

## CHAPTER 5

### SANITARY AND PHYTOSANITARY MEASURES

#### ARTICLE 140

##### Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health in the territory of the Parties while facilitating trade between them under the scope of the implementation of this Chapter;
- (b) collaborate for the further implementation of the SPS Agreement;
- (c) ensure that sanitary and phytosanitary measures do not create unjustified barriers to trade between the Parties;
- (d) consider the asymmetries between the regions;

- (e) enhance cooperation in the sanitary and phytosanitary field in line with Part III of this Agreement, with the aim of strengthening the capacities of a Party on sanitary and phytosanitary matters in order to improve access to the market of the other Party whilst safeguarding the level of protection of humans, animals and plants; and
- (f) progressively implement the region to region approach in trade of goods subject to sanitary and phytosanitary measures.

## ARTICLE 141

### Multilateral Rights and Obligations

The Parties reaffirm their rights and obligations under the SPS Agreement.

## ARTICLE 142

### Scope

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

2. This Chapter shall not apply to the standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement.
3. Additionally, this Chapter shall apply to the cooperation on animal welfare matters.

## ARTICLE 143

### Definitions

For the purposes of this Chapter, the definitions contained in Annex A of the SPS Agreement shall apply.

## ARTICLE 144

### Competent Authorities

The Competent Authorities of the Parties are the authorities competent for the implementation of this Chapter, as provided for in Annex VI (Competent Authorities). The Parties shall, in accordance with Article 151 of this Chapter, inform each other of any change concerning such Competent Authorities.

## ARTICLE 145

### General Principles

1. The sanitary and phytosanitary measures applied by the Parties shall follow the principles established in Article 3 of the SPS Agreement.
2. The sanitary and phytosanitary measures cannot be used so as to create unjustified barriers to trade.
3. The procedures established under the scope of this Chapter shall be applied in a transparent manner, without undue delays and in conditions and requirements including costs, which shall be no higher than the actual cost of the service and be equitable in relation to any fee charged on like domestic products of the Parties.
4. The Parties will neither use the procedures mentioned in paragraph 3 nor the requests of additional information to delay the access to the market without scientific and technical justification.

## ARTICLE 146

### Import Requirements

1. The exporting Party shall ensure that products exported to the importing Party comply with the sanitary and phytosanitary requirements of the importing Party.
2. The importing Party shall ensure that its import conditions are applied in a proportional and non discriminatory manner.

## ARTICLE 147

### Trade Facilitation

1. List of establishments:
  - (a) For the import of animal products, the exporting Party shall inform the importing Party of its list of establishments complying with the importing Party's requirements;

- (b) Upon request of the exporting Party, accompanied by the appropriate sanitary guarantees, the importing Party shall approve establishments as referred to in Annex VII (Requirements and Provisions for Approval of Establishments for Products of Animal Origin) which are situated on the territory of the exporting Party, without prior inspection of individual establishments. Such approval shall be consistent with the requirements and provisions set out in Annex VII, and it is limited to those categories of products for which imports are authorised;
  - (c) The sanitary guarantees referred in this Article may include relevant and justified information to ensure the sanitary status of the live animals and animal products to be imported;
  - (d) Unless additional information is requested, the importing Party shall take the necessary legislative or administrative measures, in accordance with its applicable legal procedures, to allow import on that basis within forty working days after having received the request of the exporting Party accompanied by the appropriate sanitary guarantees;
  - (e) The importing Party will regularly submit a record of rejected requests for approval, including information about the non-conformities upon which the rejection to approve an establishment was based.
2. Import checks and inspection fees: any fees imposed for the procedures on imported products may only cover the cost incurred by the Competent Authority for performing import checks; they shall be no higher than the actual cost of the service and shall be equitable in relation to any fees charged on like domestic products.

## ARTICLE 148

### Verifications

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter and within its scope, each Party has the right to:
  - (a) carry out verification of all or part of the other Party's authorities' control system, in accordance with the guidelines described in Annex VIII (Guidelines for Conducting Verifications). The expenses of such verification shall be borne by the Party carrying out the verification; and
  - (b) receive information from the other Party about its control system and be informed of the results of the controls carried out under that system.
2. The Parties shall share the results and conclusions of the verifications carried out in the territory of the other Party and make them publicly available.
3. When the importing Party decides to carry out a verification visit to the exporting Party, this visit shall be notified to the other Party at least sixty working days before such verification is carried out, except in emergency cases or if the Parties concerned agree differently. Any modification to this visit shall be agreed by the Parties concerned.

## ARTICLE 149

### Measures Linked to Animal and Plant Health

1. The Parties shall recognise the concept of pest- or disease-free areas and areas of low pest or disease prevalence, in accordance with the SPS Agreement as well as the standards, guidelines or recommendations of the World Organisation for Animal Health (hereinafter referred to as the "OIE") and the International Plant Protection Convention (hereinafter referred to as the "IPPC"). The Sub-Committee referred to in Article 156 of this Chapter may define further details for the procedure for the recognition of such areas, taking into account the SPS Agreement, the OIE and the IPPC relevant standards, guidelines or recommendations. This procedure will include situations related to outbreaks and reinfestations.
2. When determining pest- or disease-free areas and areas of low pest or disease prevalence, the Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in such areas.
3. The Parties shall establish close cooperation on the determination of pest- or disease-free areas and areas of low pest and disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the determination of such areas.



4. When determining such areas, whether for the first time or after an outbreak of an animal disease or a re-introduction of a plant pest, the importing Party shall in principle base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement, the OIE and the IPPC relevant standards, guidelines or recommendations, and take into consideration the determination made by the exporting Party.
5. If the importing Party does not accept the above mentioned determination made by the exporting Party, it shall explain the reasons and shall be ready to enter into consultations.
6. The exporting Party shall provide the necessary evidence 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.
7. The Parties recognise the principle of compartmentalisation of the OIE and pest-free production places and sites of the IPPC. They will consider their future recommendations on the matter and the Sub-Committee set up in Article 156 of this Chapter will recommend accordingly.

## ARTICLE 150

### Equivalence

Through the Sub-Committee on Sanitary and Phytosanitary Matters established by Article 156, the Parties may develop provisions on equivalence and will make recommendations according to the procedures set up in the institutional provisions of this Agreement.

## ARTICLE 151

### Transparency and Exchange of Information

The Parties shall:

- (a) pursue transparency as regards sanitary and phytosanitary measures applicable to trade;
- (b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and their application;
- (c) exchange information on matters related to the development and the application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties with a view to minimising their negative trade effects; and

- (d) communicate, upon request of a Party, the requirements that apply to the import of specific products.

## ARTICLE 152

### Notification and Consultation

1. Each Party shall notify in writing to the other Party, within three working days, any serious or significant risk to human, animal or plant life or health, including any food emergencies.
2. Notifications shall be made to the contact points set up in Annex IX (Contact Points and Web-Sites). Written notification means notification by mail, fax or e-mail.
3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, involving products for which trade takes place, consultations regarding the situation shall, on request, take place as soon as possible. Each Party shall endeavour, in such conditions, to provide all the information necessary to avoid disruptions to trade.
4. Consultations referred to in paragraph 3 could be held by e-mail, video, audio conference or any other means mutually agreed by the Parties. The requesting Party should ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties.

## ARTICLE 153

### Emergency Measures

1. In case of serious risk to human, animal or plant life or health, the importing Party may take, without previous notification, measures necessary for the protection of human, animal or plant life or health. For consignments in transit between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.
2. The Party taking the measures shall inform the other Party as soon as possible and in any case not later than one working day after the adoption of the measure. The Parties may request any information related to the sanitary and phytosanitary situation and measures adopted and the Parties shall answer as soon as the requested information is available.
3. Upon request of either Party and in accordance with the provisions of Article 152 of this Chapter, the Parties shall hold consultations regarding the situation within fifteen working days of the notification. These consultations will be carried out in order to avoid unnecessary disruptions to trade. The Parties may consider options for the facilitation of the implementation or the replacement of the measures.

## ARTICLE 154

### Cooperation and Technical Assistance

1. The cooperation and technical assistance measures required for the implementation of this Chapter are established in Article 62 of Title VI (Economic and Trade Development) of Part III of this Agreement.
2. The Parties will establish through the Sub-Committee on Sanitary and Phytosanitary Matters set up in Article 156 of this Chapter, a working programme, including the identification of cooperation and technical assistance necessities to build and/or strengthen the capacity of the Parties on human, animal, or plant health and food safety issues of common interest.

## ARTICLE 155

### Special and Differential Treatment

Any Republic of the CA Party may directly consult with the EU Party when it identifies a particular problem related to a proposed measure of the EU Party that may affect their trade. For such consultations, the decisions of the WTO/SPS Committee such as document G/SPS/33 and its modifications may be used as guidance.

## ARTICLE 156

### Sub-Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees).
2. The Sub-Committee may address any matter related to the rights and obligations of this Chapter. In particular, it shall have the following responsibilities and functions:
  - (a) recommend the development of the necessary procedures or arrangements for the implementation of this Chapter;
  - (b) to monitor the progress of the implementation of this Chapter;
  - (c) to provide a forum for discussion of problems arising from the application of certain sanitary or phytosanitary measures with a view to reaching mutually acceptable alternatives. To this end, the Sub-Committee shall be convened as a matter of urgency, at the request of a Party, so as to carry out consultations;
  - (d) to conduct, if necessary, the consultations established in Article 155 of this Chapter concerning the special and differential treatment;

- (e) to conduct, if necessary, the consultations established in Article 157 of this Chapter concerning the settlement of disputes arising under this Chapter;
  - (f) to promote cooperation on animal welfare between the Parties; and
  - (g) any other issue instructed by the Association Committee.
3. The Sub-Committee shall agree, at its first meeting, on its rules of procedure for approval by the Association Committee.

## ARTICLE 157

### Dispute Settlement

1. When a Party considers that a measure of the other Party is or might be contrary to the obligations under this Chapter, it may request technical consultations in the Sub-Committee established in Article 156. The Competent Authorities identified in Annex VI (Competent Authorities) will facilitate these consultations.

2. Unless otherwise agreed by the Parties to the dispute, when a dispute is the object of consultations in the Sub-Committee according to paragraph 1, those consultations shall replace the consultations foreseen in Article 310 of Title X (Dispute Settlement) of Part IV of this Agreement. Consultations in the Sub-Committee shall be deemed concluded within thirty days following the date of submission of the request, unless the consulting Parties agree to continue with the consultations. These consultations could be made via phone conference, videoconference, or any other means mutually agreed by the Parties.