

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Objectives

The objectives of this Chapter are to:

- (a) facilitate trade while protecting human, animal and plant life or health;
- (b) enhance the implementation of the Sanitary and Phytosanitary Agreement under the World Trade Organization (hereinafter referred to as “SPS Agreement”) with a view to minimize the negative effects of sanitary and phytosanitary (hereinafter referred to as “SPS”) measures on trade between the Parties;
- (c) encourage to use of the applicable harmonised SPS measures on the basis of International Standards, Guidelines, and Recommendations (herein after referred to as “ISGRs”) developed by the relevant international organisations.
- (d) enhance mutual understanding of each Party’s national laws, regulations, and procedures relating to the implementation of SPS measures; and
- (e) strengthen cooperation and communication between the Parties, including solving SPS issues arising from the implementation of this Chapter.

Article 5.2: Scope

This Chapter shall apply to SPS measures that may, directly or indirectly, affect trade between the Parties.

Article 5.3: Definitions

1. For the purposes of this Chapter, the following definitions shall apply:
 - (a) the definitions in Annex A of the SPS Agreement;

- (b) Relevant definitions adopted under the auspices of the Codex Alimentarius Commission (“the CODEX”), the World Organization for Animal Health (“the WOAHA”) and the International Plant Protection Convention (“the IPPC”);
 - (c) Competent Authorities mean those authorities within each Party recognised by the national government as responsible for developing and administering the SPS measures within that Party.
2. Further to paragraph 1, the definitions under the SPS Agreement shall prevail to the extent that there is an inconsistency between the definitions adopted under the auspices of the CODEX, the WOAHA, the IPPC and the definitions under the SPS Agreement.

Article 5.4: General Provision

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

Article 5.5: Harmonization

The Parties are encouraged to harmonize their SPS measures based on the ISGRs developed by the relevant international organisations.

Article 5.6: Equivalence

- 1. The Parties recognise the application of equivalence, set out in Article 4 of the SPS Agreement. The Parties further recognise that equivalence can be accepted for a specific measure or a group of measures, or on a systems-wide basis related to a certain product or categories of products.
- 2. In application of equivalence, the Parties shall follow the procedures for determining the equivalence of a sanitary or phytosanitary measure, developed by the WTO SPS Committee, the CODEX, the WOAHA and the IPPC, including in any future work related to equivalence undertaken by these international organisations.

3. The importing Party shall recognise a sanitary or phytosanitary measure of the exporting Party as equivalent to its own, if the exporting Party objectively demonstrate to the importing Party that its measure achieves the importing Party's appropriate level of protection.
4. To facilitate a determination of equivalence, the importing Party, on request of the exporting Party, shall explain the rationale and objective of its sanitary or phytosanitary measures and clearly identify the risks the sanitary or phytosanitary measures are intended to address.
5. The exporting Party shall provide appropriate science-based and technical information to support its objective demonstration that its measure achieves the appropriate level of protection identified by the importing Party. For this purpose, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.
6. The importing Party shall determine the science-based and technical information provided by the exporting Party on its sanitary or phytosanitary measures with an aim of entering bilateral Mutual Recognition Agreements ("MRAs") on the equivalence of specified sanitary or phytosanitary measures.
7. The importing Party shall respond in a timely manner to any request from the exporting Party for consideration of the equivalence of its measures, normally within a six-month period of time, unless otherwise agreed.
8. When the importing Party has adopted a sanitary or phytosanitary measure on equivalence, it shall promptly communicate the decision in writing to the exporting Party.
9. The determination by an importing Party of a request for recognition of equivalence of its measures shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question.
10. 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. The Party may refer the issue under the Article 5.13: Technical Consultation.

Article 5.7: Risk analysis

1. The Parties recognise that risk analysis is an important tool for ensuring that their SPS measures are based on scientific evidence as provided for in Article 5 of the SPS Agreement, taking into account relevant decisions of the WTO SPS Committee and ISGRs.
2. The Parties shall endeavor to expedite the risk analysis process, by working together in determining principles and guidelines, in accordance with procedures, policies, resources and laws and regulations of the importing Party.
3. When conducting its risk analysis, each Party shall:
 - (a) consider risk management option(s) that are not more trade restrictive than required to achieve the level of protection that the Party determines to be appropriate; and
 - (b) select risk management options to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.
4. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of the risk analysis status.
5. If the importing Party adopts the determination of risk analysis that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.
6. If a determination does not result in the recognition of risk analysis, the importing Party shall provide the exporting Party with the rationale for its decision.

Article 5.8: Adaptation to Regional Conditions, including Pest-or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise the principles of regionalisation and its implementation as provided for in Article 6 of the SPS Agreement in the light of relevant decisions of the WTO SPS Committee and ISGRs.
2. 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 evaluation within a reasonable period of time.

3. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of evaluation for a determination of regional conditions.

4. When the importing Party adopts a measure that recognises regional conditions of the exporting Party, the importing Party shall communicate to the exporting Party in writing and implement such measure within a reasonable period of time. Any arrangement of the recognition of regional conditions which is concluded between the Parties shall be recorded by the competent authorities of the Parties.

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

Article 5.9: Transparency

1. The Parties shall undertake cooperation as per transparency requirements set out in Annex B of the SPS Agreement, and strengthen the cooperation between Contact Points of the Parties as laid out in Article 5.16 (Competent Authorities and Contact Points).

2. The Parties, through the Competent Authorities or Contact Points established under Article 5.16 (Competent Authorities and Contact Points), shall notify proposed measures or changes to existing SPS measures that may have an effect on the trade of the other Party on a consistent and systematic basis.

3. In addition, the Party, upon request from the other Party shall provide information or clarification regarding the proposed measures within a reasonable period of time.

Article 5.10: Import Checks

When conducting Import Checks, the Parties agree that:

(a) the Parties shall ensure that their control, inspection and approval procedures are in accordance with Annex C of the SPS Agreement.

(b) the frequencies of import checks on 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. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

(c) the import checks shall be based on the risk associated with such importations. Import checks shall be carried out in a manner that is least trade-restrictive and without undue delay, and shall be based on the following principles:

(i) in carrying out the checks for health and food safety purposes, the importing Party shall ensure that plant and plant products, animal and animal products are inspected according to the risk involved;

(ii) in the event that the checks reveal non-compliance with the relevant regulatory requirements, the importing Party shall take measures appropriate to the risk involved;

(iii) when the goods are detained by the empowered authority at a port of entry, the reasons for the detention shall be promptly notified in writing or electronically to the importer or its representatives;

(iv) when a consignment is rejected, upon request, the importing Party shall endeavor to provide all appropriate information, including laboratory analytical results and methods used in the analysis to the exporting Party to objectively demonstrate the credibility of the action taken;

(v) unless there is a clearly identified risk in holding the consignment, the consignment shall not be destroyed without affording an opportunity to the exporter to take back the consignment; and

(vi) when a significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties concerned shall, upon request, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

Article 5.11: Certification

1. In applying certification requirements, each Party shall take into account the relevant decisions of the WTO SPS Committee and ISGRs.
2. Where certification is required for trade in goods, the importing Party shall ensure that such certification requirements are applied only to the extent necessary to protect human, animal or plant life or health.
3. Official certificate shall be issued by the competent authorities of the exporting Party.
4. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

Article 5.12: Audit

1. In undertaking an audit, each Party shall take into account the relevant decisions of the WTO SPS Committee and ISGRs.
2. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Party, to provide the required assurances and meet the sanitary or phytosanitary measures of the importing Party.
3. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale, the objectives and scope of the audit and other matters related specifically to the commencement of an audit.
4. On the exit meeting, the importing Party shall provide the exporting Party with an opportunity to comment on the accuracy of the findings of an audit and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a report or its summary, setting out its conclusions in writing to the exporting Party within a reasonable period of time.
5. The cost incurred for the audit shall be mutually agreed by the Parties.
6. The importing Party and the exporting Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

Article 5.13: Technical Consultation

1. Upon the request of a Party for technical consultations on any matter arising under this Chapter, such Party may communicate through the Contact Points or Competent Authorities established under Article 5.16 (Competent Authorities and Contact Points). The other Party shall respond promptly to such request.

2. Consultations will be carried out within thirty (30) days of receiving the request, unless otherwise agreed by the Parties. Such consultations may be conducted via teleconferencing, video conferencing, or any other means mutually agreed by the Parties.

Article 5.14: Cooperation

The Parties shall strengthen their technical co-operation in the areas of capacity building, technical assistance, collaboration and information exchange of mutual interest in the field of SPS measures, *inter alia*:

(a) in strengthening the capacities of relevant authorities in implementing the provisions of this Chapter;

(b) in enhancing the capacities of relevant authorities (i.e. their competencies and fulfilling responsibilities), on sanitary or phytosanitary measures as defined in accordance with Annex A of the SPS Agreement, subject to the availability of appropriate resources; and

(c) in increasing collaboration between the relevant competent authorities in activities of the regional and international organisations.

Article 5.15: Working Group on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Working Group on Sanitary and Phytosanitary Measures (hereinafter referred to as “the SPS Working Group”), with the objective of ensuring the implementation of this Chapter.

2. The Committee shall be comprised of representatives of each Party who have responsibilities for the development, implementation, and enforcement of SPS measures.

3. The SPS Working Group shall be coordinated by Contact Points established under Article 5.16 (Competent Authorities and Contact Points).
4. The Parties shall establish the SPS Working Group as soon as possible and no later than one year after the date of entry into force of this Agreement.
5. The functions of this SPS Working Group may include, but not limited to the following:
 - (a) to enhance mutual understanding of each Party's SPS measures and the regulatory processes related to those measures;
 - (b) to discuss and exchange information on issue(s) that a Party raises related to development, adoption or application of SPS measures, that may, directly or indirectly, affect human, animal and plant life or health and bilateral trade;
 - (c) to review progress on addressing bilateral issues arising from the implementation of SPS measures between the Parties;
 - (d) to monitor the implementation of this Chapter, including progress of work programmes agreed as part of cooperation under this Chapter;
 - (e) to facilitate and coordinate technical cooperation programmes on SPS measures;
 - (f) Any other functions mutually agreed by the Parties.
6. The SPS Working Group shall establish its own rules of procedure at its first meeting. These rules may be revised or further developed at any time.
7. Each Party shall ensure that its appropriate and relevant representatives participate in the meetings of the SPS Working Group. Upon mutual agreement, the Parties may invite concerned technical experts to participate in the meetings.
8. The SPS Working Group shall meet at least once a year, unless the Parties agree otherwise.
9. The SPS Working Group may agree to establish *ad hoc* technical working groups in accordance with its rules of procedure.

Article 5.16: Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of SPS measures and the Contact Points responsible for the communication between the Parties are described as follows:

(a) For Thailand:

(i) The competent authorities are Ministry of Agriculture and Cooperatives, consisting of Department of Agriculture, in the area of plant and plant products, Department of Livestock Development in the area of animal and animal products, and Department of Fisheries in the area of fish and fishery products and Ministry of Health , Food and Drug Administration, in the area of food products.

(ii) The contact point is the National Bureau of Agricultural Commodity and Food Standards, Ministry of Agriculture and Cooperatives.

(b) For Sri Lanka:

(i) The competent authorities are Ministry of Health, Ministry of Agriculture, National Plant Quarantine Service in the area of plant and plant products, Department of Animal Production and Health in the area of animal and animal products and Department of Fisheries and Aquatic Resources in the area of fish and fishery products and.

(ii) The contact point is Department of Commerce

2. A Party shall provide the other Party, through the contact points established under paragraph 1, a description of its competent authorities, including their functions and responsibilities.

3. A Party shall notify each other of any significant changes in the structure and organisation of the competent authorities or contact points.

Article 5.17: Dispute Settlement

Dispute Settlement shall not apply to this Chapter.