

*This **document** is the European Union's (EU) proposal for a legal text on sanitary and phytosanitary measures in the EU-ESA deepening of interim agreement. It will be tabled for discussion with ESA5. The actual text in the final agreement will be a result of negotiations between the EU and ESA5.*

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

EU PROPOSAL OF NEGOTIATING TEXT

CHAPTER X

SPS

Article X1

Objectives

The objectives of this chapter are are to:

- a) To protect human, animal or plant life and health in the territory of the Parties while facilitating trade between the Parties under the scope of the implementation of the sanitary and phytosanitary (SPS) measures.
- b) reinforce and build upon the implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary measures by the Parties;
- d) establish procedures and modalities for facilitating cooperation in SPS matters;
- e) ensure transparency and predictability as regards SPS measures applicable to trade between the Parties;
- f) establish and enhance ESA Partner States' capacity to implement and monitor SPS measures and of setting and implementing international, regional and national standards.
- g) enhance collaboration between the Parties on animal welfare issues, the control of animal and plant pests or diseases, on antimicrobial resistance, and on food frauds.
- h) promote cooperation in multilateral fora and in combatting Antimicrobial resistance and to promote sustainable agriculture and food systems.

Article X.2

Scope and Definitions

1. The provisions of this Chapter apply to SPS measures as defined by the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (“the SPS Agreement”).
2. For the purpose of this Chapter, unless otherwise provided, the definitions of Annex A of the SPS Agreement, the Codex Alimentarius Commission, the World Animal Health Organisation and International Plant Protection Convention shall apply.
3. This Chapter also includes collaboration activities on animal welfare, on antimicrobial resistance, on pest control, and on food frauds which, will be carried out by relevant technical experts.
4. "import conditions" means any sanitary or phytosanitary measures that are required to be fulfilled for the import of products; and
5. "protected zone" means an officially defined geographical part of the territory of each Party in which a specific regulated pest is not established in spite of favourable conditions for its establishment and its presence in other parts of the territory of the Party.
6. In addition, the SPS Committee established pursuant to **Article X.14**, may agree on other definitions for the application of this Chapter taking into consideration the glossaries and definitions developed by relevant international organisations, such as the Codex Alimentarius Commission (hereinafter referred to as "Codex Alimentarius"), the World Organisation for Animal Health (hereinafter referred to as "OIE") and the relevant international organisations operating within the framework of the International Plant Protection Convention (hereinafter referred to as "IPPC"). In the event of an inconsistency between the definitions agreed by the Committee on the Sanitary and Phytosanitary Measures and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

Article X.3

Rights and Obligations

1. The Parties affirm their commitment to the rights and obligations provided for in the Agreement on the Application of Sanitary and Phytosanitary Measures ('WTO SPS Agreement'), the International Plant Protection Convention ('IPPC'), the Codex Alimentarius Commission and the World Organisation for Animal Health ('OIE').
2. Each Party shall have the sovereign right to protect plants, animals and human life and health, provided that such measures are consistent with the provisions of the WTO SPS Agreement;
3. Those rights and obligations shall underlie the activities of the Parties under this Chapter.

Article X.4

Competent authorities

1. As of the date of entry into force of this Agreement, each Party shall provide the other Party with a description of the competent authorities for the implementation of this Chapter and a contact point for communication on all matters covered by this Chapter.
2. Each Party shall inform the other Party of any significant changes in the structure, organisation and division of responsibilities of their competent authorities and ensure that the information on contact points is kept up to date.

Article X.5

Import conditions, import procedures and trade facilitation

1. Import conditions shall be established by the importing Party in order to achieve the appropriate level of protection, subject to and taking into account consultations between the Parties when necessary.
2. Import conditions shall be applicable to the entire territory of the exporting Party.
3. The importing Party shall give consideration to any request of the exporting Party, for a review of the import conditions existing between the Parties on the date of entry into force of this Agreement.

4. The importing Party shall ensure full transparency on its import conditions, its import authorisation procedures and the frequency of import checks carried out on products from the other Party.
5. Each Party shall ensure that administrative procedures concerning the import requirements on food safety, animal health and plant health are not more burdensome or trade restrictive than necessary to give the importing Party adequate confidence that these requirements are met. These administrative procedures shall be set with the objective to minimise negative trade effects and to simplify and expedite the clearance process while meeting the importing Party requirements.
6. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.
7. With respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, including that for approval and clearance process, the Parties shall ensure that:
 - a) such procedures are simplified, expedited and completed without undue delay, in accordance with the SPS Agreement;
 - b) such procedures are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party;
 - (c) the standard processing period of each procedure is published or the anticipated processing period is communicated to the applicant upon request; and
 - (d) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs.
8. In accordance with applicable International Standard for Phytosanitary Measures (ISPM) agreed under the IPPC, the Parties undertake to maintain adequate information on their pest status (including surveillance, eradication and containment programmes and their results) in order to support the categorization of pests and to justify import phytosanitary measures.

The Parties shall establish lists of regulated pests and regulated commodities where a phytosanitary concern exists. The lists shall contain:

- (a) the pests not known to occur within any part of the Party's own territory;

(b) the pests known to occur within any part of the Party's own territory and under official control; and

(c) the pests known to occur within any part of the Party's own territory, under official control and for which pest-free areas are established.

A Party may establish a list of plants considered to be of high phytosanitary risk for its territory on the basis of a preliminary risk assessment and may require that the import of such plants shall be subject to an approval procedure based on a pest risk assessment carried out in accordance with the relevant ISPMs. Preliminary risk assessment shall take into account available scientific and technical information as well as the intended use of the plant under consideration.

The Parties shall make available their lists of regulated pests, regulated commodities and articles and the phytosanitary import requirements for all regulated commodities and articles. This information shall include, as appropriate the additional declarations, as prescribed by the importing Party.

9. The exporting Party shall ensure that products exported to the importing Party meet the appropriate level of protection of the importing Party. The responsibility for the implementation of adequate control measures and inspections lies with the exporting Party. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrate, to the satisfaction of the importing Party, that the import conditions are fulfilled.
10. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with importations. These checks shall be carried out without undue delay and with minimum trade disrupting effects. When products do not conform to the requirements of the importing Party, any action taken by the importing Party shall follow international standards and should be proportionate to the risk involved.
11. Any fees imposed for the procedures on imported products from the exporting Party, including fees for desk evaluations of export applications, shall be equitable in relation to any fees charged on like domestic products and shall not be higher than the actual cost of the service.

12. With a view to promote regional integration, ESA will harmonize import requirements, certificates and import checks.
13. The Parties recognise the different levels reached by regional integration processes within the European Union, on one hand, and ESA on the other. When applicable and with a view to facilitate trade between their respective territories, ESA will adopt:
 - a) one single questionnaire;
 - b) one single certificate, and
 - c) one list of approved establishments.

Article X.6

Verification of the official control system

In order to attain and maintain confidence in the effective implementation of the provisions of this Chapter, the importing Party, within the scope of this Chapter, has the right to carry out audits, including:

- (a) through audit visits to the exporting Party, of all or part of the exporting Party's control and certification system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC; and
 - (b) by requiring information from the exporting Party about its control and certification system and be informed of the results of the controls carried out thereunder.
2. The exporting Party shall give reasonable access to the importing Party for inspection, verification, testing, audit and other relevant procedures.
 3. The Parties shall provide the results and conclusions of the audits carried out in the territory of the other Party.
 4. If the importing Party decides to carry out an audit visit to the exporting Party, the visit shall be notified by the importing Party to the exporting Party at least 60 calendar days before the audit visit is to be carried out, except if agreed otherwise. Any modification to such visit shall be agreed by the Parties.

5. The draft report of the audit visit shall be shared with the auditee within 60 calendar days after completion of the audits. The auditee shall have 30 calendar days to comment on the draft report. Comments made by the auditee shall be attached to and, where appropriate, included in the final report. However, where a significant public, animal or plant health risk has been identified during the audit, the importing Party shall inform the auditee as quickly as possible and in any case within 15 calendar days following the end of the audit.
6. The costs incurred in carrying out the audits shall be borne by the importing Party.

Article X.7

Procedure for listing of establishments or facilities

1. Where establishments or facilities are required to be included on a list by the importing Party, the importing Party shall approve establishments or facilities which are situated on the territory of the exporting Party without prior inspection if:
 - (a) The exporting Party has requested such an approval for a given establishment or facility;
 - (b) The import of the product has been authorised, if so required by the competent authority of the importing Party;
 - (c) The establishment or facility concerned has been approved by the competent authority of the exporting Party;
 - (d) The competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility; and
 - (e) The exporting Party has provided any relevant information and appropriate guarantees requested by the importing Party.

Unless additional information is requested, the importing Party shall take the necessary legislative or administrative measures in accordance with its applicable legal procedures to allow imports within 60 calendar days of the receipt of the request of the exporting Party. If the importing Party rejects the request for approval, it shall inform without delay the exporting Party of the elements and justification upon which the decision was based.

2. The importing Party shall make its lists of approved establishments or facilities publicly available.

Article X.8

Adaptation to regional conditions

1. The Parties shall recognise concept of zoning, including pests or disease free areas and low pest or disease prevalence area and agree to apply it in the trade between the Parties, in accordance with the WTO SPS Agreement, including the Guidelines to further the practical implementation of Article 6 of that SPS Agreement (WTO/SPS Committee Decision G/SPS/48) and the relevant recommendations, standards and guidelines of the OIE, or IPPC.
2. When determining pest and disease-free areas, areas of low pest and disease prevalence, whether for the first time or after an outbreak of an animal disease or plant pest, the importing Party shall base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement and OIE and IPPC standards, and take into consideration the determination made by the exporting Party.
3. Any audit the importing Party may request shall be carried out in accordance with Article X.6 (Verification).
4. After finalisation of the procedure established in this Article and in the Annex (Procedure for recognition of zones and pest status) and without prejudice to Article X.13 (Emergency measures), the importing Party shall take the decision to approve the requested zones and shall allow trade on that basis, without undue delay.

A. Animals, animal products and animal by-products

1. **The Committee (referred- in alternative) in Article X.14** of this Chapter, may define further details for the procedure for recognition of the disease-free zones, taking into account the WTO SPS Agreement and OIE guidelines, standards and recommendations.

2. When establishing or maintaining the zones referred to in point 2 the Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance and the effectiveness of sanitary controls.
3. Within 60 working days following the receipt of the information referred to in paragraph 2 of this Article, the importing Party may raise an explicit objection or request additional information, consultation or verification. The importing Party shall assess any additional information within undue delay following its receipt. In case of consultation and/or verification, they shall take place according to Article X.10 (Technical Consultations) or Article X.6 (Verification of the official control system) respectively. In the case of verifications required by the importing Party, the deadline for assess additional information will be interrupted.
4. In the event that the importing Party does not approve the requested zones, it shall notify its decision to the exporting Party and explain the reasons for the rejection and, upon request, hold consultations, in accordance with Article X.10 (Technical Consultations).

B. Plants and plant products

1. Each Party shall establish a list of regulated pests and regulated products. The importing Party shall make available to the other Party its list of regulated pests, regulated products and the phytosanitary import requirements. The SPS import requirements shall be limited to what is necessary to protect plant health and/or safeguard the intended use. The importing Party shall inform the other Party about any required additional declaration.
2. The importing Party shall recognize the determination of phytosanitary status of the exporting Party in accordance with the following provisions:
 - (a) The Parties recognize the concepts of pest-free areas, pest-free places of production and pest-free production sites, as well as areas of low pest prevalence as specified in relevant IPPC (ISPM) and of protected zones which they agree to apply in their trade.
 - (b) When establishing or maintaining phytosanitary measures, the importing Party shall take into account pest-free areas, pest-free places of production, pest-free production sites, areas of low pest prevalence, as well as protected zones established by the exporting Party.
 - (c) The exporting Party shall identify pest-free areas, pest-free places of production, pest-free production sites, areas of low pest prevalence or protected zone to the other Party and, upon

request of the importing Party, provide a full explanation and supporting data as provided for in the relevant ISPM or otherwise deemed appropriate. Unless the importing Party raises an objection and requests consultations within 120 calendar days, the regionalization decision so notified shall be understood as accepted.

(d) The importing Party shall assess additional information requested within 120 calendar days after receipt. Any verification the importing Party may request shall be carried out in accordance with Article X.6 (Verification of the official control system) and without undue delay unless otherwise agreed between the Parties, taking into account the biology of the pest and the crop concerned.

Article X.9

Transparency and exchange of information

1. Each Party shall:

a) ensure transparency as regards:

(i) sanitary and phytosanitary measures, including import conditions applicable to trade; and

(ii) control, inspection and approval procedures, including complete details about the mandatory administrative steps, expected timelines and the authorities in charge of receiving import applications and of processing them;

(b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and their application; and

(c) on a reasonable request of the other Party and without undue delay, provide information on its sanitary and phytosanitary measures and their application, including:

(i) import conditions that apply to the import of specific products;

(ii) the state of progress of applications for authorisation of specific products;

(iii) the frequency of import checks carried out on products from the other Party;

(iv) in cases where relevant scientific evidence is insufficient the available pertinent information on which a provisional measure is based, and

- (v) matters related to the development and application of its sanitary and phytosanitary measures, including the progress concerning new available scientific evidence, that affect or may affect trade between the Parties with a view to minimising their negative effects.
2. When the information referred to in subparagraphs 1(a) and (c) has been made available by notification of a Party under the SPS Agreement, or when such information has been made available on an official, publicly accessible and free of charge website of that Party, the information referred to in subparagraphs 1(a) and (c) shall be considered to have been provided.
 3. Where the Parties have already established communication channels for such purposes, they shall utilize them to the maximum extent possible in order to avoid unnecessary duplication.

Article X.10

Technical Consultations

1. Where a Party has significant concerns regarding human, animal or plant life or health, or measures proposed or implemented by the other Party, that Party may request technical consultations.
2. The other Party shall respond to such a request without undue delay and shall engage in the technical consultations to address those concerns.
3. Each Party shall endeavour to provide the information necessary to avoid a disruption in trade or to reach a mutually acceptable solution.
4. Where the Parties have already established other mechanisms than those referred to in this Article to address the concerns, they shall make use of them to the extent possible in order to avoid unnecessary duplication.
5. Each Party shall seek to resolve any concerns with respect to sanitary and phytosanitary measures of the other Party referred to in paragraph 1 through technical consultations pursuant to this Article prior to initiating dispute settlement proceedings under this Agreement.
6. Consultations may be held by e-mail, video or audio conference. The requesting Party should ensure the preparation of the minutes which shall be formally approved by the Parties.

7. If the Parties do not reach a satisfactory solution after the consultation, the case may be submitted to the **Committee established in Article X.** that may meet in special session.
8. Each Party may terminate technical consultations by notifying the other Party in writing at any time no less than 90 days after the date of receipt of the response by the other Party referred to in paragraph 2, or any other time period as agreed by the Parties.

Article X.11
Cooperation

1. Parties shall cooperate in all the multilateral fora, in particular in the international standard bodies.
2. In accordance with Article 3 of the SPS Agreement and the decisions for the implementation of the said Article adopted by the WTO/SPS Committee, when developing their respective sanitary and phytosanitary measures, the Parties shall take into account standards, guidelines and recommendations developed by the relevant international organizations.
3. The Parties shall cooperate and promote collaboration and information exchange in relation to antimicrobial resistance in accordance with article X14.
4. The Parties shall promote their collaboration on animal welfare issues in accordance with article X13.
5. The Parties may promote collaboration on other matters, in particular on fighting and preventing frauds, within the sanitary and phytosanitary framework.

Article X.12
Capacity building and technical assistance

The Parties agree to:

- (a) explore the opportunity for technical assistance on SPS issues, including food safety, animal and plant health, the use of international standards as well as animal welfare with a view to enhancing the mutual understanding of the regulatory systems of the Parties and facilitating access to each other's markets.

- (b) promote cooperation between the equivalent institutions of the Parties;
- (c) cooperate in facilitating regional harmonisation of measures and the development of appropriate regulatory frameworks and policies within and between the **signatory Eastern and Southern Africa (ESA) States**, thereby enhancing intra-regional trade and investment;

Article X.13

Animal Welfare

1. The Parties recognise that animals are sentient beings. They also recognize the connection between improved welfare of animals and sustainable food production systems.
2. The Parties recognise the value of the OIE animal welfare standards, and shall endeavour to improve their implementation while respecting their right to determine the level of their science-based measures on the basis of OIE animal welfare standards.
3. The Parties undertake to exchange information, expertise and experiences to develop and improve their respective approaches on regulatory standards in the field of animal welfare with the aim to further develop regulatory standards related to breeding, holding, handling, transportation and slaughter of food-producing animals at the level of the EU standards or equivalent.
4. The Parties undertake to cooperate in international fora to promote the development of the best possible animal welfare practices and their implementation. In particular, the Parties will cooperate to reinforce and broaden the scope of the OIE animal welfare standards, as well as the implementation, with a focus on farmed animals.

Article X.14

Combating antimicrobial resistance

1. The Parties recognize that antimicrobial resistance is a serious threat to human and animal health. Antibiotic use in animal production can contribute to antimicrobial resistance that

may represent a risk to man. The Parties recognize that the nature of the threat requires a transnational and “One Health” approach.

2. Each Party shall endeavor to co-ordinate with regional or multilateral work programmes for reducing the use of antibiotics in animal production and to ban their use as growth promoters with the aim to combat antibiotic resistance
3. The Parties shall collaborate in and follow existing and future guidelines, standards, recommendations and actions developed in relevant international organizations, initiatives and national plans aiming to promote the prudent and responsible use of antibiotics in animal husbandry and veterinary practices.
4. This dialogue will cover, inter alia:
 1. The collaboration to follow up existing and future guidelines, standards, recommendations and actions developed in relevant international organisations, initiatives and national plans aiming to promote the prudent and responsible use of antibiotics and relating to animal production and veterinary practices.
 2. The collaboration in the implementation of the recommendations of OIE, WHO and Codex, in particular CAC-RCP61/2005.
 3. The exchange of information on good farming practices.
 4. The promotion of research, innovation and development.
 5. The promotion of multidisciplinary approaches to combat antimicrobial resistance, including the One Health approach of WHO, OIE and Codex Alimentarius.

Article X.15

COOPERATION IN MULTILATERAL FORA

1. The Parties shall promote the cooperation in all the multilateral fora relevant for SPS issues, in particular in international standard setting bodies recognised in the framework of the WTO/SPS Agreement.
2. The SPS Committee established in Article 18 shall be the forum to exchange information and cooperate in the field of matters covered by paragraph 1.

Article X.16

Cooperation on sustainable food systems

The Parties should foster the cooperation between their respective food safety, animal and plant health services to promote sustainable agriculture and food systems, including sustainable fisheries and aquaculture.

Article X.17
Emergency measures

If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the competent authority of the Party shall:

- (a) immediately, and in any case no later than 24 hours, notify the competent authorities of the other Party and the contact point designated under Article X.4 (Competent Authorities) of such emergency measure;
- (b) allow the other Party to make comments in writing;
- (c) engage, if necessary, in technical consultations as referred to in Article X.10 (Technical Consultations); and
- (d) take the comments referred to in subparagraph (b) and results of technical consultations referred to in subparagraph (c) into account.

2. The importing Party shall consider information provided in a timely manner by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties, in order to avoid unnecessary disruptions to trade.

3. The importing Party shall ensure that any emergency measure taken under paragraph 1 is not maintained without scientific evidence. It shall review the measure with a view to avoid unnecessary trade disruption and to minimize its negative effect on trade or to replace it by a permanent measure.

Article X.18

SPS Committee

1. The SPS Committee shall be competent to:
 - (a) monitor and review the implementation of this Chapter;
 - (b) advise and make recommendations in order to achieve the objectives of this Chapter through its implementation;
 - (c) provide a forum for discussion and exchange of information and issues of cooperation, in particular as regards International bodies;
 - (d) make recommendations for modifications to this Chapter if necessary and appropriate;
 - (e) enhance cooperation on the development, application and enforcement of SPS measures;
and
 - (f) any other function that is mutually agreed by the Parties.
2. The Parties may, by decision in the SPS Committee, adopt recommendations and decisions related to the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalency and alternative measures, and any other matter referred to under this article.

Article X.17

Dispute Settlement

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