

## CHAPTER 9

### SANITARY AND PHYTOSANITARY MEASURES

#### Article 9.1: Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*, except as otherwise provided for in paragraph 2.

2. For the purposes of this Chapter:

**competent authority** means a government body of a Party responsible for measures or matters referred to in this Chapter;

**import check** means an inspection, examination, sampling, review of documentation, test, or procedure, including laboratory, organoleptic, or identity, conducted at the border or otherwise during the entry process by an importing Party or its representative to determine if a consignment complies with the sanitary or phytosanitary requirements of the importing Party;

**relevant international organizations** means the Codex Alimentarius Commission, the World Organization for Animal Health, the International Plant Protection Convention, and other international organizations as decided by the Committee on Sanitary and Phytosanitary Measures established under Article 9.17 (SPS Committee);

**relevant international standards, guidelines, or recommendations** means those defined in paragraph 3(a) through (c) of Annex A of the SPS Agreement and standards, guidelines, or recommendations of other international organizations as decided by the SPS Committee;

**risk management** means the weighing of policy alternatives in light of the results of risk assessment and, if required, selecting and implementing appropriate controls, which may include sanitary or phytosanitary measures;

**WTO SPS Committee** means the WTO Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement.

#### Article 9.2: Scope

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

### **Article 9.3: Objectives**

1. The objectives of this Chapter are to:
  - (a) protect human, animal, or plant life or health in the territories of the Parties while facilitating trade between them;
  - (b) reinforce and build upon the SPS Agreement;
  - (c) strengthen communication, consultation, and cooperation between the Parties, and particularly between the Parties' competent authorities;
  - (d) ensure that sanitary or phytosanitary measures implemented by a Party do not create unnecessary barriers to trade;
  - (e) enhance transparency in and understanding of the application of each Party's sanitary and phytosanitary measures;
  - (f) encourage the development and adoption of science-based international standards, guidelines, and recommendations, and promote their implementation by the Parties;
  - (g) enhance compatibility of sanitary or phytosanitary measures as appropriate; and
  - (h) advance science-based decision making.

### **Article 9.4: General Provisions**

1. The Parties affirm their rights and obligations under the SPS Agreement.
2. Sanitary or phytosanitary measures which conform to the relevant provisions of this Chapter are presumed to be consistent with the obligations of the Parties under Chapter 2 (National Treatment and Market Access for Goods), which relate to the use of sanitary or phytosanitary measures, and Article XX(b) of the GATT 1994 as incorporated into Article 32.1 (General Exceptions).
3. Sanitary or phytosanitary measures which conform to relevant international standards, guidelines, and recommendations are deemed to be necessary to protect human, animal, or plant life or health, and presumed to be consistent with the relevant provisions of this Chapter, Chapter 2 (National Treatment and Market Access for Goods), which relate to the use of sanitary or phytosanitary measures, and Article XX(b) of the GATT 1994 as incorporated into Article 32.1 (General Exceptions).

## **Article 9.5: Competent Authorities and Contact Points**

1. Each Party shall provide to the other Parties a list of its central level of government competent authorities. On request of a Party, and, if applicable, a Party shall provide contact information or written descriptions of the sanitary and phytosanitary responsibilities of its competent authorities.
2. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 30.5 (Agreement Coordinator and Contact Points).
3. Each Party shall promptly inform the other Parties of any change in its competent authorities or contact points.

## **Article 9.6: Science and Risk Analysis**

1. The Parties recognize the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles.
2. Each Party has the right to adopt or maintain sanitary and phytosanitary measures necessary for the protection of human, animal, or plant life or health, provided that those measures are not inconsistent with the provisions of this Chapter.
3. Each Party shall base its sanitary and phytosanitary measures on relevant international standards, guidelines, or recommendations provided that doing so meets the Party's appropriate level of sanitary or phytosanitary protection (appropriate level of protection). If a sanitary or phytosanitary measure is not based on relevant international standards, guidelines, or recommendations, or if relevant international standards, guidelines, or recommendations do not exist, the Party shall ensure that its sanitary or phytosanitary measure is based on an assessment, as appropriate to the circumstances, of the risk to human, animal, or plant life or health.
4. Recognizing the Parties' rights and obligations under the relevant provisions of the SPS Agreement, this Chapter does not prevent a Party from:
  - (a) establishing the level of protection it determines to be appropriate;
  - (b) establishing or maintaining an approval procedure that requires a risk assessment to be conducted before the Party grants a product access to its market; or
  - (c) adopting or maintaining a sanitary or phytosanitary measure on a provisional basis if relevant scientific evidence is insufficient.
5. If a Party adopts or maintains a provisional sanitary or phytosanitary measure if relevant scientific evidence is insufficient, the Party shall within a reasonable period of time:

- (a) seek to obtain the additional information necessary for a more objective assessment of risk;
  - (b) complete the risk assessment after obtaining the requisite information; and
  - (c) review and, if appropriate, revise the provisional measure in light of the risk assessment.
6. Each Party shall ensure that its sanitary and phytosanitary measures:
- (a) are applied only to the extent necessary to protect human, animal, or plant life or health;
  - (b) are based on relevant scientific principles, taking into account relevant factors, including, if appropriate, different geographic conditions;
  - (c) are not maintained if there is no longer a scientific basis;
  - (d) do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties; and
  - (e) are not applied in a manner that constitutes a disguised restriction on trade between the Parties.
7. Each Party shall conduct its risk assessment and risk management with respect to a sanitary or phytosanitary regulation within the scope of Annex B of the SPS Agreement in a manner that is documented and provides the other Parties and persons of the Parties an opportunity to comment, in a manner to be determined by that Party.
8. In conducting its risk assessment and risk management, each Party shall:
- (a) ensure that each risk assessment it conducts is appropriate to the circumstances of the risk to human, animal, or plant life or health, and takes into account the available relevant scientific evidence, including qualitative and quantitative data and information; and
  - (b) take into account relevant guidance of the WTO SPS Committee and the relevant international standards, guidelines, and recommendations of the relevant international organization.
9. Each Party shall consider, as a risk management option, taking no measure if that would achieve the Party's appropriate level of protection.

10. Without prejudice to Article 9.4 (General Provisions), each Party shall select a sanitary or phytosanitary measure that is not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate. For greater certainty, a sanitary or phytosanitary measure is not more trade restrictive than required unless there is another option that is reasonably available, taking into account technical and economic feasibility, that achieves the Party's appropriate level of protection and is significantly less restrictive to trade.

11. If an importing Party requires a risk assessment to evaluate a request from an exporting Party to authorize importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the requisite information from the exporting Party, the importing Party shall endeavor to facilitate the evaluation of the request for authorization by scheduling work on this request in accordance with the procedures, policies, resources, laws, and regulations of the importing Party.

12. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of a request to authorize trade, including the status of any risk assessment or other evaluation the Party requires to authorize trade, and of any delay that occurs during the process.

13. If the importing Party, as a result of a risk assessment, adopts a sanitary or phytosanitary measure that may facilitate trade between the Parties, the importing Party shall implement the measure without undue delay.

14. If a Party has reason to believe that a specific sanitary or phytosanitary measure adopted or maintained by another Party is constraining, or has the potential to constrain, its exports and the measure is not based on a relevant international standard, guideline, or recommendation, or a relevant standard, guideline, or recommendation does not exist, the Party adopting or maintaining the measure shall provide an explanation of the reasons and pertinent relevant information regarding the measure upon request by the other Party.

15. Without prejudice to Article 9.14 (Emergency Measures), no Party shall stop the importation of a good of another Party for the reason that the importing Party is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the other Party when the review was initiated.<sup>1</sup>

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<sup>1</sup> For greater certainty, a Party is not stopping imports because it is undertaking a review if the Party stops imports on the basis that the review identifies that the information necessary to permit the importation of a good is lacking.

## **Article 9.7: Enhancing Compatibility of Sanitary and Phytosanitary Measures**

1. Each Party recognizes that enhancing the compatibility of its sanitary and phytosanitary measures with the measures of another Party may facilitate trade while maintaining each Party's right to determine its appropriate level of protection.
2. To reduce unnecessary obstacles to trade, each Party shall endeavor to enhance the compatibility of its sanitary and phytosanitary measures with the sanitary and phytosanitary measures of the other Parties, provided that doing so does not reduce each Party's appropriate level of protection. In so doing, each Party:
  - (a) is encouraged to consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties in the development, modification, or adoption of their sanitary or phytosanitary measures; and
  - (b) shall have the objective, among others, of making its sanitary and phytosanitary measures equivalent or, if appropriate, identical to those of the other Parties, but only to the extent that doing either does not reduce the Party's appropriate level of protection.

## **Article 9.8: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence**

1. The Parties recognize that adaptation to regional conditions, including regionalization, zoning, and compartmentalization, is an important means to facilitate trade.
2. The Parties shall endeavour to cooperate on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.
3. In making a determination regarding regional conditions, each Party shall take into account the relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.
4. If an importing Party receives from an exporting Party a request for a determination of regional conditions and determines that the exporting Party has provided sufficient information, the importing Party shall initiate an assessment without undue delay. For this purpose, each exporting Party shall provide reasonable access in its territory to the importing Party for inspection, testing, and other relevant procedures.
5. The importing Party shall inform the exporting Party of receipt of information provided by the exporting Party under paragraph 4. The importing Party shall evaluate the information

provided by the exporting Party and shall inform the exporting Party whether the information is sufficient to evaluate a request for adaptation to regional conditions. The importing Party may request additional relevant information or an on-site verification, if justified, based on the results of the ongoing evaluation.

6. When an importing Party initiates an evaluation of a request for a determination of regional conditions under paragraph 4, that Party shall explain, on request of the exporting Party, its process for making the determination of regional conditions without undue delay.

7. On request from the exporting Party, the importing Party's competent authority shall consider whether a streamlined process may be used for the determination of regional conditions.

8. If the importing and exporting Parties' competent authorities decide that a request for a determination of regional conditions is a priority, and the importing Party has received sufficient information, as referenced in paragraph 4, the competent authorities involved shall establish reasonable timeframes based on the circumstances and may establish a work plan under which the importing Party, under normal circumstances<sup>2</sup>, may finalize the determination. The determination may be positive or negative.

9. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the evaluation of the exporting Party's request for a determination of regional conditions.

10. The importing Party shall finalize the evaluation and all necessary stages involved for the determination of regional conditions of the exporting Party without undue delay once the importing Party's competent authority determines that it has received sufficient information from the exporting Party.

11. If the evaluation results in the recognition of specific regional conditions of an exporting Party, the importing Party shall communicate this determination to the exporting Party in writing and shall apply this recognition without undue delay.

12. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognize pest- or disease-free areas or areas of low pest and disease prevalence, the importing Party shall provide in writing to the exporting Party with the rationale for its determination.

13. The importing and exporting Parties involved in a particular determination of regional conditions may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

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<sup>2</sup> For the purposes of this paragraph, "normal circumstances" do not include any extraordinary or unanticipated situations, such as unanticipated risks to human, animal, or plant life or health, or resource or regulatory constraints.

14. If there is an incident that results in a change of status, the exporting Party shall inform the importing Party. If the importing Party modifies or revokes the determination recognizing regional conditions as a result of the change in status, on request of the exporting Party, the Parties involved shall cooperate to assess whether the determination can be reinstated.

15. The Parties involved in a determination recognizing regional conditions shall, if mutually decided, report the outcome to the SPS Committee.

### **Article 9.9: Equivalence**

1. The Parties recognize that a positive determination of equivalence of sanitary and phytosanitary measures is an important means to facilitate trade.

2. Further to Article 4 of the SPS Agreement, the Parties shall apply a recognition of equivalence to a specific sanitary or phytosanitary measure, or to the extent feasible and appropriate, to a group of measures or on a systems-wide basis. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures, or measures on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

3. On request of the exporting Party, the importing Party shall explain the objective and rationale of its sanitary or phytosanitary measure and identify the risk the sanitary or phytosanitary measure is intended to address.

4. When an importing Party receives a request for a determination of equivalence from an exporting Party and determines that the exporting Party has provided sufficient information, the importing Party shall initiate an assessment without undue delay.

5. When an importing Party initiates an equivalence assessment, the importing Party shall explain, on request of the exporting Party, and without undue delay, its process for making the determination of equivalence, and, if the determination results in recognition, its plan for enabling trade.

6. On request of the exporting Party, the importing Party's competent authority shall consider whether a streamlined process may be used to determine equivalence.

7. If the importing and exporting Parties' competent authorities decide that a request for a determination of equivalence is a priority, and the importing Party has received sufficient information, as referenced in paragraph 4, the competent authorities involved shall establish reasonable timeframes based on the circumstances and may establish a work plan under which the



importing Party, under normal circumstances<sup>3</sup>, may finalize the determination. The determination may be positive or negative.

8. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the equivalence assessment.

9. Once the importing Party determines that the information provided by the exporting Party is sufficient to finalize the assessment, the importing Party shall finalize the assessment and communicate the results of the assessment to the exporting Party without undue delay.

10. In determining equivalence, an importing Party shall take into account available knowledge, information, and relevant experience, including knowledge acquired through experience with the exporting Party's relevant competent authority.

11. An importing Party shall recognize the equivalence of a sanitary or phytosanitary measure, group of measures, or system, even if the measure, group of measures, or system differs from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure achieves the importing Party's appropriate level of protection, taking into account outcomes that the exporting Party's measure, group of measures, or system achieves.

12. If an importing Party adopts a measure that recognizes the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures, or measures on a systems-wide basis, the importing Party shall communicate that measure to the exporting Party in writing and implement the measure without undue delay.

13. The Parties involved in an equivalence determination that results in recognition shall, if mutually decided, report the outcome to the SPS Committee.

14. If an assessment does not result in the recognition of equivalence, the importing Party shall communicate that determination and its rationale to the exporting Party without undue delay.

15. If a Party plans to adopt, modify, or repeal a measure that is the subject of a sanitary or phytosanitary equivalence recognition, the following applies:

- (a) The Party shall notify the other Party involved in the recognition of its plan. The notification should take place at an early appropriate stage where any comments submitted by the other Party can be taken into account, including by revising its plan. Upon request of a Party involved in the recognition, the Parties involved shall discuss whether the adoption, modification, or repeal of the measure may affect the equivalence recognition.

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<sup>3</sup> For the purposes of this paragraph, "normal circumstances" do not include any extraordinary or unanticipated situations, such as unanticipated risks to human, animal or plant life or health, or resource or regulatory constraints.

- (b) The Party shall, upon request of the other Party, provide information and rationale concerning its planned adoption, modification, or repeal. The other Party shall review any information provided to it and submit any comments to the Party that plans to adopt, modify, or repeal the measure, without undue delay.
- (c) The importing Party shall not revoke its recognition of equivalence on the basis that an adoption, modification, or repeal of the measure is pending.

16. If a Party adopts, modifies, or repeals a measure that is the subject of a sanitary or phytosanitary recognition of equivalence, the importing Party shall maintain its recognition of equivalence provided that the exporting Party's measures concerning the good continue to achieve the appropriate level of protection of the importing Party. Upon request of a Party, the Parties involved in the recognition shall promptly discuss the determination made by the importing Party.

17. If a Party adopts, modifies, or repeals a measure that is the subject of a sanitary or phytosanitary recognition of equivalence, the importing Party shall:

- (a) continue to accept the recognition of equivalence until it has communicated to the exporting Party whether other requirements must be met to maintain equivalence; and
- (b) if other requirements under subparagraph (a) must be met, upon request, discuss those requirements with the exporting Party.

#### **Article 9.10: Audits<sup>4</sup>**

1. To determine an exporting Party's ability to comply with the importing Party's sanitary or phytosanitary requirements or to verify an exporting Party's compliance with its sanitary or phytosanitary requirements that the importing Party has determined to be equivalent, the importing Party shall have the right to audit the exporting Party's competent authorities, including associated or designated inspection systems in accordance with this Article. That audit may include an assessment of the competent authorities' control programs, including, if appropriate and feasible, the inspection programs, audit programs, or on-site inspections of facilities or other agriculture production areas.

2. An audit must be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

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<sup>4</sup> For greater certainty, the Parties recognize that an inspection of a facility and other premises relevant to the inspection in a Party's territory in order to verify compliance with applicable sanitary or phytosanitary measures is a distinct activity from an audit and the provisions of this Article do not apply to that inspection.

3. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.
4. Prior to the commencement of an audit, the auditing and audited Parties shall discuss: the rationale, objectives, and scope of the audit; and the criteria or requirements against which the audited Party will be assessed. Also at that time, the auditing and audited Parties shall decide the itinerary and procedures for conducting the audit.
5. Unless the auditing and audited Parties decide otherwise, the auditing Party shall hold an exit meeting at the end of the audit that includes an opportunity for the competent authority of the audited Party to raise questions or seek clarification on the preliminary findings and observations provided at the meeting.
6. The auditing Party shall provide the audited Party the draft written audit report, including its initial findings. The auditing Party shall provide the audited Party the opportunity to comment on the accuracy of the draft audit report and shall take any such comments into account before the auditing Party finalizes its report. The auditing Party shall provide a final audit report setting out its conclusions in writing to the audited Party within a reasonable period of time.
7. In undertaking an audit in cases in which an importing Party has recognized equivalence on a system-wide basis, the importing Party shall:
  - (a) conduct the audit to verify that the audited Party's system achieves an equivalent outcome to the sanitary or phytosanitary appropriate level of protection of the importing Party; and
  - (b) audit against the exporting Party's implementation of the equivalent oversight and control system.
8. If a Party has recognized another Party's system as equivalent, the competent authorities of the Parties involved in the recognition may discuss schedules of the audits of that system.
9. A decision or action taken by the auditing Party as a result of the audit must be supported by objective evidence and data that can be verified, taking into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party's regulatory controls. The auditing Party shall, on request of the audited Party, provide this objective evidence and data.
10. The costs incurred by the auditing Party shall be borne by the auditing Party, unless the auditing and audited Parties decide otherwise.
11. The auditing Party and audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

12. If the auditing Party makes a final audit report publicly available, the final audit report must incorporate, or be accompanied by, the comments or written response to the draft report provided by the competent authority of the audited Party.
13. The Parties may decide, if possible, to:
  - (a) collaborate on audits of non-Parties; or
  - (b) share the results of audits of non-Parties.

### **Article 9.11: Import Checks**

1. An importing Party may use import checks to assess compliance with its sanitary and phytosanitary measures and to obtain information to assess risk or to determine the need for, develop, or periodically review a risk-based import check.
2. Each Party shall ensure that its import checks are based on the risks associated with importations, and that its import checks are carried out without undue delay.
3. A Party shall make available to another Party, on request, information on its import procedures and its basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations.
4. A Party may change the frequency of its import checks as a result of experience gained through import checks or as a result of actions or discussions provided for in this Chapter.
5. An importing Party shall provide to another Party, on request, information regarding the analytical methods, quality controls, sampling procedures, and facilities that the importing Party uses to test a good. The importing Party shall ensure that any testing is conducted using appropriate and validated methods under a quality assurance program that is consistent with international laboratory standards. The importing Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample, and the analytical methods used on the test sample.
6. Each Party, with respect to any import check that it conducts, shall:
  - (a) limit any requirements regarding individual specimens or samples of an import to those that are reasonable and necessary;
  - (b) ensure that any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Party or non-Party and should be no higher than the actual cost of the service;

- (c) use criteria for selecting facilities at which an import check is conducted:
  - (i) so that the location does not cause unnecessary inconvenience to an applicant or its agent, and
  - (ii) so that the integrity of the good is preserved, except for the individual specimens or samples obtained pursuant to the requirements referred to in subparagraph (a).

7. An importing Party shall ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure is limited to what is reasonable and necessary in response to the non-conformity.

8. If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the importing Party shall provide a notification, if practicable by electronic means, about the adverse result to at least one of the following: the importer or its agent; the exporter; or the manufacturer.

9. When the importing Party provides a notification pursuant to paragraph 8, the Party shall:

- (a) include in its notification:
  - (i) the reason for the prohibition or restriction,
  - (ii) the legal basis or authorization for the action, and
  - (iii) information on the status of the affected goods including, if applicable:
    - (A) relevant laboratory results and laboratory methodologies, if requested and possible to include;
    - (B) in the case of pest interceptions, an identification of the pests at the species level, if available; and
    - (C) information on the disposition of goods, if appropriate; and
- (b) transmit the notification as soon as possible, and, in any event, under normal circumstances no later than five days after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration or subject to ongoing law enforcement action.

10. An importing Party that prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check shall provide an opportunity for a review of the

decision and consider any relevant information submitted to assist in the review.<sup>5</sup> The review request and information should be submitted to the importing Party within a reasonable period of time.

11. Paragraph 9 does not prevent an importing Party from disposing of goods which are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal, or plant life or health in the Party's territory.

12. If an importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the pattern of non-conformity.

13. On request, an importing Party shall provide to the exporting Party available information on goods of the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party.

#### **Article 9.12: Certification**

1. The Parties recognize that assurances with respect to sanitary or phytosanitary requirements may be provided through means other than certificates.

2. Each Party shall ensure that at least one of the following conditions is satisfied before imposing a sanitary or phytosanitary certification requirement:

- (a) the certification requirement is based on the relevant international standards; or
- (b) the certification requirement is appropriate to the circumstances of risks to human, animal, or plant life or health at issue.<sup>6</sup>

3. If an importing Party requires certification for trade in a good, that Party shall ensure that the certification requirement is applied only to the extent necessary to meet its appropriate level of protection.

4. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

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<sup>5</sup> For greater certainty, a Party shall provide an opportunity for review to at least one of the following: the importer or its agent, the exporter, or the manufacturer of the good, and the review shall be conducted by the customs administration or the relevant competent authority.

<sup>6</sup> For greater certainty, a certification requirement concerning non-sanitary or phytosanitary requirements, including the quality of a product or information relating to consumer preferences, does not constitute a certification requirement appropriate to the circumstances of a risk to human, animal, or plant life or health.

5. An importing Party shall limit attestations and information it requires on the certificates to essential information that is necessary to provide assurances to the importing Party that its appropriate level of protection has been met.
6. An importing Party shall provide to another Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.
7. The Parties may decide to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, taking into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.
8. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

### **Article 9.13: Transparency**

1. This Article applies to sanitary or phytosanitary measures that constitute sanitary or phytosanitary regulations for the purposes of Annex B of the SPS Agreement.
2. The Parties recognize the value of sharing information about their sanitary and phytosanitary measures on an ongoing basis, and of providing other Parties and persons of the Parties with the opportunity to comment on their proposed sanitary or phytosanitary measures.
3. In implementing this Article, each Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.
4. A Party shall notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of another Party, including any that conforms to international standards, guidelines, or recommendations, by using the WTO SPS notification submission system as a means of notifying the other Parties.
5. Unless urgent problems of human, animal, or plant life or health protection arise or threaten to arise requiring the adoption of an emergency measure, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for the other Parties or persons of the Parties to provide written comments on the proposed measure, other than proposed legislation, after it makes the notification under paragraph 4. The Party shall consider any reasonable request from another Party or persons of the Parties to extend the comment period. On request of another Party, the Party shall respond to the written comments of the other Party in an appropriate manner.
6. The Party shall make available on a free, publicly available website or official journal, the proposed sanitary or phytosanitary measure notified under paragraph 4, the legal basis for the

measure, and the written comments or a summary of the written comments that the Party has received from the public on the proposed measure.

7. If a Party proposes a sanitary or phytosanitary measure that does not conform to a relevant international standard, guideline, or recommendation, the Party shall provide to another Party, on request, the relevant documentation that the Party considered in developing the proposed measure, including documented and objective scientific evidence related to the measure, such as risk assessments, relevant studies, and expert opinions.

8. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with another Party, on request and when appropriate during its regulatory process, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the Party's appropriate level of protection.

9. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official journal or website.

10. Each Party shall notify the other Parties of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Each Party shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. A Party shall also make available to another Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, significant written comments and relevant documentation considered to support the measure that were received during the comment period.

11. If a final sanitary or phytosanitary measure is substantively altered from the proposed measure, a Party shall also include in the notice of the final sanitary or phytosanitary measure that it publishes, an explanation of:

- (a) the objective and rationale of the measure and how the measure advances that objective and rationale; and
- (b) any substantive revisions that it made to the proposed measure.

12. An exporting Party shall notify the importing Party through the contact points referred to in Article 9.5 (Competent Authorities and Contact Points) in a timely and appropriate manner:

- (a) if it has knowledge of a significant sanitary or phytosanitary risk related to the export of a good from its territory;
- (b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;



- (c) of significant changes in the status of a regionalized pest or disease;
- (d) of new scientific findings of importance which affect the regulatory response with respect to food safety, pests, or diseases; and
- (e) of significant changes in food safety, pest, or disease management, control or eradication policies or practices that may affect trade.

13. If feasible and appropriate, a Party shall normally provide an interval of not less than six months between the date it publishes a final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to address an urgent problem of human, animal, or plant life or health protection or the measure facilitates trade.

14. A Party shall make available to another Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.

#### **Article 9.14: Emergency Measures**

1. If an importing Party adopts an emergency measure to address an urgent problem of human, animal or plant life or health that arises or threatens to arise, and applies it to the exports of another Party the importing Party shall promptly notify in writing each affected Party of that measure through the normal channels. The importing Party shall take into consideration any information provided by an affected Party in response to the notification.

2. If an importing Party adopts an emergency measure under paragraph 1, it shall review the scientific basis of that measure within six months and make available the results of the review to any Party on request. If the emergency measure is maintained after the review, because the reason for its adoption remains, the Party should review the measure periodically.

#### **Article 9.15: Information Exchange**

A Party may request information from another Party on a matter arising under this Chapter. A Party that receives a request for information shall endeavor to provide available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

#### **Article 9.16: Cooperation**

1. The Parties shall explore opportunities for further cooperation, collaboration, and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter. Those opportunities may include trade facilitation initiatives and technical assistance. The Parties shall cooperate to facilitate the implementation of this Chapter.

2. The Parties shall cooperate and may work, as mutually decided, on sanitary and phytosanitary matters, including to develop as appropriate, common principles, guidelines, and approaches on matters covered by this Chapter, with the goal of eliminating unnecessary obstacles to trade between the Parties.
3. If mutually decided, the Parties shall share information on their respective approaches to risk management with the objective of enhancing the compatibility of their risk management approaches.
4. The Parties are encouraged to create and develop initiatives to facilitate and promote the compatibility of their sanitary or phytosanitary measures.
5. If there is mutual interest and with the objective of establishing a common scientific foundation for each Party's risk management approach, the competent authorities of the Parties are encouraged to:
  - (a) share best practices on their respective approaches to risk analysis;
  - (b) cooperate on joint scientific data collection;
  - (c) if feasible and appropriate, undertake science-based joint risk assessments;
  - (d) if applicable and in accordance with the procedures, policies, resources, laws, and regulations of each Party, provide access to their respective completed risk assessments and the data used to develop risk assessments; or
  - (e) if appropriate, cooperate on aligning data requirements for risk assessments.

#### **Article 9.17: Committee on Sanitary and Phytosanitary Measures**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, composed of government representatives of each Party responsible for sanitary and phytosanitary matters.
2. The SPS Committee shall serve as a forum:
  - (a) to consider any matter related to this Chapter, including relating to its implementation;
  - (b) to improve the Parties' understanding of sanitary or phytosanitary issues that relate to the implementation of the SPS Agreement or this Chapter;

- (c) to enhance mutual understanding of each Party's sanitary or phytosanitary measures or the regulatory processes that relate to those measures;
- (d) to enhance communication and cooperation among the Parties related to sanitary or phytosanitary matters;
- (e) to identify and discuss, at an early appropriate stage, proposed sanitary or phytosanitary measures or revisions to existing sanitary or phytosanitary measures that may have a significant effect on trade in North America including for the purposes of issue avoidance and facilitating greater alignment of sanitary or phytosanitary measures; and
- (f) for a Party to share information, as appropriate, on a sanitary or phytosanitary matter that has arisen between it and another Party or Parties.

3. The SPS Committee may serve as a forum:

- (a) if appropriate, to identify and develop technical assistance and cooperation projects between the Parties on sanitary and phytosanitary measures;
- (b) to consult on matters and positions for meetings of the WTO SPS Committee, and meetings held under the auspices of the Codex Alimentarius Commission, the World Organisation for Animal Health, the International Plant Protection Convention, and other international organizations as appropriate;
- (c) to identify, prioritize, manage, and resolve bilateral or trilateral issues;
- (d) to review progress on addressing specific trade concerns related to the application of a sanitary or phytosanitary measure, with a view to facilitating mutually acceptable solution;
- (e) to establish and, as appropriate, determine the scope and mandate of technical working groups in areas such as, animal health, plant health, food safety, or pesticides, taking into account existing mechanisms, to undertake work related to the implementation of this Chapter;
- (f) to provide guidance to technical working groups, as needed and appropriate, for the identification, prioritization, and management of sanitary or phytosanitary matters;
- (g) to request updates and discuss the work of the technical working groups;
- (h) to review the recommendation from a technical working group regarding whether it should be continued, suspended, or dissolved;

- (i) to seek, to the extent practicable, the assistance of relevant international or regional organizations, such as the North American Plant Protection Organization, to obtain available scientific and technical advice and minimize duplication of effort; and
  - (j) to facilitate the development, as appropriate, of common principles, guidelines and approaches on matters covered by this Chapter.
4. The SPS Committee shall establish its terms of reference at its first meeting and may revise those terms of reference as needed.
5. The SPS Committee shall meet within one year of the date of entry into force of this Agreement and once a year thereafter unless the Parties decide otherwise.
6. The SPS Committee shall report annually to the Commission on the implementation of this Chapter.

#### **Article 9.18: Technical Working Groups**

1. A technical working group may function on an on-going or *ad hoc* basis.
2. Any on-going technical working group shall meet on an annual basis unless otherwise decided by the Parties participating in the technical working group. Any *ad hoc* technical working group shall meet as frequently as decided by the Parties participating in the technical working group.
3. At the first meeting of a technical working group, the participating Parties shall establish the working group's terms of reference, unless the Parties decide otherwise.
4. Any technical working group established under Article 9.17.3(e) (Committee on Sanitary and Phytosanitary Measures) may:
- (a) engage, at the earliest appropriate stage, in scientific or technical exchange and cooperation regarding sanitary or phytosanitary matters;
  - (b) consider any sanitary or phytosanitary measure or set of measures identified by any Party that are likely to affect, directly or indirectly, trade, and provide technical advice with a view to facilitating the resolution of specific trade concerns relating to those measures;
  - (c) serve as a forum to facilitate discussion and consideration of specific risk assessments and possible risk management options;

- (d) provide an opportunity for Parties to discuss developments relevant to the work of the technical working group;
  - (e) discuss other issues related to this Chapter; and
  - (f) report to the SPS Committee on progress of work, as appropriate.
5. A technical working group may provide the SPS Committee with the recommendation that it be continued, suspended, or dissolved.
6. Each technical working group shall be co-chaired by representatives of the participating Parties.
7. The Parties may seek to resolve any specific trade concern through the relevant technical working group.

#### **Article 9.19: Technical Consultations**

1. Recognizing that trade matters arising under this Chapter are best resolved by the appropriate competent authority, if a Party has concerns regarding any matter arising under this Chapter with respect to another Party, the Party shall endeavor to resolve the matter through available administrative procedures of the relevant competent authority or through a relevant technical working group established by the SPS Committee, if it considers that it is appropriate to do so. A Party may have recourse to technical consultations set out in paragraph 2 at any time it considers that the use of the relevant administrative procedures, the relevant technical working group, or other mechanisms would not resolve the matter.
2. A Party (requesting Party) may initiate technical consultations with another Party (responding Party) to discuss any matter arising under this Chapter that may adversely affect its trade by delivering a written request to the Contact Point of the responding Party. The request shall identify the reason for the request, including a description of the requesting Party's concerns about the matter.
3. The requesting and responding Parties shall meet within 30 days of the responding Party's receipt of the request, with the aim of resolving the matter cooperatively within 180 days of the request if possible.
4. The requesting and responding Parties shall ensure the appropriate involvement of relevant trade representatives and competent authorities in meetings held pursuant to this Article.
5. Recognizing that Parties may decide to engage in consultations pursuant to this Article for any length of time, the requesting Party may cease technical consultations under this Article and

have recourse to dispute settlement under Chapter 31 (Dispute Settlement) following the meeting referred to in paragraph 3 or if the meeting is not held within 30 days as specified in paragraph 3.

6. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter through technical consultations in accordance with this Article.

#### **Article 9.20: Dispute Settlement**

In a dispute under this Chapter that involves scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the disputing Parties. To this end, the panel may, if it deems appropriate, establish an advisory technical experts group, or consult the relevant international standard setting organizations, at the request of a disputing Party or on its own initiative.