

## **CHAPTER 7**

### **SANITARY AND PHYTOSANITARY MEASURES**

#### **Article 1 Objectives**

The objectives of this Chapter are to:

- (a) uphold and enhance implementation of the *SPS Agreement* and applicable international standards, guidelines and recommendations developed by the Codex Alimentarius Commission (“Codex”), the World Organisation for Animal Health (“OIE”) and under the framework of the International Plant Protection Convention (“IPPC”);
- (b) facilitate trade between the Parties through establishing a mechanism to address, and where possible resolve, market access matters while protecting human, animal or plant life or health in the Areas of the Parties;
- (c) provide a means to improve communication, consultation and cooperation between the Parties on sanitary and phytosanitary matters; and
- (d) strengthen collaboration between the Parties in relevant international bodies that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

#### **Article 2 Scope**

This Chapter shall apply to all sanitary or phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

### **Article 3 Definitions**

For the purposes of this Chapter:

- (a) **Implementing Arrangements** means subsidiary documents to this Chapter which set out mutually determined mechanisms for applying, or outcomes derived from applying, the principles and processes outlined in this Chapter;
- (b) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the *WTO Agreement*;
- (c) the definitions in Annex A of the *SPS Agreement* are incorporated into and made part of this Chapter, *mutatis mutandis*; and
- (d) the relevant definitions developed by Codex, OIE and under the framework of the IPPC shall apply in the implementation of this Chapter.

### **Article 4 International Obligations**

Nothing in this Chapter or any Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the *SPS Agreement*.

### **Article 5 Competent Authorities and Contact Points**

1. The competent authorities of the Parties are those authorities that are responsible for the implementation of matters within the scope of this Chapter, as identified in the first Implementing Arrangement to be known as "Implementing Arrangement 1".

2. At the request of either Party, competent authorities of the Parties shall jointly consider any matters relating to the implementation of this Chapter, including:

- (a) establishing technical working groups to identify and address relevant technical and scientific issues;
- (b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which give practical effect to the provisions of this Chapter in order to facilitate trade between the Parties;
- (c) establishing, monitoring and reviewing work plans which contribute to achieving the objectives of this Chapter; and
- (d) reporting, as required, to the Joint Commission on their activities within the scope of this Chapter.

3. Each Party shall designate a contact point for its competent authorities, which shall be set out in Implementing Arrangement 1.

4. When the competent authorities need to consider any matters relating to the implementation of this Chapter as provided for in Paragraph 2, such consideration may be carried out in person or via teleconference, video-conference or any other means mutually determined by the Parties. The competent authorities may also address issues through correspondence, including via electronic communication.

5. The Parties shall inform each other of any significant changes in the structure, organisation and division of responsibility within its competent authorities.

## **Article 6 Implementing Arrangements**

1. Consistent with Paragraph 2(b) of Article 5, the Implementing Arrangements shall set out understandings reached, including in relation to competent authorities, contact points, equivalence, adaptation to regional conditions and verification as provided for in Articles 5, 7, 8 and 9.
2. Where Implementing Arrangements have been adopted, they shall be applied to trade between the Parties.
3. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to do so within a reasonable period of time as mutually determined by the Parties.

## **Article 7 Equivalence**

1. The Parties may make determinations of equivalence consistent with the *SPS Agreement* and in particular Article 4 of the *SPS Agreement* which provides for the recognition of sanitary or phytosanitary measures as equivalent where the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection. The determination of equivalence may be in relation to an individual measure and/or group of measures and/or systems applicable to a sector or part of a sector.
2. The Parties may agree the principles and procedures applicable to the determinations of equivalence made in accordance with Paragraph 1, and any such agreed principles and procedures shall be recorded in an Implementing Arrangement.
3. Any determination of equivalence shall be recorded in an Implementing Arrangement.

## **Article 8**

### **Adaptation to Regional Conditions**

1. The Parties may make determinations in relation to regionalisation, pest-free areas, areas of low pest prevalence, zoning and compartmentalisation consistent with the *SPS Agreement*, and in particular Article 6 of the *SPS Agreement*. Such determinations shall be consistent with relevant OIE and IPPC standards which provide, *inter alia*, for the recognition of pest-free areas or areas of low pest prevalence where the exporting Party objectively demonstrates to the importing Party that such areas are, and are likely to remain, pest-free areas or areas of low pest prevalence. These determinations may be made at various levels, including farms and processing establishments, which have appropriate sanitary or phytosanitary measures in place.

2. The Parties may agree the principles and procedures applicable to the determinations regarding adaptation to regional conditions made in accordance with Paragraph 1, and any such agreed principles and procedures shall be recorded in an Implementing Arrangement.

3. Any determinations in relation to regionalisation, pest-free areas, areas of low pest prevalence, zoning and compartmentalisation shall be recorded in an Implementing Arrangement.

## **Article 9**

### **Verification**

1. In order to maintain confidence in the effective implementation of this Chapter, each Party may carry out verification and audit of the exporting Party's system of regulating compliance with sanitary and phytosanitary requirements applicable to the trade. Such verification and audit procedures shall be risk-based and proportionate to the record of compliance. Verification and audit may include

reviews of the exporting Party's sanitary and phytosanitary system, on-site visits to a sample of establishments and/or verification of a proportion of imports from the exporting Party.

2. The Parties may agree the principles and guidelines applicable to any verification or audit, taking account of the relevant domestic law of the exporting Party. Any such agreed principles and guidelines shall be recorded in an Implementing Arrangement.

### **Article 10 Emergency Measures**

A Party may, on serious human, animal or plant life or health grounds, take emergency measures necessary for the protection of human, animal or plant life or health. Within 24 hours of a Party taking any emergency measures, such measures shall be notified to the contact point of the other Party. On request of either Party, consultations between the competent authorities regarding the situation shall be held within eight days of receipt of the request by the contact point, unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

### **Article 11 Notification**

1. The Parties shall notify each other in a timely and appropriate manner in writing through the contact points of any significant food safety issue or change in animal health, plant health or pest status in their Area that is relevant to existing trade.

2. Where one Party notifies the other Party of non-compliance of imported consignments with sanitary or phytosanitary measures, the Parties shall cooperate as

follows, drawing on the guidelines of relevant international organisations where available:

- (a) where significant non-compliance with sanitary or phytosanitary measures arises, the importing Party shall notify as soon as possible the exporting Party of the consignment details; and
- (b) the Parties should consult to ensure that appropriate remedial actions are undertaken by the Parties to address the area of non-compliance.

3. Unless specifically required by its domestic law or policies, the importing Party shall avoid suspending trade based on one non-compliant consignment and should contact the exporting Party to ascertain how the non-compliance has occurred.

#### **Article 12 Explanation of Measures**

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with the other Party, it may, through the contact points, request a detailed explanation of the sanitary or phytosanitary measure including information on the technical justification for the measure. The other Party shall respond promptly to any requests for such explanations.

2. Either Party may request consultations with the other Party in relation to the same matter for which an explanation has been provided pursuant to Paragraph 1, and such consultations shall be held as soon as practicable.

#### **Article 13 Cooperation**

The Parties may explore opportunities for further cooperation, collaboration and information exchange on sanitary or

phytosanitary matters of mutual interest consistent with this Chapter, including in relevant international standard-setting bodies.

#### **Article 14 Consultations**

Any requests for consultations or consultations held pursuant to Articles 10, 11 or 12 shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the *WTO Dispute Settlement Understanding*.