

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Consolidation with Amendments

The Agreement on Trade in Goods which entered into force on 1 January 2005 continues to remain in force with amendments as consolidated in this Chapter.

Article 5.2: Definitions

For the purposes of this Chapter:

- (a) the definitions provided in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO (“SPS Agreement”), shall apply;
- (b) relevant definitions developed by Codex Alimentarius Commission, the World Organisation for Animal Health, and the International Plant Protection Convention shall be taken into account;
- (c) **competent authorities** means those authorities within each Party recognised by the national government as responsible for developing and administering the sanitary and phytosanitary measures within that Party;
- (d) **days** means calendar days, including weekends and holidays;
- (e) **emergency measure** means a sanitary or phytosanitary measure that is applied by an importing Party to a relevant exporting Party to address an urgent problem of human, animal, or plant life or health protection that arises or threatens to arise in the Party applying the measure; and
- (f) **person** means a natural person or a juridical person.

Article 5.3: Objectives

The objectives of this Chapter are to:

- (a) protect human, animal, or plant life or health in the Parties through the development, adoption, and application of sanitary and phytosanitary measures, while facilitating trade by minimising the negative effects on trade between the Parties;
- (b) enhance the practical implementation of the SPS Agreement;
- (c) enhance the transparency and understanding of the development and application of sanitary and phytosanitary measures of the Parties;
- (d) strengthen cooperation, communication, and consultation between the Parties in the field of sanitary and phytosanitary measures;
- (e) facilitate information exchange and technical cooperation between the Parties, and enhance mutual understanding of each Party's regulatory system on sanitary and phytosanitary measures; and
- (f) encourage the Parties' participation in the development and adoption of international standards, guidelines, and recommendations.

Article 5.4: Scope

This Chapter shall apply to all sanitary and phytosanitary measures of the Parties, which may, directly or indirectly, affect trade among the Parties.

Article 5.5: General Provisions

1. The Parties commit to apply the principles of the SPS Agreement in the development and application of any sanitary and phytosanitary measure.
2. Each Party affirms its rights and obligations with respect to each other Party under the SPS Agreement.
3. Any information exchange in this Chapter between the Parties is encouraged to be in English.

Article 5.6: Equivalence

1. The Parties shall strengthen cooperation on equivalence in accordance with Article 4 of the SPS Agreement while taking into account the relevant decisions of the WTO Committee on Sanitary and Phytosanitary Measures (“WTO SPS Committee”) and international standards, guidelines, and recommendations.
2. An importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if an exporting Party objectively demonstrates to the importing Party that the exporting Party’s measure achieves the same level of protection as the importing Party’s measure, or that the exporting Party’s measure has the same effect in achieving the objective as the importing Party’s measure.
3. In determining the equivalence of a sanitary or phytosanitary measure, the importing Party shall take into account available knowledge, information, and experience, as well as the regulatory competence, of the exporting Party.
4. A Party shall, upon request, enter into consultation with the aim of achieving bilateral recognition arrangements on the equivalence of specified sanitary or phytosanitary measures. The recognition of equivalence under such bilateral recognition arrangements may be with respect to a single measure, a group of measures, or on a systems-wide basis. 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.
5. As part of the consultation for equivalence recognition, on request of the exporting Party, the importing Party shall explain and provide:
 - (a) the rationale and objective of its measures; and
 - (b) the specific risks its measures are intended to address.
6. The exporting Party shall provide necessary information in order for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall, upon request, and without undue delay, explain the process and plan for making an equivalence determination.

7. The consideration by an exporting Party of a request from an importing Party for recognition of the equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the Party of the product or products in question.
8. 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 notify the decision in writing to the exporting Party and implement the measure within a reasonable period of time. The rationale shall be provided in writing by the importing Party in the event that the decision is negative.
9. The Parties involved in a positive determination of equivalence are encouraged, where mutually agreed, to share information and experiences at the Committee on Sanitary and Phytosanitary Matters ("SPS Committee").

Article 5.7: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence. The Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. The Parties may cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for such recognition.
3. On request of an exporting Party, an importing Party shall, without undue delay, explain its process and plan for making a determination of regional conditions.
4. When an importing Party has received a request for a determination of regional conditions from an exporting Party and has determined that the information provided by the exporting Party is sufficient, it shall initiate the assessment within a reasonable period of time.
5. For such an assessment, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.
7. When an importing Party recognises specific regional conditions of an exporting Party, the importing Party shall notify that decision to the exporting Party in writing and implement the measures within a reasonable period of time.
8. If the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the regional conditions, the importing Party shall provide the exporting Party with the rationale for its decision in writing within a reasonable period of time.
9. The Parties involved in a determination recognising regional conditions are encouraged, where mutually agreed, to report the outcome to the SPS Committee.

Article 5.8: Risk Analysis

1. The Parties recognise that risk analysis is an important tool for ensuring that sanitary or phytosanitary measures have scientific basis. The Parties shall ensure that their sanitary or phytosanitary measures are based on an assessment of the risks to human, animal, or plant life or health as provided in Article 5 of SPS Agreement, taking into account the risk assessment techniques developed by the relevant international organisations.
2. The Parties shall strengthen their cooperation on risk analysis in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
3. When conducting a risk analysis, an importing Party shall:
 - (a) ensure that the risk analysis is documented and that it provides the relevant exporting Party or Parties with an opportunity to comment, in a manner to be determined by the importing Party;

- (b) consider risk management options that are not more trade restrictive than required¹ to achieve its appropriate level of sanitary or phytosanitary protection; and
 - (c) select a risk management option that is not more trade restrictive than required to achieve its appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.
4. On request of an exporting Party, an 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.
 5. Without prejudice to emergency measures, 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 a sanitary or phytosanitary measure, if the importing Party permitted importation of the good of the other Party at the time of the initiation of the review.

Article 5.9: Audit²

1. In undertaking an audit, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
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 and phytosanitary measures of the importing Party.³

¹ For the purposes of subparagraphs (b) and (c), a risk management option is not more trade restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

² For greater certainty, without affecting the implementation of this Article, nothing in this Article prevents a Party from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

³ For greater certainty, nothing in this paragraph prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

3. Prior to the commencement of an audit, the importing Party and exporting Party involved shall exchange information on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.
4. The importing Party shall provide the exporting Party with an opportunity to comment on the finding 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. A decision or action taken by the importing Party as a result of the audit should be supported by objective evidence or data that can be verified. This objective evidence or data should be provided to the exporting Party on request.
6. The importing Party and exporting Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the entire audit process.

Article 5.10: Certification

1. In applying certification requirements, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. An exporting Party shall ensure that the documents, including certificates, that are required by an importing Party and provided by the competent authorities of the exporting Party, to demonstrate the fulfilment of the sanitary and phytosanitary requirements of the importing Party, are in the English language, unless the importing Party and exporting Party agree otherwise. When the importing Party requires such documents, the importing Party shall endeavour to provide the requirements for such documents in the English language. Upon request, the importing Party shall provide a summary or explanation of such requirements.
3. The Parties recognise that an importing Party may, as appropriate, allow assurances with respect to sanitary or phytosanitary requirements to be provided through means other than certificates, and that different systems may be capable of meeting the same sanitary and phytosanitary objectives.

4. Where certification is required for trade in a good, 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.
5. An importing Party should communicate to the exporting Party, on request, the rationale and requirements for specific attestations and identifying information that the importing Party requires to be included on a certificate.
6. Without prejudice to each Party's right to import controls, the importing Party shall accept certificates issued by the competent authorities of the exporting Party that are in compliance with the regulatory requirements of the importing Party.

Article 5.11: Import Checks

1. In applying import checks, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. Import checks, conducted in accordance with the importing Party's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations. In the event that import checks reveal a non-compliance, the final decision or action taken by the importing Party shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant product.
3. If an importing Party prohibits or restricts the importation of a good of an exporting Party on the basis of non-compliance of that good found during an import check, the importing Party shall notify the importer or its representatives and, if the importing Party considers necessary, the exporting Party of such non-compliance.
4. When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties concerned shall, on request of either Party, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

Article 5.12: Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal, or plant life or health and that may have an effect on trade, that Party shall immediately notify the relevant exporting Parties in writing through the contact point or contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Parties.
2. The relevant exporting Parties may request discussions with the Party adopting an emergency measure referred to in paragraph 1. Such discussions shall be held as soon as practicable. Each Party participating in the discussions shall endeavour to provide relevant information, and shall take due account of any information provided through the discussions.
3. If a Party adopts an emergency measure, it shall review that measure within a reasonable period of time or on request of the exporting Party. The importing Party may, if necessary, request relevant information and the exporting Party shall endeavour to provide the relevant information to assist the importing Party in its review of the adopted emergency measure. The importing Party shall provide the result of the review to the exporting Party upon request. If the emergency measure is maintained after the review, the importing Party should review the measure periodically based on the most recent available information, and upon request, shall explain the reason for the continuation of the emergency measure.

Article 5.13: Transparency

1. The Parties recognise the importance of transparency as set out in Annex B of the SPS Agreement.
2. The Parties recognise the importance of the exchange of information on the development, adoption, and application of sanitary and phytosanitary measures that may have significant effects on trade among the Parties.
3. In implementing this Article, the Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

4. Each Party shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Parties through the online WTO Sanitary and Phytosanitary Measures Notification Submission System, the contact points designated under Article 5.16 (Contact Points and Competent Authorities), or already established communication channels of the Parties.
5. 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 other Parties to provide written comments after it makes a notification pursuant to paragraph 4. A Party shall consider reasonable requests from another Party to extend the comment period.
6. As part of the comment period referred to in paragraph 5, on request of another Party and if appropriate and feasible, the notifying Party shall consider any scientific or trade concerns and the availability of alternatives that the other Party may raise regarding the proposed measure.
7. Upon request, a Party shall, within 30 days of the request, provide the requesting Party with the documents or a summary of the documents describing the requirements of draft sanitary or phytosanitary measures notified to the WTO pursuant to paragraph 4, in the English language.
8. Following the notification of sanitary or phytosanitary measures to the WTO, upon request, a Party shall provide the requesting Party with the documents or a summary of the documents describing the requirements of the adopted sanitary or phytosanitary measures, within a reasonable period of time as agreed by the relevant Parties, in the English language.
9. A Party, on reasonable request of another Party, shall provide relevant information and clarification regarding any sanitary or phytosanitary measure to the requesting Party, within a reasonable period of time, including:
 - (a) the sanitary or phytosanitary requirements that apply to the import of specific products;
 - (b) the status of the requesting Party's application; and
 - (c) procedures for authorising the import of specific products.

10. An exporting Party shall provide timely and appropriate information to relevant Parties through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Parties, where there is a significant change in animal or plant health status or food safety issues in that exporting Party that may affect trade.
11. An importing Party shall provide timely and appropriate information to relevant Parties through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Parties, where there is:
 - (a) significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments identified by the importing Party; or
 - (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Party considered necessary to protect human, animal, or plant life or health within the importing Party.
12. An exporting Party shall, to the extent possible and as promptly as possible, provide information to the importing Party if the exporting Party identifies that an export consignment that may be associated with a significant sanitary or phytosanitary risk has been exported.
13. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official website or official journal.

Article 5.14: Cooperation and Capacity Building

1. The Parties shall explore opportunities for further cooperation among the Parties, including e-SPS certificates, capacity building, technical assistance, collaboration, and information exchange, on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter, subject to the availability of appropriate resources.
2. Any two or more Parties may cooperate on any matter, including sector specific proposals, of mutual interest under this Chapter.

3. In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional, or multilateral work programmes, with the objective of avoiding unnecessary duplication and maximising the use of resources.
4. The Parties are encouraged to share, where mutually agreed, information and the experiences of their cooperation activities with other Parties at the SPS Committee.

Article 5.15: Technical Consultation

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with another Party, it may, through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels, request a detailed explanation of the sanitary or phytosanitary measure. The other Party shall respond promptly to any request for such explanation.
2. A Party may request to hold technical consultations with another Party in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measure. The requested Party shall respond promptly to any reasonable request for such consultation. The consulting Parties shall make every effort to reach a mutually satisfactory resolution.
3. Where a Party requests technical consultations, these shall take place within 30 days of the receipt of the request, unless the consulting Parties agree otherwise. Such consultation should aim to resolve the matter within 180 days of the date of the request, or a time frame agreed by the consulting Parties.
4. The consulting Parties shall encourage relevant authorities to appropriately involve in such meetings held pursuant to this Article, to ensure the consultations to be conducted in a more effective way.
5. The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the consulting Parties.

Article 5.16: Contact Points and Competent Authorities

1. Each Party shall, within 30 days of the date of entry into force of the CAFTA 3.0 Upgrade Protocol for that Party:
 - (a) designate one or more contact points to facilitate communication on matters covered under this Chapter;
 - (b) notify the other Parties of the contact details of that contact point or those contact points; and
 - (c) when more than one contact point is designated, specify a contact point that serves as the focal point to respond to enquiries from another Party on the appropriate contact point with which to communicate.
2. Each Party shall provide the other Parties, through the contact points, a description of its competent authorities and the division of their functions and responsibilities.
3. Each Party shall notify the other Parties of any change to the contact points and significant changes in the structure, organisation, and division of responsibility within its competent authorities. Each Party shall keep this information up to date.
4. The Parties recognise the importance of the competent authorities in the implementation of this Chapter. Accordingly, the competent authorities of the Parties may cooperate with each other on matters covered by this Chapter in a manner to be agreed. The Parties are encouraged to share information and experiences of such cooperation of their competent authorities with the SPS Committee where the Parties agree to do so.

Article 5.17: Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (“SPS Committee”), composed of representatives from relevant government authorities of the Parties responsible for sanitary and phytosanitary measures.
2. The functions of the SPS Committee are:

- (a) monitoring the implementation of this Chapter;
 - (b) enhancing each Party's implementation of this Chapter;
 - (c) considering sanitary and phytosanitary matters of mutual interest;
 - (d) enhancing communication and cooperation on sanitary and phytosanitary matters;
 - (e) facilitating technical consultations upon request by the relevant Parties;
 - (f) consulting on issues of mutual interest prior to meetings of relevant international organisation, if appropriate; and
 - (g) carrying out other functions as agreed by the Parties.
3. The SPS Committee shall be co-chaired by a representative of China and an ASEAN representative appointed by ASEAN Member States and meet once a year, unless the Parties agree otherwise. The SPS Committee may conduct the meeting in person, or through any other means agreed by the SPS Committee.
4. The SPS Committee may establish *ad hoc* working groups to accomplish specific tasks.

Article 5.18: Disclosure of Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 5.19: Confidentiality

Where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified by the Party providing the information, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to

the extent that the Party receiving the information is required under its domestic law to provide the information to judicial proceedings.

Article 5.20: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Chapter or incorporated into this Chapter is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Chapter, unless otherwise provided in this Chapter.

Article 5.21: Administrative Proceedings

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Chapter in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of another Party in specific cases that:

- (a) wherever possible, a person of another Party that is directly affected by such a proceeding is provided with reasonable notice, in accordance with its domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;
- (b) a person of another Party that is directly affected by such a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) it follows its procedures in accordance with its laws and regulations.