

5. Replace Chapter 5 (Trade Facilitation) with:

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1

Definitions

For the purposes of this Chapter:

- (a) the definitions provided in the SPS Agreement shall apply;
- (b) relevant definitions developed by the Codex Alimentarius Commission (Codex), the World Organization for Animal Health (WOAH), and the International Plant Protection Convention (IPPC) shall be taken into account;
- (c) **competent authorities** means those authorities within each Member State recognised by the national government as responsible for developing and administering the sanitary and phytosanitary measures within that Member State; and
- (d) **emergency measure** means a sanitary or phytosanitary measure that is applied by an importing Member State to a relevant exporting Member State to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Member State applying the measure.

Article 5.2

Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health in the Member States through the development, adoption, and application of sanitary and phytosanitary measures, while facilitating trade by minimising the negative effects on trade among the Member States;
- (b) enhance the practical implementation of the SPS Agreement and strengthen implementation of this Chapter;
- (c) provide a framework and guidelines on requirements in the application of sanitary and phytosanitary measures among Member States, particularly to achieve commitments set forth in the ASEAN Economic Community Blueprint;
- (d) strengthen co-operation, communication, and consultation among Member States in the field of sanitary and phytosanitary measures;
- (e) enhance the transparency and understanding of the development and application of sanitary and phytosanitary measures of the Member States; and
- (f) encourage the Member States' participation in the development and adoption of international standards, guidelines, and recommendations.

Article 5.3

Scope

1. This Chapter applies to all sanitary and phytosanitary measures of Member States which may, directly or indirectly, affect trade among Member States.
2. In the implementation of their sanitary or phytosanitary measures, Member States agree to be guided, where applicable, by relevant international standards, guidelines, and recommendations developed under the auspices of the Codex, WOHAI, IPPC, and ASEAN, while taking into account the relevant decisions of the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee).

Article 5.4

General Provision

Member States affirm their rights and obligations with respect to each other under the SPS Agreement.

Article 5.5

Equivalence

1. To facilitate trade, each Member State shall strengthen co-operation on equivalence, may develop equivalence arrangements and recommend equivalence decisions in accordance with Article 4 of the SPS Agreement.
2. An importing Member State shall recognise the equivalence of a sanitary or phytosanitary measure if an exporting Member State objectively demonstrates to the importing Member State that the exporting Member State's measure achieves the same level of protection as the

importing Member State's measure, or that the exporting Member State's measure has the same effect in achieving the objective as the importing Member State's measure.

3. In determining the equivalence of a sanitary or phytosanitary measure, the importing Member State shall take into account available knowledge, information, and experience, as well as the regulatory competence, of the exporting Member State.

4. Each Member State shall, upon request, enter into consultations with the aim of achieving bilateral or regional recognition arrangements of the equivalence of specified sanitary or phytosanitary measures. The recognition of equivalence under such bilateral recognition arrangements may be with respect to a single measure, a group of measures, or on a systems-wide basis. For this purpose, reasonable access shall be given by the exporting Member State, upon request, to the importing Member State for inspection, testing, and other relevant procedures.

5. As part of the consultation for equivalence recognition, on request of the exporting Member State, the importing Member State shall explain and provide:

- (a) the rationale and objective of its measures; and
- (b) the specific risks its measures are intended to address.

6. The exporting Member State shall provide necessary information for the importing Member State to commence an equivalence assessment. Once the assessment commences, the importing Member State shall, upon request, and without undue delay, explain the process and plan for making an equivalence determination.

7. When an importing Member State recognises the equivalence of an exporting Member State's specific sanitary

or phytosanitary measure, group of measures, or measures on a systems-wide basis, the importing Member State shall communicate the decision in writing to the exporting Member State and implement the measure within a reasonable period of time. The rationale shall be provided in writing by the importing Member State in the event that the decision is negative.

8. The consideration by a Member State of a request from another Member State for recognition of the equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the Member State of the product or products in question.

9. Member States involved in a positive determination of equivalence are encouraged, where mutually agreed, to share information and experiences at the Committee on Sanitary and Phytosanitary Measures.

Article 5.6

Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Member States recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence in accordance with Article 6 of the SPS Agreement.

2. Member States shall strengthen the co-operation on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Member State for such recognition.

3. On request of an exporting Member State, an importing Member State shall, without undue delay, explain its process,

and, plan for making a determination of regional conditions within a reasonable period of time.

4. When an importing Member State has received a request for a determination of regional conditions from an exporting Member State and has determined that the information provided by the exporting Member State is sufficient, it shall initiate the assessment within a reasonable period of time.

5. For such an assessment, reasonable access shall be given by the exporting Member State, upon request, to the importing Member State for inspection, testing, and other relevant procedures.

6. On request of the exporting Member State, the importing Member State shall inform the exporting Member State of the status of the assessment.

7. When an importing Member State recognises specific regional conditions of an exporting Member State, the importing Member State shall communicate that decision to the exporting Member State in writing and implement the measures within a reasonable period of time.

8. If the evaluation of the evidence provided by the exporting Member State does not result in a decision by the importing Member State to recognise the regional conditions, the importing Member State shall provide the exporting Member State with the rationale for its decision in writing within a reasonable period of time.

9. Member States involved in a determination recognising regional conditions are encouraged, where mutually agreed, to report the outcome to the Committee on Sanitary and Phytosanitary Measures.

Article 5.7

Risk Analysis

1. Member States shall strengthen their co-operation on risk analysis in accordance with Article 5 and other related provisions of the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. Each Member State shall ensure that its sanitary and phytosanitary measures either conform to the relevant international standards, guidelines, or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines, or recommendations, that they are based on documented and objective scientific evidence that is rationally related to the measures, while recognising the Member States' obligations regarding assessment of risk under Article 5 of the SPS Agreement.¹

3. If an importing Member State requires a risk analysis to evaluate a request from an exporting Member State to authorise importation of a good of that exporting Member State, the importing Member State shall provide, on request of the exporting Member State, an explanation of the information required for the risk assessment. On receipt of the required information from the exporting Member State, the importing Member State shall endeavour to facilitate the evaluation of the request for authorisation by scheduling work on this request in accordance with the procedures, policies, resources, and laws and regulations of the importing Member State.

4. When conducting a risk analysis, an importing Member State shall:

¹ Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this paragraph.

- (a) ensure that the risk analysis is documented and that it provides the relevant exporting Member State with an opportunity to comment, in a manner to be determined by the importing Member State;
- (b) consider risk management options that are not more trade restrictive than required² to achieve its appropriate level of sanitary or phytosanitary protection; and
- (c) select a risk management option that is not more trade restrictive than required to achieve its appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.

5. On request of an exporting Member State, an importing Member State shall inform the exporting Member State of the progress of a specific risk analysis request, as well as any delay that may occur during the process.

6. Without prejudice to emergency measures, no Member State shall stop the importation of a good of another Member State solely for the reason that the importing Member State is undertaking a review of a sanitary or phytosanitary measure, if the importing Member State permitted importation of such good from the other Member State at the time the review was initiated.

7. If the importing Member State, as a result of a risk analysis, adopts a sanitary or phytosanitary measure that allows trade to commence or resume, the importing Member State shall implement the measure within a reasonable period of time.

²For the purpose of subparagraphs (b) and (c), a risk management option is not more trade restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

Article 5.8

Audit³

1. In undertaking an audit, each Member State shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Member State to provide the required assurances and meet the sanitary and phytosanitary measures of the importing Member State.⁴

3. Prior to the commencement of an audit, the importing Member States and exporting Member States involved shall exchange information on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.

4. The costs incurred by the importing Member State in undertaking the audit shall be borne by the importing Member State, unless the exporting Member State and the importing Member State decide otherwise.

5. The importing Member State and the exporting Member State shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

6. The importing Member State shall provide the exporting

³ For greater certainty, without affecting the implementation of this Article, nothing in this Article prevents a Member State from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

⁴ For greater certainty, nothing in this paragraph prevents an importing Member State from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Member State's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Member State has determined to be equivalent to its sanitary or phytosanitary requirements.

Member State with an opportunity to comment on the finding of an audit and take any such comments into account before making its conclusions and taking any action. The importing Member State shall provide a report or its summary, setting out its conclusions in writing to the exporting Member State within a reasonable period of time.

7. A decision or action taken by the importing Member State as a result of the audit shall be supported by objective evidence or data that can be verified, taking into account the importing Member State's knowledge of, relevant experience with, and confidence in, the exporting Member State. This objective evidence or data shall be provided to the exporting Member State on request.

Article 5.9

Certification

1. In applying certification requirements, each Member State shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. An exporting Member State shall ensure that the documents, including certificates, that are required by an importing Member State and provided by the competent authorities of the exporting Member State, to demonstrate the fulfilment of the sanitary and phytosanitary requirements of the importing Member State, are in the English language, unless the importing Member State and the exporting Member State agree otherwise.⁵ When the importing Member State requires such documents, the importing Member State shall endeavour to provide the requirements for such documents in the English language. Upon request, the importing Member State shall provide a summary or explanation of such requirements.

⁵ For greater certainty, this provision does not prevent the Member States from including information for certification in other languages in addition to the English language.

3. Member States recognise that an importing Member State may, as appropriate, allow assurances with respect to sanitary or phytosanitary requirements to be provided through means other than certificates, and that different systems may be capable of meeting the same sanitary and phytosanitary objectives.

4. Where certification is required for trade in a good, the importing Member State shall ensure that such certification requirements are applied only to the extent necessary to protect human, animal or plant life or health.

5. An importing Member State shall provide to another Member State, on request, the rationale for any attestation or information that the importing Member State requires to be included on a certificate.

6. Without prejudice to each Member State's right to import controls, the importing Member State shall accept certificates issued by the competent authorities of the exporting Member State that are in compliance with the regulatory requirements of the importing Member State.

Article 5.10

Import Checks

1. In applying import checks, each Member State shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. Import checks, conducted in accordance with the importing Member State's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations. In the event that import checks reveal a non-compliance, the final

decision or action taken by the importing Member State shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant good, and be rationally related to available science.

3. A Member State shall make available to another Member State, 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. An importing Member State shall provide to another Member State, on request, information regarding its sampling and analytical methods to ensure that any testing is conducted using appropriate and validated methods, which is consistent with international laboratory standards.

5. If an importing Member State prohibits or restricts the importation of a good of an exporting Member State on the basis of non-compliance of that good found during an import check, the importing Member State shall notify the importer or its representatives and, if the importing Member State considers necessary, the exporting Member State of such non-compliance.

6. When the importing Member State provides a notification pursuant to paragraph 5, it shall:

- (a) include:
 - (i) the reason for the prohibition or restriction;
 - (ii) the legal basis or authorisation for the action;
and
 - (iii) information on the status of the affected goods and, if appropriate, on their disposition;

- (b) do so in a manner consistent with its laws, regulations, and requirements as soon as possible after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration; and
- (c) if the notification has not already been provided through another channel, transmit the notification by electronic means, if practicable.

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

8. When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Member State, the Member States concerned shall, on request of either Member State, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

9. An importing Member State that prohibits or restricts the importation of a good of another Member State on the basis of an adverse result of an import check shall, to the extent possible, provide an opportunity for review of the decision and consider any relevant information submitted to assist in the review. The review request and information should be submitted to the importing Member State, subject to its laws and regulations, within a reasonable period of time.⁶

⁶ For greater certainty, nothing in this Article prevents an importing Member State 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 Member State's territory.

Article 5.11

Emergency Measures

1. If a Member State adopts an emergency measure that is necessary for the protection of human, animal or plant life or health and that may have an effect on trade, that Member State shall immediately notify the relevant exporting Member States and the ASEAN Secretariat in writing through the contact point or contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Member States.

2. The relevant exporting Member States may request discussions with the Member State adopting an emergency measure referred to in paragraph 1. Such discussions shall be held as soon as practicable. Each Member State participating in the discussions shall endeavour to provide relevant information and shall take due account of any information provided through the discussions.

3. If a Member State adopts an emergency measure, it shall review that measure within a reasonable period of time or on request of the exporting Member State. The importing Member State may, if necessary, request relevant information and the exporting Member State shall endeavour to provide the relevant information to assist the importing Member State in its review of the adopted emergency measure. The importing Member State shall provide the result of the review to the exporting Member State upon request. If the emergency measure is maintained after the review, the importing Member State should review the measure periodically based on the most recent available information, and upon request, shall explain the reason for the continuation of the emergency measure.

Article 5.12

Transparency

1. Member States recognise the importance of transparency in accordance with Article 7 and Annex B of the SPS Agreement.
2. Member States recognise the importance of exchanging information on the development, adoption, and application of sanitary and phytosanitary measures that may have significant effects on trade among the Member States.
3. In implementing this Article, Member States shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
4. Each Member State shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Member States through the online WTO Sanitary and Phytosanitary Measures notification submission system, the contact points designated under Article 5.16 (Contact Points and Competent Authorities), or already established communication channels of the Member States.
5. Upon request, a Member State shall, within 30 days of the request, provide the requesting Member State with the documents or a summary of the documents describing the requirements of draft sanitary or phytosanitary measures notified to the WTO pursuant to paragraph 4, in the English language.
6. If a Member State proposes a sanitary or phytosanitary measure which does not conform to an international standard, guideline or recommendation, the Member State shall provide to another Member State, on request, and to the extent permitted by the confidentiality and privacy requirements

under its law, the relevant documentation considered in developing the proposed measure. This shall include documented and objective scientific evidence that is rationally related to the measure, such as:

- (a) risks assessments;
- (b) relevant studies; and
- (c) expert opinions.

7. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade facilitating nature, a Member State shall normally allow a period of at least 60 days for other Member States to provide written comments after it makes a notification pursuant to paragraph 4. A Member State shall consider reasonable requests from another Member State to extend the comment period.

8. As part of the comment period referred to in paragraph 7, on request of another Member State, and if appropriate and feasible, the notifying Member State shall consider:

- (a) any scientific or trade concerns; and
- (b) the availability of alternatives that the other Member State may raise regarding the proposed measure.

9. Following the notification of sanitary or phytosanitary measures to the WTO, upon request, a Member State shall provide the requesting Member State with the documents or a summary of the documents describing the requirements of the adopted sanitary or phytosanitary measures, within a reasonable period of time as agreed by the relevant Member States, in the English language.

10. A Member State, on reasonable request of another

Member State, shall provide relevant information and clarification regarding any sanitary or phytosanitary measure to the requesting Member State, within a reasonable period of time, including:

- (a) the sanitary or phytosanitary requirements that apply to the import of specific products;
- (b) procedures for authorising the import of specific products; and
- (c) the status of the requesting Member State's application.

11. An exporting Member State shall provide timely and appropriate information to relevant Member States through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Member States, where there is a significant change in animal or plant health status or food safety issues in that exporting Member State that may affect trade.

12. An exporting Member State shall, to the extent possible and as promptly as possible, provide information to the importing Member State if the exporting Member State identifies that an export consignment that may be associated with a significant sanitary or phytosanitary risk has been exported.

13. An importing Member State shall provide timely and appropriate information to relevant Member States through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Member States, where there is:

- (a) significant or recurring sanitary or phytosanitary non-compliance associated with exported

consignments identified by the importing Member State; or

- (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Member State considered necessary to protect human, animal or plant life or health within the importing Member State.

Article 5.13

Application of Digital Technology to Support the Implementation of Sanitary and Phytosanitary Measures

1. Each Member State is encouraged to promote the utilisation of digital technology to support the implementation of sanitary and phytosanitary measures and trade facilitation, including the implementation of existing ASEAN frameworks and guidelines.
2. Each Member State shall, to the extent possible, use digital technology to facilitate sanitary and phytosanitary procedures and expedite the release of goods, including the submission of information and documents prior to the arrival of consignments, as well as electronic or automated systems for inspection and sampling regime based on risk.
3. Each Member State shall endeavour to accept e-SPS certificates as the legal documents equivalent of the paper version.
4. Each Member State shall enhance co-operation with other Member States including participation in international fora for the acceptance of sanitary and phytosanitary documents submitted electronically.

Article 5.14

Co-operation and Capacity Building

1. Member States shall, subject to the availability of appropriate resources, explore opportunities for further co-operation between or among the Member States with the objectives of this Chapter and the commitments set forth in the ASEAN Economic Community Blueprint, including:

- (a) strengthening the information notification and communication system, including consultations on sanitary and phytosanitary measures of the Member States;
- (b) conducting exchange visits of relevant personnel of the Member States;
- (c) conducting training courses, seminars, and other similar activities based on the needs and capabilities of the Member States and in consideration of facilitating trade within the Member States;
- (d) conducting collaborative research in areas of common interest within the scope of this Chapter; and
- (e) strengthening co-operation on exchange of e-SPS certificates through the ASW.

2. In implementing the provisions of paragraph 1, Member States shall co-ordinate their undertakings with the activities conducted in the regional and multilateral context, with the objectives of avoiding unnecessary duplication and maximising efficiency of efforts of the Member States in this field.

3. Member States are encouraged to share, where

mutually agreed, information and the experiences of their co-operation activities with other Member States at the Committee on Sanitary and Phytosanitary Measures.

Article 5.15

Technical Consultation

1. Where a Member State considers that a sanitary or phytosanitary measure is affecting its trade with another Member State, it may, through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Member States, request a detailed explanation of the sanitary or phytosanitary measure. The requested Member State shall respond promptly to such request.

2. A Member State may request to hold technical consultations with another Member State in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measures. The requested Member State shall respond promptly and no later than seven working days from the date of receipt of the request, unless otherwise agreed, to any reasonable request for such consultation. The consulting Member States shall make every effort to reach a mutually satisfactory resolution.

3. Where a Member State requests technical consultations, these shall take place within 30 days of the receipt of the request, unless otherwise agreed. Such consultation should aim to resolve the matter within 180 days of the date of the request, or a time frame agreed by the consulting Member States.

4. The technical consultations may be conducted *via* teleconference, videoconference, or through any other means agreed by the consulting Member States.

5. The requesting Member State may cease technical consultations under this Article and have recourse to dispute settlement mechanisms under Chapter 16 (Dispute Settlement) if the technical consultations referred to in paragraph 3:

- (a) do not take place within 37 days of the date of the receipt of the request, or such other timeframe as the consulting Member States may agree under paragraphs 2 and 3; or
- (b) have been held.

Article 5.16

Contact Points and Competent Authorities

1. Each Member State shall, within 30 days of the date of entry into force of the Second Protocol for that Member State:

- (a) designate one or more contact points to facilitate communication on matters covered under this Chapter;
- (b) notify the other Member States of the contact details of that contact point or those contact points; and
- (c) when more than one contact point is designated, specify a contact point that serves as the focal point to respond to enquiries from the other Member States on the appropriate contact point with which to communicate.

2. Each Member State shall provide the other Member States, through the contact points, a description of its competent authorities and the division of their functions and responsibilities.

3. Each Member State shall notify the other Member States of any change to the contact points and significant changes in the structure, organisation, and division of responsibility within its competent authorities. Each Member State shall keep this information up to date.

4. Member States recognise the importance of the competent authorities in the implementation of this Chapter. Accordingly, the competent authorities of the Member States may co-operate with each other on matters covered by this Chapter in a manner to be agreed. Member States are encouraged to share information and experiences of such co-operation of their competent authorities with the Committee on Sanitary and Phytosanitary Measures where the Member States agree to do so.

Article 5.17

Committee on Sanitary and Phytosanitary Measures

1. For the effective implementation of this Chapter, the Committee on Sanitary and Phytosanitary Measures shall be established, with the following functions:

- (a) endeavour to resolve sanitary and phytosanitary matters with a view to facilitate trade between and among Member States. The Committee on Sanitary and Phytosanitary Measures may establish an *ad hoc* task force to undertake science-based consultations to identify and address specific issues that may arise from the application of sanitary or phytosanitary measures;
- (b) facilitate exchange of information on such matters as occurrences of sanitary or phytosanitary incidents in the Member States, and change or introduction of sanitary and phytosanitary-related regulations and standards of the Member States,

which may, directly or indirectly, affect trade between and among Member States;

- (c) facilitate co-operation in the area of sanitary or phytosanitary measures including capacity building, technical assistance and exchange of experts, subject to the availability of appropriated funds and the applicable laws and regulations of each Member State; and
- (d) submit regular reports of developments and recommendations in the implementation of this Chapter to the AFTA Council, through the ATIGA Joint Committee for further action.

2. The Committee on Sanitary and Phytosanitary Measures shall establish its terms of reference within six months after the first meeting. The Committee on Sanitary and Phytosanitary Measures may revise those terms as needed.

3. The Committee on Sanitary and Phytosanitary Measures shall meet at least once a year, unless otherwise agreed.

Article 5.18

Dispute Settlement

No Member State shall have recourse to dispute settlement mechanisms set out in Chapter 16 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter through technical consultations in accordance with Article 5.15 (Technical Consultation).