

CHAPTER 5 SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 5.1: OBJECTIVES

The objectives of this Chapter are to:

- (a) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;
- (b) deepen mutual understanding of each Party's regulations and procedures relating to sanitary and phytosanitary measures;
- (c) strengthen cooperation between Australian and Chinese government agencies with responsibility for sanitary and phytosanitary matters; and
- (d) enhance implementation of the SPS Agreement.

ARTICLE 5.2: SCOPE

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

ARTICLE 5.3: DEFINITIONS

For the purposes of this Chapter,

- (a) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* contained in Annex 1A of the World Trade Organization Agreement; and
- (b) **sanitary and phytosanitary measure** means any measure referred to in paragraph 1 of Annex A of the SPS Agreement.

ARTICLE 5.4: INTERNATIONAL OBLIGATIONS

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

ARTICLE 5.5: TRANSPARENCY

1. The Parties acknowledge the importance of transparency in the application of sanitary and phytosanitary measures, including through, *inter alia*, the exchange of information on their respective sanitary and phytosanitary measures in a timely manner.
2. Each Party shall provide notification, consistent with the notification requirements under the SPS Agreement, to the enquiry point of the other Party of new or revised sanitary and phytosanitary measures, including measures imposed in response to an urgent threat to human, animal or plant life or health.
3. Upon request by a Party, the notifying Party shall provide the full text of the notified sanitary and phytosanitary measures to the enquiry point of the other Party within 7 days.
4. Whenever an international standard, guideline or recommendation does not exist, or the content of a proposed sanitary or phytosanitary measure is not substantially the same as the content of an international standard, guideline or recommendation, and if the measure may have a significant effect on trade of the other Party, the Party should normally allow at least 60 days for the other Party to make comments in writing, shall discuss these comments upon request, and shall take the comments and the results of the discussions into account.
5. Where urgent problems of health protection arise, or threaten to arise, for a Party, the Party is not required to provide an opportunity for the other Party to make comments in writing prior to the entry into force of the measure. However, the Party shall observe the provisions of paragraphs 3 and 4, shall allow the other Party to make comments in writing, shall discuss these comments upon request, and shall take the comments and the results of the discussions into account.
6. Where there is non-compliance of an imported consignment with sanitary and phytosanitary measures, the relevant government agency of the importing Party shall notify the relevant government agency of the exporting Party of the non-compliance without undue delay.

ARTICLE 5.6: COOPERATION

1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary and phytosanitary matters at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter, including through:

- (a) cooperating on work in relevant international bodies and regional organisations engaged in food safety and human, animal or plant life or health issues;

- (b) strengthening technical cooperation and communication on import risk analysis principles and processes so as to avoid undue delay; and
- (c) conducting possible joint research projects on diseases and pest prevention, surveillance and control strategies and on other scientific issues, including in the area of food safety, relating to SPS measures.

2. The Committee on Sanitary and Phytosanitary Measures established in accordance with Article 5.11 shall consider proposals for cooperation and collaboration to give effect to this Article.

ARTICLE 5.7: REGIONALISATION AND EQUIVALENCE

Each Party shall accept the regionalisation and equivalence provisions of the SPS Agreement, and consider the relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

ARTICLE 5.8: CONTROL, INSPECTION AND APPROVAL PROCEDURES

1. Each Party shall implement its control, inspection and approval procedures in accordance with its rights and obligations under the SPS Agreement.
2. On request of a Party, the Parties shall exchange views and information on their control, inspection and approval procedures.
3. Each Party shall, on request of the other Party, accept the control, inspection and approval procedures of the other Party as equivalent, provided that it is satisfied that these achieve the importing Party's appropriate level of sanitary and phytosanitary protection.

ARTICLE 5.9: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. The Parties recognise that cooperation, information sharing, capacity building and technical assistance are important elements in promoting the objectives of this Chapter.
2. The Parties shall give full consideration to the provisions on technical assistance and special and differential treatment in the SPS Agreement, and the possible difficulties that the Parties may encounter in the implementation of this Chapter. The Parties agree to take such reasonable measures, as may be available, to enhance capacity building by providing technical assistance.

3. Consistent with the objectives of this Article, the Parties shall jointly consider technical assistance projects in the field of sanitary and phytosanitary measures for the purposes of implementing this Article. Such technical assistance projects may include, but are not limited to:

- (a) sharing knowledge, experience or research results in areas such as:
 - (i) animal and plant pests and diseases;
 - (ii) food safety;
 - (iii) agri-chemicals and veterinary medicines; and
 - (iv) other areas agreed by the Parties; and
- (b) consulting on positions in regional and international organisations and on relevant standards and programs.

4. The Parties shall explore opportunities for other forms of technical assistance or cooperation that the Parties jointly decide upon, including strengthening cooperation between their SPS enquiry points, sharing available translations of SPS notifications and related documents, and exchanging experience and information on SPS notifications.

ARTICLE 5.10: CONSULTATION AND DISPUTE SETTLEMENT

1. The Parties shall endeavour to resolve any matter arising under this Chapter through cooperative mechanisms under this Chapter.

2. Neither Party shall have recourse to the dispute settlement provisions in Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 5.11: COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

1. The Parties note the high level consultative mechanism established under the *Memorandum of Understanding on Cooperation in Sanitary and Phytosanitary Matters between the Australian Department of Agriculture, Fisheries and Forestry and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China*.

2. The Parties hereby establish the Committee on Sanitary and Phytosanitary Measures (the "Committee"), comprising representatives of each Party.

3. For the purposes of this Article, the Committee shall be coordinated by:
 - (a) for Australia, the Department of Agriculture or its successor; and
 - (b) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.

4. The Committee shall meet at least once every two years unless the Parties agree otherwise. The Committee's functions shall include:
 - (a) promoting the objectives set out in Article 5.1;
 - (b) reviewing and monitoring the implementation of this Chapter;
 - (c) determining areas for cooperation and collaboration;
 - (d) considering proposals for technical assistance and capacity building under this Chapter;
 - (e) reviewing progress on and, as appropriate, seeking to address through mutual consent, sanitary and phytosanitary matters that may arise between the Parties;
 - (f) as appropriate, reporting its findings and the outcomes of its discussions to the FTA Joint Commission; and
 - (g) carrying out other functions as may be delegated to it by the FTA Joint Commission.

5. Each Party shall ensure that appropriate representatives with responsibility for sanitary and phytosanitary measures and food standards participate in meetings of the Committee.

6. The Committee may agree to establish technical working groups on human, animal and plant health or food safety, as necessary, including regionalisation and equivalence, to address issues arising from the implementation of this Chapter.

7. Each Party shall establish a contact point which shall have responsibility for coordinating the implementation of this Chapter. The contact points will be:
 - (a) for Australia, the Department of Agriculture or its successor; and
 - (b) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.