

CHAPTER ...

SANITARY AND PHYTOSANITARY MEASURES

Article

Scope

1. This Chapter shall apply to the preparation, adoption and application of all SPS measures of a Party may, directly or indirectly affect trade among the Parties.
2. Nothing in this chapter shall affect the rights of the Parties under the TBT Chapter with respect to measures not within the scope of this chapter.

Article

Objectives

The objectives of this Chapter are to:

- a. enhance practical implementation of the principles and disciplines contained within SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organisations;
- b. to protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and ensure that SPS measures imposed by each Party do not create unnecessary obstacles to trade;
- c. provide a mean to strengthen communication, cooperation and resolution on SPS issues that affect trade between the Parties and other agreed matters of interest to the Parties, and
- d. promote greater transparency in and understanding in the application of each Party's SPS measures.

Article

Definitions

For the purposes of this Chapter:

1. WTO SPS Agreement means the WTO Agreement on the Application of Sanitary and Phytosanitary measures.
2. The definitions contained in Annex A of the WTO SPS Agreement shall apply.
3. The Parties may agree on other definitions for the application of this Chapter taking into consideration the glossaries and definitions of the relevant international organizations, such as the CODEX Alimentarius Commission (CODEX), World Organisation for Animal Health (OIE), and the International Plant Protection Convention (IPPC).

4. “Competent authorities” means those organizations recognised by each Party as responsible for developing, implementing and administering the SPS measures within its territory.

Article

General provisions

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Each Party commits to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measure with the intent to facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party.

Article

Competent Authorities and contact points

1. To ensure close and effective working relationships between the Parties in achieving objectives of this Chapter, the competent authorities are:
 - (a) In the case of Vietnam, competence authorities in control sanitary and phytosanitary issues shares between Governmental agencies. In this respect the following applies:
 - i. Ministry of Agriculture and Rural Development is responsible for animal and plant health. It administers surveillance and control to prevent the introduction of diseases of agricultural, economic and animal and human health importance and also a comprehensive program to control as well as prevent the incursion of diseases and pests of economic and plant health importance. For exporting animal and plant products, the Ministry is also responsible for inspection, quarantine and issuing certifications attesting to the agreed standards and requirements of importing Party.
 - ii. Ministry of Health, Ministry of Agriculture and Rural development, Ministry of Trade and Industry, in accordance with their respective competences, are responsible for food safety for human consumption. They administer surveillance and control which include developing national technical regulations, approval procedures, carrying out risk assessment of products, inspections of establishments to ensure the compliance with the agreed standards and requirements of importing Party and for importation. For export of foods, the Ministries are also responsible for inspection and issuing health certifications.

- (b) In the case of European Union, control is shared between the national services of the Member States and the European Commission. In this respect the following applies:
- i. As regards exports to Vietnam, the Member States are responsible for control of the production circumstances and requirements, including statutory inspections and issuing health and animal welfare certifications attesting to the agreed standards and requirements.
 - ii. As regards imports from Vietnam, the Member States are responsible for control of the compliance of the imports with the EU's import conditions.
 - iii. The Commission is responsible for overall co-ordination, inspection/audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the Internal European Market.
2. As of the date of entry into force, the competent authorities of each Party shall provide the 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 with responsibility for sanitary and phytosanitary matters;
 - (b) facilitating information exchange so as to enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures and their impact on trade in such goods between the Parties;
3. The Parties shall ensure the information provided under paragraphs 1 and 2 are kept up to date.

Article

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 a party to take decisions and measures in accordance with the criteria set out in article X "Measures linked to animal and plant health".
2. Each Party shall institute only measures that are scientifically justified, consistent with the risk involved and represent the least restrictive measures available and result in the minimum impediment to trade.
3. The importing Party shall ensure that its imports requirements and procedures are applied in a proportional and non-discriminatory manner.

4. The import procedures shall be set with the objectives to minimize negative trade effects and expedite the clearance process while satisfying the importing Party requirements and procedures.
5. The importing Party shall give full transparency on its import requirements and procedures.
6. The exporting Party shall ensure the compliance of the import requirements and procedures of the importing Party.
7. The Parties shall establish and update lists of regulated pests, using scientific names, and make such lists available to the other Party.

Phytosanitary import requirements shall be restricted to measures ensuring the respect of the appropriate level of protection of the importing Party, and limited to the regulated pests of concern of the importing Party.

Without prejudice to provisions of Article 6 of the IPPC, the Parties shall not require phytosanitary measures for non-regulated pests.

8. When a Pest risk analysis is required, this shall be carried out without undue delay after the initial request. In case of difficulty, the Parties shall agree within the SPS Committee referred to in Article X on a time schedule in which they shall initiate the process.
9. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with importations. These checks shall be carried out without undue delay and with a minimum trade disrupting effect. When products do not conform to the requirements of the importing Party, any action taken by the importing Party shall follow the international standards and should be proportionate to the risk involved.
10. 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, import checks or by mutual agreement between the Parties.
11. Any fees imposed for the procedures relating to the import of products under this chapter are equitable in relation to any fees charged on like domestic products and shall be no higher than the actual cost of the service.

Article

Verifications

1. In order to obtain or maintain confidence in the effective implementation of the provisions of this Chapter the importing party, within the scope of this Chapter, has the right to carry out verifications, meaning:
 - (a) to carry out verification, including by verifications visits to the exporting party, of 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 shall be borne by the Party carrying out the verification; and
 - (b) to require information from the exporting party about its control system and be informed of the results of the controls carried out under that system.
2. The Parties shall provide the results and conclusions of the verifications 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, this visit shall be notified to the other Party at least 60 working days before such verification be carried out, except if agreed otherwise. Any modification to this visit shall be mutually agreed by the Parties.
4. The draft report of verification shall be forwarded to the auditee within 45 working days after completion of the verifications. The auditee shall have 30 working days to comment on the draft report. Comments made by the auditee shall be attached to and, where appropriate included in the final report. However, where a significant public, animal or plant health risk has been identified during the verification, the auditee shall be informed as quickly as possible and in any case within 10 working days following the end of the verification.

Article

Procedure for listing of establishments

1. For approval upon request by the importing Party, for the import of products, the exporting Party shall inform the importing Party of its lists of establishments with satisfactory sanitary guarantees, according to the provisions set out in annex 1, to demonstrate compliance with the importing Party's requirements.
2. The importing Party shall approve establishments which are situated on the territory of the exporting Party, without prior inspection of individual establishments. If the importing Party rejects the request for approval, it should inform without delay the exporting Party of the elements and justifications upon which the decision was based.

3. Unless additional information is requested, the importing Party shall take the necessary measures in accordance with its applicable legal procedures to allow import on that basis within 45 working days after having received the request of the exporting Party.

Article

Measures linked to animal and plant health

1. The Parties recognise the concept 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 official animal health status as determined by the OIE.
2. The Parties recognise the concept 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 “SPS Committee” referred to in Article X shall define further details for the procedure for the recognition of the concepts referred to in paragraphs 1 and 2 taking into account the SPS Agreement, OIE and IPPC standards, guidelines or recommendations. The Parties shall also consider factors such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of the sanitary or phytosanitary controls.
4. When accepting the determination made by the exporting Party, the importing Party shall in principle base its own determination 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, OIE and IPPC standards, guidelines or recommendations. The importing Party will endeavour to provide its decision without undue delay after the initial request.
5. If the importing Party does not accept the determination made by the exporting Party, it shall explain the reasons and shall be ready to enter into consultations as soon as possible to reach a possible alternative solution.
6. The exporting Party shall provide relevant evidence in order to objectively demonstrate to the importing Party that the health status of the areas referred to in paragraphs 1 and 2 is likely to remain unchanged. For these purposes, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.

Article

Equivalence

1. The Parties recognise that the application of equivalence that principle set down in Article 4 of the SPS Agreement is an important tool for trade facilitation and has mutual benefits for both exporting and importing countries. A determination of equivalence may be made in relation to partial or full equivalence of sanitary and phytosanitary measures and systems.
2. The importing Party shall accept the sanitary and phytosanitary measures of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party's appropriate level of sanitary and phytosanitary protection. To facilitate a determination of equivalence, a Party shall, on request, advise the other Party of the objective of any relevant sanitary or phytosanitary measures.
3. The Parties shall, within three months after receipt request from exporting Party, initiate the consultation process of equivalent determination. The determination of equivalence shall be finalised without undue delay after the demonstration of equivalence of the proposed measures by the exporting Party. The importing Party shall accelerate the assessment taking into account any knowledge and past experience it has in trading with the exporting country to make the determination as efficiently as possible.
4. In case of multiple requests from the exporting Party, the Parties shall agree within the Committee referred to in Article [Committee on SPS] on a time schedule in which they shall initiate the process.
5. In accordance with the Article 9 of the SPS Agreement, the importing Party shall give full consideration to the requests by the exporting Party for appropriate technical assistance to facilitate the implementation of this Article. This assistance may *inter alia* be to help identify and implement measures which can be recognized as equivalent or to otherwise enhance market access opportunities.
6. The consideration by a Party of a request from another Party for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question. When an equivalence determination is made, it shall be formally recorded and apply to the trade between the Parties in the relevant area without delay.

Article

Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (“the SPS Committee”).
2. The Committee shall include representatives of the competent authorities of the Parties. All decisions made by the SPS-Committee shall be by mutual agreement.
3. The Committee shall meet in person within one year of the entry into force of this Agreement and shall meet at least annually thereafter or as mutually determined by the Parties. It shall establish its rules of procedures at its first meeting. It shall meet in person, via teleconference, video-conference, or through other means as mutually agreed by the Parties. The agenda shall be set up before the meetings. Parties shall share the chairmanship of the meeting.
4. The 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.
5. The SPS Committee may address any matter related to the effective functioning of this Chapter including to facilitate communication and to strengthen cooperation between the Parties. In particular it shall have the following responsibilities and functions:
 - a) Develop the necessary procedures or arrangements for the implementation of this Chapter.
 - b) Monitor the progress of implementation of this Chapter;
 - c) Provide a forum for discussion of problems arising from the application of certain sanitary or phytosanitary measures with a view to reaching mutually acceptable solutions and promptly addressing any matters that may create unnecessary obstacles to trade among the Parties;
 - d. Provide a forum to exchange information, expertise and experiences in the field of SPS matters;
 - e. Identify, initiate and review technical assistance projects and activities among the Parties;
 - f. Any other function that is mutually agreed between the Parties.

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, equivalency and alternative measures, and any other matter referred to under the above paragraphs.

Article

Transparency and Exchange of Information

1. The Parties shall:
 - (a) pursue transparency as regards SPS measures applicable to trade;
 - (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 the Parties with a view to minimising their negative trade effects;
 - (d) upon request of a Party, communicate the import requirements that apply for the import of specific products within fifteen working days ; and
 - (e) upon request of a Party, communicate progress on the application for the authorisation of specific products within fifteen working days.
2. When the information pursuant to paragraph 1 has been made available by notification to the WTO in accordance with its relevant rules and procedures or when the above information has been made available on the official, publicly accessible and fee free web-sites of the Parties, the information exchange shall be considered to have taken place.
3. All notifications under this Chapter shall be made to the contact points referred to under Article (Competent authorities and contact points).

Article

Consultations

1. Where a Party considers that a SPS measure affecting trade warrants further discussion, it may, through the contact points, request a full explanation of the SPS measure and if necessary request to hold consultations to resolve it. The other Party shall respond promptly to such requests.
2. Parties shall make every effort to reach an agreeable solution through consultations within a timeframe agreed upon. Should the consultations fail to resolve the matter, it shall be considered by SPS Committee.

Article

Emergency Measures

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

2. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, affecting commodities for which trade takes place, consultations regarding the situation shall, upon request, take place as soon as possible. In this case, each Party shall endeavor 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 twenty-four hours after the adoption of the measure. Either Party may request any information related to the sanitary and phytosanitary situation and any measures adopted. The other Party shall answer as soon as the requested information is available.
5. Upon request of either Party and in accordance with the provisions of Article (Consultations) the Parties shall hold consultations regarding the situation within (ten working days) of the notification. These consultations shall 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

Technical Assistance and Special and Differential Treatment

1. Technical assistance should be provided to address specific needs of Viet Nam, to comply with sanitary and phytosanitary measure(s) regulated by EU Party including food safety, plant health and animal health, and the use of international standards.
2. In application of Article 10 of the WTO SPS Agreement, for new sanitary and phytosanitary measures, while continuing to achieve the EU level of protection, the EU shall take into account the special needs of so as to maintain export opportunities. The “SPS Committee” referred to in Article X shall be consulted upon request to reflect and decide about:
 - longer timeframes for compliance;
 - alternative import conditions in the context of equivalence;
 - technical assistance activities.

Annex 1

Requirements and provisions for approval of establishments for products

1. The competent authority of the importing Party shall draw up lists of approved establishments and shall make these lists publicly available.
2. Requirements and procedures for approval:
 - a) The products concerned shall have been authorised by the competent authority of the importing Party. This authorisation shall include the import and certification requirements;
 - b) The competent authority of the exporting Party shall approve the establishments intended to export and provide the importing Party with satisfactory sanitary guarantees that the establishments meet the relevant requirements of the importing Party;
 - c) The competent authority of the exporting Party must have the power to suspend or withdraw the export approval of an establishment in the event of non-compliance.
 - d) The importing Party may carry out verifications in accordance with the provisions of Article X (Verifications of this Chapter as part of the approval procedure.

This verification shall concern the structure, organisation and powers of the competent authority responsible for the approval of the establishment and the sanitary guarantees regarding the compliance with the importing Party's requirements.

These checks may include on the spot inspection of a representative number of establishments appearing on the list or lists provided by the exporting Party.

- e) Based on the results of the verification provided for in (d), the importing Party may amend the list of establishments.