

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

Article 79: Objectives

The objectives of this Chapter are:

- (a) to protect human, animal or plant life or health in the territory of each Party;
- (b) to facilitate bilateral trade and to provide a framework to address sanitary and phytosanitary matters that may, directly or indirectly, affect trade between the Parties;
- (c) to ensure that the Parties' sanitary and phytosanitary measures shall not be applied in a manner which would constitute an unjustified barrier to trade;
- (d) to strengthen capacities for the implementation of the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* (hereinafter referred to as "SPS Agreement"); and
- (e) to strengthen mechanisms, communication and cooperation between Chinese and Peruvian government agencies having responsibility for matters covered by this Chapter and to deepen mutual understanding of each Party's regulations and procedures.

Article 80: Scope and Coverage

1. This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.
2. This Chapter does not apply to standards, technical regulations and conformity assessment procedures as defined in the *WTO Agreement on Technical Barriers to Trade*.

Article 81: Reaffirmation of SPS Agreement

1. The Parties reaffirm and incorporate in this Chapter their existing rights and obligations with respect to each other under the SPS Agreement.
2. The Parties recognize and apply the Decisions on the application of the Agreement adopted by the WTO Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee).

Article 82: Definitions

For purposes of this Chapter:

(a) definitions under Annex A of the SPS Agreement, definitions provided in the glossary of harmonized terms of the relevant international organizations, and definitions agreed by the Parties and adopted by the SPS Committee established in this Chapter, are applicable; and

(b) **relevant international organizations** refers to the organizations mentioned in the SPS Agreement.

Article 83: General Provisions to Facilitate Trade

1. The relevant national authorities on sanitary and phytosanitary matters may achieve cooperation and/or coordination agreements to facilitate trade.
2. These agreements shall aim to deepen and/or define mechanisms necessary to achieve transparent and streamlined procedures, including recognition of equivalence; recognition of pest or disease-free areas or low pest or disease prevalence zones; control, inspection, approval; among other matters of mutual interest for the Parties.
3. At the request of the other Party, each Party shall give favourable consideration to any SPS

specific proposal made by the other Party in order to facilitate bilateral trade between them.

Article 84: Harmonization

1. In accordance with Article 3 of the SPS Agreement and the Decisions for the implementation of the said Article adopted by the WTO/SPS Committee, the Parties shall work on the harmonization of their respective sanitary and phytosanitary measures, taking into account standards, guidelines and recommendations developed by the relevant international organizations.

2. In case these international standards, guidelines and recommendations do not exist, their respective measures shall be based on science and guarantee that the appropriate level of sanitary or phytosanitary protection is achieved.

Article 85: 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.

3. If the recognition of the equivalence is still pending, the Parties should neither stop nor apply sanitary and phytosanitary measures more restrictive than those in force in their mutual

trade, except in the case of a sanitary or phytosanitary emergency.

Article 86: Risk Assessment and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Sanitary and phytosanitary measures shall be based on a risk assessment, in line with the circumstances of the risks existing for human, animal and plant life and health, taking into account the risk assessment techniques developed by the relevant international organizations, so that the measures adopted may reach the appropriate level of protection.

2. When a Party decides to make a re-evaluation of a product for which there is a fluid and regular trade, said Party shall not interrupt bilateral trade of the affected products by reason of such decision to make the re-evaluation, except in the case of a sanitary or phytosanitary emergency.

Article 87: Recognition of Pest- or Disease- Free Areas and Areas of Low Pest or Disease Prevalence

1. The importing Party shall recognize in an expeditious way, upon request by the other Party and after the receipt of the necessary information provided by the exporting Party and an assessment by the importing Party, the pest- or disease-free areas and areas of low pest or disease prevalence recognized by the relevant international organizations.

2. In the absence of recognition of pest- or disease-free areas and areas of low pest or disease prevalence by the relevant international organizations, the importing Party shall decide, in a reasonable time, on the request made by the exporting Party for the recognition of pest- or

disease-free areas and areas of low pest or disease prevalence. For this purpose, the exporting Party shall objectively demonstrate that an area or part of its territory is free of a pest or disease or has low pest or disease prevalence, and maintain this status, and the importing Party shall conduct an assessment.

3. In case of an event affecting the sanitary or phytosanitary status of a pest- or disease-free area or an area of low pest or disease prevalence, the Parties shall work in an expeditious way for regaining such status.

Article 88: Transparency

1. The Parties agree to designate Contact Points and/or Enquiry Points for information exchange and notification on sanitary and phytosanitary issues no later than 3 months following the entry into force of this Agreement.

2. Each Party shall notify electronically to the other Party's Contact Point or Enquiry Point its proposed sanitary and phytosanitary measures notifications to the WTO, at the same time the Party submits to the WTO Secretariat in accordance with the SPS Agreement , with at least a 60-day-long comment period.

3. In cases of urgency or duly justified emergency, the Parties shall adopt similar action as specified in paragraph 2, without observing the timeframe established.

4. The Parties shall strengthen cooperation between SPS Contact Points and/or Enquiry Points of the Parties, including sharing available translated versions of SPS notifications and relevant information and exchanging experience and information on SPS notifications.

Article 89: Technical Cooperation

The Parties agree to cooperate in human, animal, plant health and food safety issues of common interest with a view to facilitating access to each other's markets. In particular, the Parties shall consider the following activities, *inter alia*:

- (a) encourage the enforcement of this Chapter; and
- (b) strengthen the capacity of their corresponding SPS authorities.

Article 90: Committee on Sanitary and Phytosanitary Measures

1. The Parties establish a Committee on Sanitary and Phytosanitary Measures consisting of sanitary and phytosanitary authorities and/or trade authorities of the Parties.

2. The Committee shall meet every 2 years or whenever it considers necessary. The Committee shall meet in presence or through teleconference, videoconference, or any other means; and shall be able to deal with sanitary and phytosanitary issues through telecommunications or correspondence.

3. At its first regular meeting, the Committee shall adopt its rules of procedure and if necessary, shall develop a Working Plan, which could be updated with the issues of interest proposed by the Parties.

4. The functions of this Committee include:

- (a) to monitor the implementation of this Chapter;
- (b) to review progress on addressing sanitary and phytosanitary matters that may arise between the Parties' competent sanitary and phytosanitary authorities, including each Party's priority market access interests;

(c) to strengthen the communication on the Parties' SPS-related administrative procedures to promote mutual understanding and compliance with the respective obligations under this Chapter;

(d) to strengthen technical cooperation in sanitary and phytosanitary issues and seek the enhancement of any present or future relationship between the Parties;

(e) to consult on issues, positions and agendas for meetings of the WTO/SPS Committee, Codex Alimentarius, the International Plant Protection Convention, the World Organization for Animal Health, and other international and regional fora on food safety and human, animal and plant health;

(f) to establish technical working groups if necessary. The technical working groups may consist of expert-level representatives of the Parties as agreed, which shall identify, address, and attempt to resolve technical and scientific issues arising from this Chapter;

(g) to hold technical discussions on sanitary and phytosanitary matters; and

(h) other functions mutually agreed by the Parties.

5. The Committee shall be coordinated by:

(a) for China, the Department of International Cooperation of the General Administration of Quality Supervision, Inspection and Quarantine, or its successor; and

(b) for Peru, the Vice Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism, or its successor.

Article 91: Technical Consultations and Dispute Settlement

1. When a Party considers that a sanitary or phytosanitary measure affecting trade between it

and the other Party warrants technical consultations, it may request that technical consultations be held under the Committee on Sanitary and Phytosanitary Measures, with a view to sharing information and increasing mutual understanding about the specific sanitary and phytosanitary measure under consultation and to identify a workable and practical solution that would facilitate trade. The other Party shall respond as early as possible to any request for technical consultations.

2. The technical consultations shall be held, if possible, in a term of 45 days after the date of receipt of the request, unless the Parties agree otherwise, and may be conducted via teleconference, videoconference, or through any other means mutually agreed by the Parties.

3. Notwithstanding paragraphs 1 and 2, any Party may directly resort to the dispute settlement mechanism provided in Chapter 15 (Dispute Settlement).

Article 92: Competent Authorities

1. The competent authorities of the Parties are the authorities in the Parties responsible for the implementation of the measures referred to in this Chapter.

2. The Parties will communicate any significant change in the structure, organization and division of the competent authorities.

3. For the adequate implementation of this Chapter, the Parties shall strengthen bilateral contact and cooperation between their respective sanitary and phytosanitary agencies.