

ANNEX 7

SANITARY AND PHYTOSANITARY MEASURES

Article 1 Definitions

1. The definitions set out in the following instruments shall apply to this Annex:
 - (a) the Agreement;
 - (b) Annex A of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures; and
 - (c) international standards.

2. For purposes of this Annex, the abbreviations set out below shall have the following meaning:
 - (a) **“CAC”** means Codex Alimentarius Commission;
 - (b) **“IPPC”** means the International Plant Protection Convention; and
 - (c) **“OIE”** means the World Organization for Animal Health.

Article 2 Purpose and Scope

1. The purpose of this Annex is to implement the provisions of the Protocol on Trade in Goods concerning Sanitary and Phytosanitary measures (hereinafter referred to as the “SPS” measures).
2. This Annex shall apply to SPS measures that directly or indirectly affect trade between the State Parties.

Article 3 Guiding Principle

In the preparation, adoption, and application of SPS measures, State Parties shall be guided by the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Article 4 Objectives

The objectives of this Annex are to:

- (a) facilitate trade while safeguarding human, animal or plant life or health in the territory of State Parties;
- (b) enhance cooperation and transparency in the development and implementation of SPS measures to ensure that they do not become unjustifiable barriers to trade; and

- (c) enhance technical capacity of State Parties for the implementation and monitoring of SPS measures while encouraging the use of international standards in the elimination of barriers to trade.

Article 5

Assessment of Risk to Determine Appropriate Level of Sanitary or Phytosanitary Protection

1. State Parties shall, in responding to market access requests, ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate, of the circumstances of the risks to human, animal or plant life or health taking into account risk assessment techniques developed by the relevant international organisations.
2. State Parties shall, in assessing risk and determining the sanitary or phytosanitary measures to be applied to achieve the appropriate level of protection, take into account available scientific evidence, relevant processes and production methods, relevant inspection, sampling and testing methods, prevalence of specific diseases or pests, existence of disease or pest free areas, relevant ecological and environmental conditions and quarantine, or other treatments.
3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risks, the State Parties shall take into account as relevant economic factors; the potential damage in terms of loss of production or sales in the event of entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing State Party; and the relative cost effectiveness of alternative approaches to limiting risks.
4. In cases where relevant scientific evidence is insufficient, a State Party may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information including that from relevant international organisations as well as from sanitary or phytosanitary measures applied by other State Parties. In such circumstances, the State Parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly, within reasonable time frames agreed by the concerned State Parties.
5. When a State Party has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by other State Parties is constraining, or has the potential to constrain its exports, and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the State Party maintaining the measure and if the aggrieved State Party is not satisfied, request for the review of the measure in accordance with the provisions of this Annex.

Article 6
Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and
Areas of Low Pest or Disease Prevalence

With a view to boosting intra-Africa trade in animals, animal products, animal by-products, plants, plant products and plant by-products:

- (a) State Parties undertake to recognise the concept, principles and guidelines of regionalisation and zoning as outlined in the Terrestrial and Aquatic Animal Health Codes of the OIE, and agree to apply this concept to prescribed diseases to be determined by consensus;
- (b) State Parties shall, in implementing sub-paragraph a of this Article, base their respective sanitary measures applicable to the exporting State Party whose territory is affected by a disease on the zoning decision made by the exporting State Party, provided that the importing State Party is satisfied that the exporting State Party's zoning decision is in accordance with the principles and guidelines that the State Parties have agreed upon, and is based on relevant international standards, guidelines, and recommendations. The importing State Party may apply any additional measure supported by science based evidence to achieve its appropriate level of sanitary protection;
- (c) State Parties may request recognition of a special status with respect to a disease not subject to zoning under sub-paragraph a of this Article. The importing State Party may request additional guarantees for imports of live animals, animal products, and animal by-products appropriate to the agreed status recognised by the importing State Party, including conditions deemed necessary by the importing State Party to achieve an appropriate level of sanitary protection;
- (d) State Parties recognise the concept of compartmentalisation and agree to cooperate on this matter;
- (e) State Parties shall endeavour to recognise regional conditions;
- (f) when establishing or maintaining its phytosanitary measures, the importing State Party shall take into account, among other things, the pest status of an area, such as a pest-free area, pest-free place of production, pest-free production site, an area of low pest prevalence and a protected zone that the exporting State Party has established; and
- (g) the exporting State Party claiming that areas within its territory are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary scientific evidence in order to demonstrate that such areas are, and are likely to remain pest- or disease-free areas or areas of low pest and or disease prevalence. For this purpose, each exporting State Party shall provide reasonable access to its territory to the importing State Party for inspection, testing and other relevant procedures.

Article 7 Equivalence

1. The importing State Party shall accept the sanitary or phytosanitary measures of the exporting State Party as equivalent to its own if the exporting State Party objectively demonstrates, through science based and technical information including *inter alia*, reference to relevant international standards, or relevant risk assessment, that the measure would achieve the importing State Party's appropriate level of sanitary or phytosanitary protection;
2. State Parties shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.
3. State Parties shall follow the procedures for determining the equivalence of sanitary or phytosanitary measures developed by the WTO SPS Committee, the CAC, the OIE and the IPPC.

Article 8 Harmonisation

1. State Parties shall cooperate in the development and harmonisation of sanitary or phytosanitary measures based on international standards, guidelines and recommendations taking into account the harmonisation of sanitary or phytosanitary measures at the regional level.
2. State Parties may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a State Party determines to be appropriate, in accordance with the relevant provisions of Article 5 of this Annex.
3. State Parties shall fully participate in the relevant international organisations and their subsidiary bodies, in particular the CAC, the OIE and the IPPC to promote within these organisations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of SPS measures.
4. If State Parties jointly identify a commodity as a priority, they shall establish harmonised sanitary or phytosanitary import requirements for that commodity.

Article 9 Audit and Verification

1. For purposes of maintaining confidence in the implementation of this Annex, an importing State Party may carry out an audit or verification, or both, of all or part of the control programme of the competent authority of the exporting State Party. An importing State Party shall bear its own costs associated with the audit or verification.

2. For purposes of paragraph 1 of this Article, the State Parties shall abide by principles and guidelines established by international standards bodies in conducting audits or verifications as agreed between the State Parties.

Article 10
Import or Export Inspections and Fees

1. State Parties reaffirm their rights and obligations to undertake import or export inspections while abiding by principles and guidelines established by international standard bodies in conducting inspections.
2. The importing or exporting State Party may collect fees for inspections, which shall not exceed the recovery of the costs reasonably incurred in the conduct of the inspection.
3. When import inspections reveal non-compliance with the relevant import requirements, the action taken by the importing State Party shall be based on relevant international standards or an assessment of the risk involved and not be more trade-restrictive than required to achieve the State Party's appropriate level of sanitary or phytosanitary protection.
4. The importing State Party shall notify the importer and the Competent Authority of the exporting State Party of a non-compliant consignment and the reason for non-compliance and action to be taken. The importing State Party may provide the exporter with an opportunity for a review of the decision. The importing State Party shall consider any relevant information submitted to assist in the review.

Article 11
Transparency

1. State Parties, recognising that transparency is essential in ensuring clarity, predictability and trust in order to foster intra Africa-trade shall:
 - (a) comply with transparency obligations in accordance with the procedures developed by the SPS Sub-Committee;
 - (b) designate a National Focal Point for fulfilling the notification obligations established under this Article; and
 - (c) notify the Secretariat of any draft, revised or adopted SPS measures for further distribution to State Parties.
2. State Parties shall endeavour to exchange information on other SPS issues including:
 - (a) any significant change to the structure or organisation of a State Party's Competent Authority;

- (b) upon request, the results of a State Party's official controls and a report on the implementation of the controls carried out with respect to the provisions of this Annex;
- (c) the results of an import inspection provided for in Article 10 of this Annex in case of a rejected or a non-compliant consignment;
- (d) upon request, a risk analysis or scientific opinion that a State Party has produced in accordance with Article 5 of this Annex;
- (e) pest or disease status, including the evolution of a new disease or new pest;
- (f) any food safety issue related to a product traded between the State Parties, that poses a food safety risk; and
- (g) import requirements such as quarantine restrictions.

Article 12 Technical Consultations

1. Where a State Party has a significant concern with respect to food safety, plant health or animal health, or any other SPS measure that another State Party has proposed or implemented, the concerned State Party may request technical consultations with the other State Party.
2. The State Party so requested shall respond to the request within thirty (30) days of receipt of the request.
3. Each State Party shall provide the information necessary to avoid a disruption to trade and, as the case may be, to reach a mutually acceptable solution.
4. Where State Parties fail to reach a mutually acceptable solution, the matter may be referred to the SPS Sub-committee for consideration.

Article 13 Emergency SPS Measures

1. State Parties shall notify emergency SPS measures within forty-eight (48) hours of the decision to implement the measure. Where a State Party requests technical consultations to address the emergency SPS measure, the technical consultations shall be held within ten (10) working days of the notification of the emergency SPS measure. The State Parties shall consider any information provided through the technical consultations.
2. The importing State Party shall consider the information, that was provided in a timely manner by the exporting State Party, when making a decision with respect to a consignment that at the time of adoption and implementation of the emergency SPS measure is in transit between the State Parties. State Parties shall base their decision

on the principles of risk assessment in accordance with the provisions of Article 5 of this Annex.

Article 14 Cooperation and Technical Assistance

1. State Parties agree to cooperate in the implementation of obligations arising out of this Annex including on technical assistance, in particular in the following areas:
 - (a) exchange of information and sharing of expertise and experience among State Parties;
 - (b) adopting harmonised common positions while participating in international SPS fora relevant to the AfCFTA;
 - (c) development and harmonisation of SPS measures at regional and continental levels, on the basis of established scientific data or relevant international standards;
 - (d) development of infrastructure such as testing laboratories;
 - (e) capacity building for public and private sector stakeholders, including through information sharing and training; and
 - (f) identification or establishment of SPS centres of excellence.
2. State Parties may collaborate with regional and international SPS bodies.

Article 15 Establishment and Functions of the Sub-Committee for Sanitary and Phytosanitary Measures

1. The Committee for Trade in Goods shall, in accordance with Article 31 of the Protocol on Trade in Goods, establish a Sub-Committee on Sanitary and Phytosanitary Measures.
2. The Sub-Committee shall be composed of duly designated representatives from State Parties and shall carry out the responsibilities assigned to it under this Annex or by the Committee on Trade in Goods.
3. The functions of the SPS Sub-Committee shall be to:
 - (a) monitor and review the implementation of this Annex;
 - (b) provide direction for the identification, prioritisation, management and resolution of SPS issues that may arise;
 - (c) provide a regular forum to exchange information relating to each State Party's regulatory system, including the scientific and risk assessment basis for SPS measures;

- (d) prepare and maintain a document detailing the state of discussions between State Parties on their work on the recognition of equivalence of specific SPS measures;
 - (e) develop procedures for the implementation of provisions of this Annex;
 - (f) identify, establish, and monitor the implementation of a capacity building programme to support implementation of the provisions of this Annex, in conjunction with the Secretariat;
 - (g) identify opportunities for greater bilateral engagement, and enhanced relationships, which may include an exchange of officials between State Parties;
 - (h) consider SPS issues referred to it by State Parties, as expeditiously as possible;
 - (i) facilitate improved understanding between the State Parties on the implementation of the SPS provisions of this Annex, and promote cooperation between the State Parties on SPS issues under discussion in multilateral fora, including the WTO SPS Committee, the CAC, the OIE and the IPPC, as appropriate;
 - (j) identify and discuss, at an early stage, initiatives that have an SPS component, and that would benefit from cooperation;
 - (k) collaborate with other Sub-Committees with a view to facilitating intra-Africa trade; and
 - (l) undertake any other tasks as may be assigned by the Committee on Trade in Goods.
4. For purposes of paragraph 2 of this Article, State Parties shall regularly provide relevant information as may be required.
5. A State Party may refer any SPS issue to the SPS Sub-Committee:
- (a) where the SPS Sub-Committee is unable to resolve an issue, the matter shall be referred to the Committee on Trade in Goods for consideration.
 - (b) where a State Party is not satisfied with the decision of the Sub-Committee, the State Party shall refer the matter to the Committee on Trade in Goods.

Article 16

Dispute Settlement

Any dispute between the State Parties arising out of or relating to the interpretation or application of any provision of this Annex shall be settled in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

Article 17

Review and Amendment

This Annex shall be subject to review and amendments in accordance with Articles 28 and 29 of the Agreement.