Committee** means the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement.

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

3. The relevant definitions developed by *the International Office of Epizootics (OIE)*, *the International Plant Protection Convention (IPPC)* and *the Codex Alimentarius Commission* apply in the implementation of this Chapter.

#### **Article 5.2: 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 the OIE, the IPPC and *the Codex Alimentarius Commission*;
- (b) expand trade opportunities through facilitation of 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;
- (c) provide a means to improve communication, cooperation and resolution of sanitary and phytosanitary issues; and
- (d) establish a mechanism for the recognition of equivalence of sanitary and phytosanitary measures and regionalisation practices maintained by the Parties consistent with the protection of human, plant and animal life or health.

#### **Article 5.3: Scope**

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

2. Nothing in this Chapter or any implementing arrangement under this Chapter shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

#### **Article 5.4: Committee to Consider Sanitary and Phytosanitary Matters**

Matters relating to the implementation of this Chapter shall be considered by the competent authorities of the Parties through the Committee on Biosecurity, Food and Primary Products established under Article 15.3 (Committee on Biosecurity, Food and Primary Products).

#### **Article 5.5: Competent Authorities and Contact Points**

1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in the Arrangement between New Zealand and Singapore on Competent Authorities and Contact Points (Implementing Arrangement 1). The contact points that have the responsibilities relating to notification are also set out in Implementing Arrangement 1.

2. The Parties shall inform each other of any significant changes in the structure and organisation of its competent authorities or contact points. The Committee on Biosecurity, Food and Primary Products shall amend Implementing Arrangement 1 to reflect such changes.

#### **Article 5.6: 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, including regionalisation, zoning and compartmentalisation, 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 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.

5. When an 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 an importing Party recognises specific regional conditions of an exporting Party, the importing Party shall communicate to the exporting Party in writing and implement the decision-within a reasonable period of time.

8. When the Parties are involved in a particular determination they 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.

9. 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 and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

10. 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.

11. The Arrangement between New Zealand and Singapore on the Recognition of the Equivalence of Foreign Disease and Pest Control and Zoning Measures as They Apply to Trade (Implementing Arrangement 2) lists those areas or parts of each Party's territory that are free of certain diseases or pests and recognises the ability for the exporting party to continue to provide assurances should an incursion occur.

12. In the event of an incursion of a disease or pest specified in Implementing Arrangement 2, the importing Party shall recognise the exporting Party's measures specified in the implementing arrangement for the purposes of facilitating trade.

13. The Parties may agree to list additional diseases or pests in Implementing Arrangement 2, in accordance with the criteria set out in this Article and any additional criteria agreed.

#### **Article 5.7: 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 to measures on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or measures 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. 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. When an importing Party commences an equivalence assessment, that Party shall promptly, on request of the exporting Party, explain its equivalence process and plan for making the equivalence determination and, if the determination results in recognition, for enabling trade.

5. The recognition of equivalence requires an assessment and acceptance of:

- (a) the legislation, standards and procedures, as well as the programmes in place to allow control and to ensure domestic and importing country requirements are met;
- (b) the documented structure of the competent authorities, their powers, their chain of command, their modus operandi and the resources available to them; and
- (c) the performance of the competent authorities in relation to the control and assurance programmes.

In this assessment, the Parties shall take account of experience already acquired.

6. The importing Party shall accept the sanitary or phytosanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection or has the same effect in achieving the objective as the importing Party's measure.

7. When an importing Party recognises the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures or measures on a systems-wide basis, the importing Party shall communicate to the exporting Party in writing. The recognition shall be applied to the trade between the Parties without undue delay and shall be recorded in the Arrangement between New Zealand and Singapore on Recognition of Measures and Status (Implementing Arrangement 3) within a reasonable period of time.

8. 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.

9. Where equivalence has not been recognised or where an application is pending, trade shall take place under the conditions required by the importing Party to meet its appropriate level of protection. The exporting Party may agree to meet the importing Party's conditions, without affecting the result of the process of determining equivalence.

10. Implementing Arrangement 3 may list:

- (a) those groups of measures or systems applicable to a sector or part of a sector, for which the respective sanitary or phytosanitary measures are recognised as equivalent for trade purposes;
- (b) actions to enable the assessment of equivalence to be completed in accordance with the process set out in this Article, and by any agreed dates, or as specified by the importing Party; or
- (c) the specific guarantees related to recognition of special status provided for in Implementing Arrangement 2; and
- (d) may also list those sectors, or parts of sectors, for which the Parties apply differing sanitary or phytosanitary measures and have not concluded the determination provided for in paragraph 7.

### **Article 5.8: Science and Risk Analysis**

1. The Parties recognise the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles.
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, ensure they are based on a risk assessment.
3. Each Party shall:
  - (a) ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate against the other Party where identical or similar conditions prevail, including between its own territory and that of the other Party; and
  - (b) conduct its risk analysis in a manner that is documented and that provides the other Party opportunity to comment.
4. 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.
5. When conducting its risk analysis, each Party shall:
  - (a) take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations;
  - (b) consider risk management options that are not more trade restrictive than required, including the option of facilitating trade by not taking any measure

to achieve the level of protection that the Party has determined to be appropriate; and

- (c) 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.

6. 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.

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 5.13, no Party shall stop the importation of a good of another 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 5.9: Verification**

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to carry out audit and verification of the procedures of the exporting Party, which may include an assessment of all or part of the competent authorities' total control programme, including, if appropriate:

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

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

3. 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 5.10, the results of which form part of the verification process.

4. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

5. 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.

6. The auditing Party shall provide the audited Party the opportunity to comment on the findings of the audit and take any such comments into account before the auditing Party

makes its conclusions and takes any action. The auditing Party shall provide a report setting out its conclusions in writing to the audited Party within a reasonable period of time.

7. A decision or action taken by the auditing Party as a result of the audit shall be supported by objective evidence and data that can be verified, taking into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party. This objective evidence and data shall be provided to the audited Party on request.

8. The costs incurred by the auditing Party shall be borne by the auditing Party, unless the Parties agree otherwise.

9. The auditing Party and audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

10. With the consent of the other Party, a Party may:

- (a) share the results and conclusions of its audit and verification procedures and checks with non-Parties; or
- (b) use the results and conclusions of the audit and verification procedures and checks of non-Parties.

#### **Article 5.10: Import Checks**

1. The import checks applied to imported animals and animal products, plants and plant products, or other related goods shall be based on the risk associated with such importations. They shall be carried out without undue delay and with a minimum effect on trade between the Parties.

2. The basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations, shall be made available on request. The Parties may amend the frequencies, within their responsibilities, as appropriate, as a result of experience gained through import checks, or as a result of other actions or consultations provided for in this Chapter.

3. 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.

4. The 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 ensure that any testing is conducted using appropriate and validated methods in a facility that operates under a quality assurance programme that is consistent with international laboratory standards. 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.

5. In the event that the import checks reveal non-conformity with the relevant standards or requirements, the action taken by the importing Party should be based on an assessment of the risk involved. For example, except as otherwise provided in this Chapter, an importing Party shall not suspend trade between it and another Party on the basis of a single consignment. Wherever possible, the importer or their representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision.

6. 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.

7. If an importing Party prohibits or restricts the importation of a good of another 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; or the manufacturer; as well as the exporting Party if appropriate.

8. When the importing Party provides a notification pursuant to paragraph 7, 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 consistent with its laws, regulations and requirements as soon as possible and no later than seven working days 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.

9. An importing Party that prohibits or restricts the importation of a good of another 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 request and information should be submitted to the importing Party within a reasonable period of time.

10. Unless there is a clearly identified risk in holding that consignment, the consignment shall not be destroyed without affording an opportunity to the exporter or their representative to take back the consignment.

11. 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.

12. On request, an importing Party shall provide to the exporting Party available information on goods from the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party, and, on request, make itself available for discussions within a reasonable period of time in order to resolve the matter.

#### **Article 5.11: 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.

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. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

4. 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.

5. An importing Party should provide to another Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.

6. The Parties may agree to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, including where equivalence has been recognised.

7. The Parties shall work together cooperatively to facilitate the implementation of electronic certification and other technologies to facilitate trade.

8. The Parties shall cooperate to facilitate the onward certification of goods exported for storage or further processing in each other's territory prior to re-export.

#### **Article 5.12: Transparency**

1. The Parties shall notify each other in writing, through the contacts points set out in Implementing Arrangement 1, of:

- (a) significant changes in animal or plant health status including the presence and evolution of diseases or pests covered by Implementing Arrangement 2, in a timely and appropriate manner so as to ensure continued confidence in the competence of the Party with respect to the management of any risks of transmission to the other Party which may arise as a consequence;

- (b) scientific findings of importance with respect to food safety, diseases or pests which have not been discussed between the Parties without delay; and
- (c) any additional measures beyond the basic requirements of their respective sanitary or phytosanitary measures taken to control or eradicate diseases or pests or to protect public health, and any changes in preventive policies, including vaccination policies.

2. The Parties shall notify proposed sanitary or phytosanitary measures or changes to existing measures that may have an effect on the trade of the other Party, including any that conform to international standards, guidelines or recommendations, by using the notification system in Annex B of the SPS Agreement.

3. Unless urgent problems of health protection arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow a period of at least 60 days, for the other Party to provide written comments after it makes a notification under paragraph 2. A Party shall consider reasonable requests from the other Party to extend the comment period. In cases of serious and immediate concern with respect to human, animal or plant life or health, immediate oral notification shall be made to the contact points and written confirmation should follow within 24 hours.

4. The Party shall make available to the public, for example on a website, the proposed sanitary or phytosanitary measure notified under paragraph 3, the legal basis for the measure, and the written comments or a summary of the written comments that the Party has received from the public on the measure.

5. When a Party proposes to adopt a sanitary or phytosanitary measure it shall, on request by 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 measure's objectives.

6. Each Party shall publish notices of final sanitary or phytosanitary measures, for example on a website.

7. When 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 10 working days of the request unless the Parties agree otherwise. 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.

8. When an exporting Party identifies that an export consignment which may be associated with a significant sanitary or phytosanitary risk has been exported, it should, to the extent possible, provide information to the importing Party.

### **Article 5.13: Provisional Measures**

1. Without prejudice to Article 5.12, and in particular Article 5.12(7), any Party may, on serious human, animal or plant life or health grounds, adopt provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Parties and, on request, consultations regarding the situation shall be held within 10 working days unless the Parties agree otherwise. The Parties shall take due account of any information provided through such consultations.
2. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months and make available the results of the review to the other Party on request. If the emergency measure is maintained after the review because the reason for its adoption remains, the Party should review the measure periodically.

#### **Article 5.14: Exchange of Information**

1. The Parties, through the contacts points set out in Implementing Arrangement 1, 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, achievements of these objectives may be enhanced by exchanges of officials.
2. The information exchange on changes in the respective sanitary or 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;
  - (b) briefing on current developments affecting trade; and
  - (c) information on the results of the verification procedures provided for in Article 5.9.
3. The Parties may provide for the sharing of scientific papers or data to relevant scientific forums on sanitary or phytosanitary measures and related matters.

#### **Article 5.15: Technical Consultation**

1. A Party may initiate consultations with the other Party with the aim of resolving issues on the application of measures covered in this Chapter or interpretation of the provisions of this Chapter.
2. When a Party requests consultations, these consultations shall take place as soon as practicable.
3. Such consultations are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

**Article 5.16: Cooperation**

1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary or phytosanitary matters of mutual interest consistent with the provisions of this Chapter.
2. The Parties agree to cooperate to facilitate the implementation of this Chapter, and in particular to develop implementing arrangements under this Chapter.