

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Scope

1. This Chapter applies to the preparation, adoption and application of all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of a Party which may, directly or indirectly affect trade between the Parties.
2. This Chapter does not affect the rights of the Parties under Chapter 5 (Technical Barriers to Trade) with respect to measures not within the scope of this Chapter.

ARTICLE 6.2

Objectives

The objectives of this Chapter are to:

- (a) enhance the effective implementation of the principles and disciplines of the SPS Agreement and international standards, guidelines and recommendations developed by relevant international organisations;

- (b) protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that SPS measures adopted by each Party do not create unnecessary obstacles to trade;
- (c) strengthen communication and cooperation on, and resolution of SPS matters that affect trade between the Parties and other agreed matters of mutual interest; and
- (d) promote greater transparency and understanding in the application of each Party's SPS measures.

### ARTICLE 6.3

#### Definitions

1. For the purposes of this Chapter:
  - (a) the definitions contained in Annex A of the SPS Agreement apply;
  - (b) "competent authorities" means each Party's authorities responsible for developing, implementing and administering SPS measures within its territory; and
  - (c) "SPS Committee" means the Committee on Sanitary and Phytosanitary Measures referred to in Article 6.11 (Committee on Sanitary and Phytosanitary Measures) established pursuant to Article 17.2 (Specialised Committees).

2. The Parties may agree on other definitions for the application of this Chapter taking into consideration the glossaries and definitions of the relevant international organisations, such as the Codex Alimentarius Commission (hereinafter referred to as "Codex Alimentarius"), the World Organisation for Animal Health (hereinafter referred to as "OIE"), and the International Plant Protection Convention (hereinafter referred to as "IPPC").

#### ARTICLE 6.4

##### General Provisions

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

2. Each Party shall apply the SPS Agreement in the development, application or recognition of any SPS measure with the aim of facilitating trade between the Parties while protecting human, animal or plant life or health in its territory.

ARTICLE 6.5

Competent Authorities and Contact Points

1. To ensure close and effective working relationships between the Parties in achieving the objectives of this Chapter, the competent authorities are:
  - (a) in the case of Viet Nam, responsibility for SPS matters is shared between governmental agencies as follows:
    - (i) the Ministry of Agriculture and Rural Development, or its successor, is responsible for animal and plant health; it administers surveillance and control measures to prevent the introduction of diseases which negatively affect human and animal health; it also administers a comprehensive program to control and prevent the incursion of diseases and pests which negatively affect plant health and the economy; and, for animal and plant products destined for exportation, it is also responsible for inspection, for quarantine and for the issuance of certifications attesting to the agreed standards and requirements of the Union; and

- (ii) the Ministry of Health, the Ministry of Agriculture and Rural Development and the Ministry of Industry and Trade, or their respective successors, are, in accordance with their respective competences, responsible for the safety of food destined for human consumption; for the importation of food, they administer surveillance and control measures, including the development of national technical regulations and approval procedures, the conduct of risk assessment of products and inspections of establishments, to ensure the compliance with the agreed standards and requirements of Viet Nam; for the exportation of food, they are also responsible for inspection and for the issuance of health certifications;
  
- (b) in the case of the Union, responsibility is shared between the administrations of the Member States and the European Commission as follows:
  - (i) as regards exports to Viet Nam, the Member States are responsible for the control of the production conditions and requirements, including statutory inspections and issuing health and animal welfare certifications attesting to compliance with Viet Nam's standards and requirements;
  
  - (ii) as regards imports from Viet Nam, the Member States are responsible for controlling compliance of imports with the Union's import conditions;
  
  - (iii) the European Commission is responsible for overall coordination, inspection and audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the Union's internal market.

2. As of the date of entry into force of this Agreement, the competent authorities of each Party shall provide each other with a contact point for communication on all matters arising under this Chapter. The contact points' functions shall include:

- (a) enhancing communication among the Parties' agencies and ministries responsible for SPS matters; and
- (b) facilitating information exchange in order to enhance mutual understanding of each Party's SPS measures, the regulatory processes that relate to those measures and their impact on trade in the products concerned between the Parties.

3. The Parties shall ensure that the information provided under paragraphs 1 and 2 is kept up to date.

## ARTICLE 6.6

### Import Requirements and Procedures

1. The general import requirements of a Party shall be applicable to the entire territory of the exporting Party, without prejudice to the ability of the importing Party to take decisions and measures in accordance with the criteria set out in Article 6.9 (Measures linked to Animal and Plant Health).

2. Each Party shall adopt only measures that are scientifically justified, consistent with the risk involved and that represent the least restrictive measures available and result in minimum impediment to trade.
3. The importing Party shall ensure that its import requirements and procedures are applied in a proportional and non-discriminatory manner.
4. The import procedures shall aim at minimising negative trade effects and expedite the clearance process while complying with the importing Party's requirements and procedures.
5. The importing Party shall ensure full transparency of its import requirements and procedures.
6. The exporting Party shall ensure compliance with the import requirements of the importing Party.
7. Each Party shall establish and update lists of regulated pests, using scientific terminology, and make such lists available to the other Party.
8. Phytosanitary import requirements shall be restricted to measures ensuring the respect for the appropriate level of protection of the importing Party, and limited to the regulated pests of concern to the importing Party. Without prejudice to Article 6 of the IPPC, a Party shall not impose or maintain phytosanitary measures for non-regulated pests.

9. A pest risk analysis undertaken by a Party shall be carried out without undue delay after the initial request of the exporting Party. In case of difficulties, the Parties shall agree within the SPS Committee on a time schedule for carrying out the pest risk analysis.

10. The importing Party shall have the right to carry out import checks based on the SPS risks associated with imports. Those checks shall be carried out without undue delay and with a minimum impediment to trade. If products do not conform to the requirements of the importing Party, any action taken by the importing Party shall be in conformity with the international standards and proportionate to the risk caused by the product.

11. The importing Party shall make available the information about the frequency of import checks carried out on products. This frequency may be adapted as a consequence of verifications or import checks, or by mutual agreement between the Parties.

12. Any fees imposed for the procedures related to the import of products under this Chapter shall be equitable in relation to any fees charged on like domestic products and shall not be higher than the actual cost of the service.

ARTICLE 6.7

Verifications

1. In order to obtain or maintain confidence in the effective implementation of this Chapter, the importing Party has the right to carry out verifications, including:

- (a) by conducting verification visits to the exporting Party to verify all or part of the exporting Party's control system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC; the expenses of such verification visits shall be borne by the Party carrying out the verification visit; and
- (b) by information requests to the exporting Party about its control system and the results of the controls carried out under that system.

2. Each Party shall provide the other Party with the results and conclusions of the verification visits carried out in the territory of the other Party.

3. If the importing Party decides to carry out a verification visit to the exporting Party, it shall notify the exporting Party of this visit at least 60 working days before such verification visit is carried out, unless agreed otherwise. Any modification to this verification visit shall be mutually agreed by the Parties.

4. The importing Party shall provide a draft verification report to the exporting Party within 45 working days of the completion of the verifications. The exporting Party shall have 30 working days to comment on the draft report. Comments made by the exporting Party shall be attached to and, where appropriate, included in the final verification report which shall be delivered within 30 working days. If, during the verification, the importing Party identifies a significant human, animal or plant health risk, it shall inform the exporting Party as quickly as possible and in any case within 10 working days following the end of the verification.

## ARTICLE 6.8

### Procedure for Listing of Establishments

1. Upon request of the importing Party, the exporting Party shall inform the importing Party of its list of establishments which comply with the importing Party's requirements for approval and for which satisfactory sanitary guarantees have been provided in accordance with Annex 6-A (Requirement and Procedures for Approval of Establishments for Products).
2. Upon request of the exporting Party, the importing Party shall approve within 45 working days the list of establishments referred to in paragraph 1, without prior inspection of individual establishments.

3. If the importing Party requests additional information, the time-period referred to in paragraph 2 shall be extended by up to 30 working days. Following the approval of the list of establishment, the importing Party shall take necessary measures, in accordance with its applicable legal procedures, to allow the importation of products concerned.
4. If the importing Party rejects the request for approval, it should inform without delay the exporting Party of the reasons upon which that rejection was based.

## ARTICLE 6.9

### Measures linked to Animal and Plant Health

1. The Parties recognise the concepts of disease-free areas, areas of low disease prevalence, and compartmentalisation in accordance with the SPS Agreement and OIE standards, guidelines or recommendations. The Parties also recognise the animal health status as determined by the OIE.
2. The Parties recognise the concepts of pest-free areas, areas of low pest prevalence, protected zones and pest free production sites in accordance with the SPS Agreement and IPPC standards, guidelines or recommendations.
3. The Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of the SPS controls.

4. The SPS Committee shall define in further detail the procedure for the recognition of the concepts referred to in paragraphs 1 and 2 taking into account the SPS Agreement and the OIE and IPPC standards, guidelines or recommendations.

5. When the importing Party assesses the self-determination of the animal or plant health status made by the exporting Party, it shall, in principle, base its own assessment of the animal or plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement and the OIE and IPPC standards, guidelines or recommendations. The importing Party shall endeavour to provide the exporting Party its decision without undue delay after the request for assessment.

6. If the importing Party does not accept the self-determination of the animal or plant health status made by the exporting Party, it shall explain the reasons and, upon request by the exporting Party, enter into consultations as soon as possible to reach an alternative solution.

7. The exporting Party shall provide relevant evidence in order to objectively demonstrate to the importing Party that the animal or plant health status of those areas is likely to remain unchanged. For that purpose, the exporting Party shall, upon request by the importing Party, give the importing Party reasonable access for inspection, testing and other relevant procedures.

ARTICLE 6.10

Equivalence

1. The Parties recognise that the application of equivalence in Article 4 of the SPS Agreement is an important tool for trade facilitation and has mutual benefits for both exporting and importing countries.
2. Equivalence can be accepted for a specific SPS measure or measures related to a certain product or categories of products, or on a systems-wide basis.
3. The importing Party shall accept the SPS measures and systems of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party's appropriate level of SPS protection. To facilitate a determination of equivalence, the importing Party shall, upon request, explain the objective of any relevant SPS measures to the other Party.
4. Within three months of the date of receipt by the importing Party of a request from the exporting Party, the Parties shall hold consultations in order to determine the equivalence of SPS measures and systems.
5. The importing Party shall make a determination of equivalence without undue delay after the exporting Party has demonstrated the equivalence of the proposed SPS measures and systems.

6. The importing Party shall accelerate the determination of equivalence in particular in respect of those products which it has historically imported from the exporting Party.
7. In case of multiple requests from the exporting Party, the Parties shall agree within the SPS Committee on a time schedule in which they shall initiate the process.
8. In accordance with Article 9 of the SPS Agreement, the importing Party shall give full consideration to the requests by the exporting Party for technical assistance to facilitate the implementation of this Article. This assistance may, *inter alia*, help to identify and implement measures which can be recognised as equivalent or to otherwise enhance market access.
9. The consideration by the importing Party of a request from the exporting Party for recognition of equivalence of its SPS measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of that product. When the importing Party has made an equivalence determination, the Parties shall formally record it and apply it without delay to trade between them in the relevant area.

#### ARTICLE 6.11

##### Committee on Sanitary and Phytosanitary Measures

1. The SPS Committee established pursuant to Article 17.2 (Specialised Committees) shall include representatives of the competent authorities of the Parties. All decisions made by the SPS Committee shall be by mutual agreement.

2. The SPS Committee shall meet in person within one year of the entry into force of this Agreement. It shall meet at least annually thereafter or as mutually determined by the Parties. It shall establish its rules of procedure at its first meeting. It shall meet in person, via teleconference, video-conference, or through other means as mutually agreed by the Parties.

3. The SPS Committee may propose to the Trade Committee to establish working groups which shall identify and address technical and scientific issues arising from this Chapter and explore opportunities for further collaboration on SPS matters of mutual interest.

4. The SPS Committee may address any matter related to the effective functioning of this Chapter, including facilitating communication and strengthening cooperation between the Parties. In particular it shall have the following responsibilities and functions:

- (a) developing the necessary procedures or arrangements for the implementation of this Chapter;
- (b) monitoring the progress in the implementation of this Chapter;
- (c) providing a forum for discussion of problems arising from the application of certain SPS measures with a view to reaching mutually acceptable solutions and promptly addressing any matters that may create unnecessary obstacles to trade between the Parties;
- (d) providing a forum to exchange information, expertise and experiences in the field of SPS matters;

- (e) identifying, initiating and reviewing technical assistance projects and activities between the Parties; and
- (f) carrying out any other function as mutually agreed between the Parties.

5. The Parties may, by decision in the SPS Committee, adopt recommendations and decisions related to the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalence and alternative measures, and any other matter referred to under this Article.

## ARTICLE 6.12

### Transparency and Exchange of Information

- 1. The Parties shall:
  - (a) ensure transparency as regards SPS measures applicable to trade between them;
  - (b) enhance mutual understanding of each Party's SPS measures and their application;
  - (c) exchange information on matters related to the development and application of SPS measures, including the progress on new available scientific evidence, that affect, or may affect, trade between them with a view to minimising their negative trade effects;

- (d) upon request of a Party, communicate the import requirements that apply to the import of a particular product within 15 working days of the date of receipt of the request; and
  - (e) upon request of a Party, communicate progress achieved in processing the application for the authorisation of a particular product within 15 working days of the date of receipt of the request.
2. When a Party has made the information available either by notification to the WTO in accordance with the relevant rules and procedures, or by publication on its official publicly and free of charge accessible websites, the exchange of information pursuant to subparagraphs (c), (d) and (e) of paragraph 1 shall not be required.
3. All notifications under this Chapter shall be made to the contact points referred to under Article 6.5 (Competent Authorities and Contact Points).

#### ARTICLE 6.13

##### Consultations

1. When a Party considers that an SPS measure affecting bilateral trade warrants further discussion, it may, through the contact points referred to under Article 6.5 (Competent Authorities and Contact Points), request full explanation and, if necessary, request consultations on that SPS measure. The other Party shall respond promptly to such requests.

2. The Parties shall make every effort to reach, within an agreed timeframe, a mutually acceptable solution through consultations. Should the consultations fail to resolve the matter, it shall be considered by the SPS Committee.

#### ARTICLE 6.14

##### Emergency Measures

1. Each Party shall notify in writing to the other Party within two working days any serious or significant risk to human, animal or plant life or health, including any food emergencies, affecting products for which trade between the Parties takes place.

2. Where a Party has serious concerns regarding a risk to human, animal or plant life or health affecting products for which trade between the Parties takes place, it may request consultations in accordance with Article 6.13 (Consultations). The consultations shall take place as soon as possible. Each Party shall endeavour to provide in due time all necessary information to avoid disruption in trade.

3. The importing Party may take, without previous notification, measures necessary to protect human, animal or plant life or health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.

4. The Party taking the measures shall inform the other Party as soon as possible and in any case no later than 24 hours after the adoption of the measure. Either Party may request any information related to the SPS situation and any measures adopted. The other Party shall reply as soon as the requested information is available.

5. Upon request of either Party and in accordance with Article 6.13 (Consultations) the Parties shall hold consultations regarding the situation within 10 working days of the notification referred to in paragraph 1. The consultations shall be held with a view to avoiding unnecessary disruptions to trade. The Parties may consider options for the facilitation of the implementation or the replacement of the SPS measures.

#### ARTICLE 6.15

##### Technical Assistance and Special and Differential Treatment

1. The Union should provide technical assistance to address specific needs of Viet Nam to comply with the Union's SPS measures, including food safety, animal and plant health, and the use of international standards.

2. In accordance with Article 10 of the SPS Agreement, in the case of new SPS measures, the Union shall take into account the special needs of Viet Nam so as to maintain the export opportunities of Viet Nam while continuing to achieve the Union's level of protection. The SPS Committee shall be consulted upon request by either Party to reflect on and decide about:

- (a) longer timeframes for compliance;
- (b) alternative import conditions in the context of equivalence; and
- (c) technical assistance activities.