

CHAPTER FIVE

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Objectives

The objectives of this Chapter are to:

- (a) minimize the negative effects of sanitary and phytosanitary (hereinafter referred to as “SPS”) measures on trade between the Parties while protecting human, animal or plant life or health in the Parties’ territories;
- (b) ensure that the Parties’ SPS measures shall not be applied in a manner which would constitute a disguised restriction on trade between the Parties;
- (c) enhance transparency in and mutual understanding of the application of each Party’s SPS measures;
- (d) strengthen cooperation and communication among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and
- (e) enhance implementation of the SPS Agreement.

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: Reaffirmation of the SPS Agreement

Except as otherwise provided for in this Chapter, the SPS Agreement shall apply between the Parties and is hereby incorporated into and made part of this Agreement, taking into account standards, guidelines or recommendations from the *Codex Alimentarius Commission* (hereinafter referred to as “CAC”), the *International Plant Protection Convention* (hereinafter referred to as the “IPPC”), and the *World Organization for Animal Health* (hereinafter referred to as the “WOAH”).

Article 5.4: Equivalence

1. The importing Party shall accept the SPS measures of the exporting Party as equivalent, even if these measures differ from its own or from those used by the exporting Party trading in the same product, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection.
2. A Party shall, upon request, enter into consultation with the aim of achieving a bilateral agreement on recognition of the equivalence of specified SPS measures.
3. The consideration by a Party of a request from the other 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.

Article 5.5: Risk Assessment

1. Without prejudice to Article 5 of the SPS Agreement, the Parties shall endeavor to give due consideration to a request for risk assessment of the other Party.
2. Risk assessment on a Party's SPS measures shall be conducted and evaluated by the relevant regulatory agencies of each Party. The risk assessment will be in accordance with the provisions of this Chapter and the SPS Agreement.
3. Without prejudice to emergency measures¹, no Party shall stop the importation of a good of the other Party solely for the reason that the importing Party is undertaking a review of a SPS measure, if the importing Party permitted importation of the good of the other Party at the time of the initiation of the review.

Article 5.6: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Each Party shall recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence in accordance with the SPS Agreement.

¹ Emergency Measure means a SPS 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.

2. The exporting Party claiming that areas within its territory are pest or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Party that such areas are, and are likely to remain, pest or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing, and other relevant procedures.

3. In connection with paragraphs 1 and 2, if a Party does not accept the determination on pest or disease-free areas or areas of low pest or disease prevalence made by the other Party, the Party not accepting the determination shall explain the reasons in a timely manner.

Article 5.7: Technical Cooperation

1. The Parties agree to explore the opportunity for technical cooperation in SPS areas, with a view to enhancing the mutual understanding of the regulatory systems of each Party and minimizing the negative effects on bilateral trade.

2. The Parties agree to support the processes of cooperation and technical assistance in SPS which shall be mutually agreed. These may include, but are not limited to:

- (a) strengthening cooperation with respect to, *inter alia*, risk analysis methodology, disease or pest control methods, laboratory testing techniques, and exchange of information on domestic regulations;
- (b) developing exchange programs for relevant officials of competent authorities, with the objectives of building capacity and confidence of each Party regarding animal disease and plant pest management; and
- (c) carrying out joint research and exchanging technical experiences, sharing the result of such research and experiences in SPS areas including animal disease, plant pest and food safety.

3. The competent authorities of each Party or several of them may work together, upon request of a Party, if necessary, for establishing subsidiary working groups with the aim of enhancing regulatory understanding with regard to each Party's SPS requirements for certain products of export interest, and strengthening their capacity and confidence, taking into account the interest of each authority.

Article 5.8: Information Exchange

1. Each Party shall ensure that any information or explanation upon request of the other Party pursuant to this Chapter is communicated within a reasonable period of time.
2. The Parties shall exchange relevant information with each other through the competent SPS authorities, in a timely manner, regarding serious non-compliance of SPS requirements which results in rejection by the importing Party.
3. Each Party shall establish contact points for the implementation of this Article, which may be contacted through the internet in English. Enquiries in English shall be answered in English.
4. Upon request, each Party shall provide an explanation of the risk analysis process and required information for the risk analysis. The importing Party shall inform the status of its risk analysis process, upon request of the exporting Party. If the result of risk analysis allows the importation of goods from the exporting Party, the importing Party shall proceed with the administrative or legislative process within a reasonable period of time.

Article 5.9: Committee on the SPS Measures

1. The Parties hereby agree to establish a Committee on the SPS Measures (hereinafter referred to as the “Committee”).
2. Recognizing that the resolution of SPS matters must rely on science and risk-based assessment and is best achieved through bilateral technical cooperation and consultation, the Committee shall seek to enhance present or future relations between the Parties’ competent authorities of SPS matters. For purposes of this the Committee shall:
 - (a) monitor the implementation of this Chapter;
 - (b) recognize that scientific risk analysis shall be conducted and evaluated by the relevant regulatory agencies of each Party;
 - (c) enhance mutual understanding of each Party’s SPS measures;
 - (d) consult on matters related to the development or application of SPS measures that affect, or may affect, trade between the Parties;

- (e) communicate timely, through the contact points of the Parties, the significant, sustained or recurring non-compliance with SPS requirements;
- (f) consider, if necessary, upon request of a Party, establishing technical consultations on the basis of terms and conditions to be agreed by the Committee with a view to, as appropriate, seeking to address SPS matters of mutual interest to the Parties. Where a Party requests technical consultation, these shall take place within 30 days of the notification of the request, unless otherwise agreed. Such consultation should aim to reach a mutually satisfactory resolution within 180 days of the notification of the request, or a longer time frame agreed by the Parties. Nothing in this paragraph shall be construed to prevent a Party from applying SPS measures;
- (g) coordinate on issues, positions, and agenda for meetings of the WTO SPS Committee established under the SPS Agreement, the CAC, the WOH, the relevant international and regional organizations operating within the framework of the IPPC, and other international and regional fora on food safety and on human, animal, or plant life or health;
- (h) promote coordination of technical cooperation activities in relation to development, implementation, and application of SPS measures; and
- (i) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement, including clarification of each Party's regulatory frameworks and rulemaking procedures.

3. The Parties shall establish the Committee not later than 90 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

4. The Committee shall meet within one year following the date of entry into force of this Agreement and thereafter every two years unless the Parties otherwise agree. The Committee may meet in person or by any technological means available to the Parties.

5. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of SPS measures from its relevant trade and regulatory agencies or ministries participate in the Committee meetings.

6. To coordinate the implementation of this Chapter, in particular the Committee meetings and to provide a means of information exchange within a reasonable period of time, each Party shall designate the following contact points:

- (a) For Korea: The Ministry of Agriculture, Food and Rural Affairs, or its successor; and
- (b) For Ecuador: The Ministry of Production, Trade, Investment and Fisheries, or its successor.

Article 5.10: Dispute Settlement

Neither Party shall have recourse to Chapter Twenty (Dispute Settlement) for any matter arising under this Chapter.