

**ASEAN-HONGKONG CHINA
FREE TRADE AGREEMENT**

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CHAPTER 5
SANITARY AND PHYTOSANITARY MEASURES

Artikel 1. Definitions

For the purposes of this Chapter:

- a. the definition in Annex A of the SPS Agreement are incorporated into and shall form part of this Chapter, *mutatis mutandis*; and
- b. competent authorities means those authorities within each Party recognised by the national government as responsible for developing and administering the various sanitary and phytosanitary measures within that Party.

Article 2. Objectives

The objectives of this Chapter are to:

- a. enhance implementation of the SPS Agreement;
- b. facilitate trade by minimising obstacle to trade among the Parties, while protecting human, animal or plant life or health in the Area of each Party;
- c. enhance transparency such that sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade;
- d. strengthen co-operation and communication among the Parties in the field of sanitary and phytosanitary matters; and
- e. provide a means to resolve, where possible, problems arising sanitary and phytosanitary measures that may affect trade.

Article 3. Scope

This Chapter shall apply to all sanitary and phytosanitary measures of a Party, which may, directly or indirectly, affect trade among the Parties.

Article 4. General Provisions

1. Each Party affirms its rights and obligations with respect to another Party under the SPS Agreement.
2. Each Party commits to applying the principles of the SPS Agreement in the development and application of any sanitary or phytosanitary measures.

Article 5. Equivalence

1. The Parties may develop equivalence arrangements and make determinations of equivalence in accordance with Article 4 of the SPS Agreement by taking into account relevant guidance of the WTO Committee of Sanitary and Phytosanitary

Measures and relevant international standards, guidelines and recommendations.

2. Each Party shall accept the sanitary and phytosanitary measures of another Party as equivalent, even if these measures differ from its own or from those used by the other Parties trading in the same product, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary and phytosanitary protection.
3. A Party shall, upon request of another Party, enter into consultations with the requesting Party with the aim of achieving agreements on recognition of the equivalence of specified sanitary or phytosanitary measures. In the event that an outcome of the assessment of such consultations is negative, the importing Party should explain its rationale for the outcome.

Article 6. Regionalisation

1. A Party may make determinations in relation to regionalisation, pest- or disease-free areas of low pest or disease prevalence, zoning, and compartmentalisation in accordance with Article 6 of the SPS Agreement by taking into account relevant guidance of the WTO Committee on Sanitary and Phytosanitary Measures and relevant international standards, guidelines and recommendations.
2. The Parties may co-operate on the adaptation to regional conditions in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations.

Article 7. Transparency

1. Each Party acknowledges the value of transparency and exchanging information on its sanitary and phytosanitary measures.
2. Each Party shall notify in a timely manner the relevant Parties, through the contact points, of the following situations:
 - a. any significant food safety issue, pest or disease outbreak in its Area that may affect trade; and
 - b. where a provisional sanitary or phytosanitary measure against or affecting the exports of another Party is considered necessary to protect human, animal or plant life or health of the importing Party.
3. In particular, where a consignment is in non-compliance, the importing Party shall notify and provide details of the non-compliance to the exporting Party promptly. The exporting Party shall respond promptly through the contact point or competent authorities of the importing Party by providing remedial measures for the consignment.
4. The notification referred to in paragraphs 2 and 3 can be made electronically or by any other means as mutually determined by the Parties.

Article 8. Technical Co-operation

1. The Parties shall explore opportunities for further technical co-operation and assistance, collaboration and information exchange of mutual interest, consistent with the objectives of this Chapter.
2. Each Party shall endeavour to co-ordinate with regional or multilateral work programmes with the objective of avoiding unnecessary duplication and maximising the benefits from the application of resources.
3. The Parties agree to explore opportunities to further strengthen co-operation on the provision of technical assistance, subject to the availability of appropriate resources and in accordance with Chapter 9 (Economic and Technical Co-operation).

Article 9. Technical Consultations

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with another Party and needs further discussion, it may, through the contact points, request a detailed explanation of such measures including information on the technical justification for the measures. The requested Party shall respond promptly to any request for such explanation.
2. A Party may request consultation with another Party in relation to the same matter for which an explanation has been provided pursuant to paragraph 1. Such consultations shall be carried out within a reasonable timeframe, or where practicable within 30 days, of receiving the request for consultations given by the requesting Party. Such consultations may be conducted via teleconference, videoconference or any other means agreed by the Parties. The Parties to the consultations shall make every effort to reach a mutually satisfactory resolution.

Article 10. Implementation

1. Each Party shall designate a contact point to facilitate distribution of enquiries, requests or notifications made in accordance with this Chapter; and representatives of its competent authorities responsible for the implementation of sanitary and phytosanitary measures.
2. A Party shall inform the other Parties of any change of its contact point or representatives of its competent authorities.
3. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters, consisting of representative from the relevant government agencies of the Parties, to monitor the implementation of this Chapter
4. Any action taken pursuant to Article (Technical Consultations) shall be without prejudice to the rights and obligations of the Parties under Chapter 13 (Consultations and Dispute Settlement) or under the WTO Dispute Settlement Understanding.