

## CHAPTER 5

### SANITARY AND PHYTOSANITARY MEASURES

#### Article 5.1: Objectives

The objectives of this Chapter are to:

- (a) promote and facilitate the trade of animals, products of animal origin, plants and products of vegetal origin between the Parties, protecting at the same time public health, animal and vegetable health;
- (b) improve between the Parties the implementation of the *Agreement of Sanitary and Phytosanitary Measures* (hereinafter referred to as the “SPS Agreement”), contained in Annex 1A to the WTO Agreement;
- (b) provide a forum to approach bilateral sanitary and phytosanitary measures, to solve the problems of trade that from them derives, and to expand trade opportunities; and
- (c) provide mechanisms of communication and cooperation to resolve sanitary and phytosanitary issues in a prompt and efficient manner.

#### Article 5.2: Scope and Definitions

1. This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.
2. For the purposes of this Chapter, the definitions in Annex A to the SPS Agreement shall apply.

#### Article 5.3: Affirmation

Except as otherwise provided for in this Chapter, the SPS Agreement shall apply between the Parties and is hereby incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

#### Article 5.4: Risk Analysis

The Parties recognise that risk analysis is an important tool for ensuring that SPS measures have scientific basis. The Parties shall ensure that their SPS measures are based on an assessment of the risks to human, animal or plant life or health as provided in Article 5 of the SPS Agreement, taking into account the risk assessment techniques developed by the relevant international organisations.

#### **Article 5.5: Regionalisation**

1. The Parties shall accept the principle of regionalisation provided for in the SPS Agreement.
2. The Parties take note of the *Guidelines to further the Practical Implementation of Article 6 of the Agreement on the Application of Sanitary and Phytosanitary Measures* (G/SPS/48), adopted by the WTO Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the “WTO/SPS Committee”) and of relevant standards developed by *World Organization for Animal Health* (WOAH) and *International Plant Protection Convention* (IPPC).

#### **Article 5.6: Equivalence**

1. Each Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent, if the other Party objectively demonstrates to the Party that its measures achieve the Party’s appropriate level of sanitary and phytosanitary protection.
2. The Parties shall, if necessary, give positive consideration to establishing a procedure to expedite recognition on equivalence of their sanitary and phytosanitary measures, on the basis of the relevant procedures established by the relevant international organizations and the WTO/SPS Committee.

#### **Article 5.7: Transparency**

1. The Parties agree the full implementation of Article 7 of the SPS Agreement in accordance with the provisions of Annex B of the SPS Agreement.
2. The Parties shall make endeavor to exchange information on, include but not limited to, SPS measures, pest status and noncompliance cases.

3. The sanitary and phytosanitary enquiry points of the Parties established under the SPS Agreement, shall set up a bilateral mechanism for further communication. The Parties shall provide upon request a copy of the full text of the proposed regulation notified and allow at least 60 days for comments.

#### **Article 5.8: Emergency Measures**

Emergency measures imposed by an importing Party shall be notified to the other Party as rapidly as possible, and upon request, the communication between the competent authorities shall be held in a timely manner. The Parties shall consider any information provided through such communication.

#### **Article 5.9: Technical Cooperation**

1. The Parties agree to strengthen bilateral technical cooperation on sanitary and phytosanitary issues, with a view to improving mutual understanding of the regulatory systems of the Parties and facilitating access to the respective markets.

2. The Parties agree to explore cooperation programs for a better application of this Chapter in terms of strengthening technical capacities, technological exchange, and related activities, such as laboratory diagnosis, sampling methods, control of pests and diseases, risk analysis, and control, inspection and approval activities.

#### **Article 5.10: Committee on Sanitary and Phytosanitary Measures**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (the “SPS Committee”), composed of government representatives of each Party.

2. The functions of the SPS Committee shall be:

- (a) monitoring the implementation of this Chapter;
- (b) coordinating technical cooperation activities mentioned in Article 5.9;
- (c) facilitating technical consultations;
- (d) identifying areas for enhanced cooperation, including giving favorable consideration to any specific proposal made by either Party;

- (e) establishing a dialogue between competent authorities in accordance with the objectives of this Chapter;
  - (f) consulting on related issues prior to meetings of relevant international organisations, as appropriate; and
  - (g) carrying out other functions mutually agreed by the Parties.
3. The SPS Committee shall be co-chaired and meet once a year, except as otherwise agreed by the Parties. The SPS Committee meetings may be conducted by any agreed method on a case by case basis.
4. The SPS Committee may establish ad-hoc working groups to accomplish specific tasks.

#### **Article 5.11: Contact Points and Competent Authorities**

1. Each Party shall designate a Contact Point which shall have responsibility for coordinating the implementation of this Chapter. The contact points will be:
- (a) for China, the Department of International Cooperation of the General Administration of Customs of the People's Republic of China or its successor; and
  - (b) for Nicaragua, the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio* (MIFIC)) and the Institute for Agricultural Protection and Health (*Instituto de Protección y Sanidad Agropecuaria* (IPSA)) or their successors.
2. For the purposes of this Chapter, the competent authorities on Sanitary and Phytosanitary Measures are:
- (a) for China, the General Administration of Customs or its successor; and
  - (b) for Nicaragua, the Institute for Agricultural Protection and Health (*Instituto de Protección y Sanidad Agropecuaria* (IPSA)) or its successor.