

India - Australia Trade Agreement: Sanitary And Phytosanitary Measures In The ECTA

written by Jidesh Kumar | May 6, 2022

in

India Australia ECTA

This article is regarding the India Australia ECTA - Economic Co-Operation and Trade Agreement (ECTA) which was signed on April 2nd 2022 and is part of our ongoing series on the historic deal.

We will focus on the various aspects of Sanitary and Phytosanitary (SPS)

measures and their scope of relevance in ECTA.

In simple language, SPS measures are the standards governments put into place to ensure the products coming into their countries are safe for consumption or use. The sections below will outline what SPS measures have been agreed upon between India and Australia to ensure fair, just and navigable trade between the two entities.

Sanitary And Phytosanitary Measures – Relevance Under [India Australia ECTA](#)

The SPS measures are governed by the SPS Agreement formulated by the World Trade Organization (WTO). As an exacting set of standards regarding the safety and biosecurity applicable to humans, plants and animals to prevent them from health risks arising due to contamination in the food and feed, they are a challenging but necessary trade barrier for importers and exporters to overcome. They are more crucial nowadays due to the complex nature of transactions between the economies. Such an agreement allows the governments of member nations to protect their territory while ensuring that such measures do not cause unnecessary trading hurdles for all parties.

Scope Of The SPS Agreement under India Australia ECTA

This chapter will apply to the SPS measures of the two Parties that will affect trade directly or indirectly and the Parties will affirm their rights and duties concerning each other under the agreement. The term “Parties” or “Party” here will henceforth refer to India and Australia where necessary.

I. Adaptation of Regional Conditions

- Parties must recognize the concept of regional conditions including pest/disease-free areas/areas of low pest/disease prevalence as given in the SPS Agreement. Parties will take into account the decision of the WTO SPS Committee and relevant international guidelines for area-specific measures to recognize such regional conditions and gain confidence in the procedure.
- When an importer establishes regional conditions for the exporter, the latter must request the importer to recognize its regional conditions for pests or disease. On receiving such a request accompanied with sufficient information, an assessment must be initiated within a reasonable period of time.
- Reasonable access shall be given to the importer for assessment and upon request, the status of the assessment must be provided to the exporter.
- If the importer adopts the recognized regional condition, it must communicate the same to the exporter in writing and implement the measures in a reasonable period of time.
- If upon evaluation, the importer does not recognize the regional condition, it must communicate this in writing along with the rationale behind the decision to the other. If a Party modifies or revokes a determination that recognizes the regional conditions of the other Party, it is possible for the concerned Party to request an assessment on whether the determination is reinstated.

II. Equivalence

The concept of “equivalence” is about ensuring fair trade despite the differences in the regulatory measures concerning food and health quality standards since, in practice, these standards may be fulfilled using different kinds of measures. For instance, Australia uses heat treatment of milk to produce hard cheese for food safety. However, New Zealand uses a “no-risk” period of import of cucurbits from Australia as an alternative health measure. Therefore, New Zealand can accept this alternative health measure without undermining its national objectives of food and health quality.

- Parties will strengthen cooperation of equivalence by taking into account decisions of the WTO SPS Committee and other international guidelines.
- When a Party has concluded the equivalence determination of the other Party’s measures, it should notify the latter.
- The importer shall recognize the equivalence of individual and group measures or systems if the exporter demonstrates that they have the same effect as the importer’s measures.
- To determine equivalence, the importer shall take into account the available knowledge, information, experience, and competence of the exporter.
- A Party may enter into consultation to achieve bilateral recognition arrangements of equivalence. On such a request, the importer shall provide to the exporter the rationale and specific risks its measures are intended to address.
- The exporter shall provide any necessary information to the importer to commence an equivalence assessment and the latter shall explain the process and plan for such determination without undue delay.
- The consideration by one Party concerning a request from the other Party for the recognition of the equivalence of its measures should not disrupt or suspend the ongoing import of that product.
- After the assessment, the importer shall notify the result to the exporter with its decision in any case.
- A Party may propose to alter an SPS measure that it feels is having a significant impact on trade in goods that are subject to an equivalence arrangement to notify its effect to the other Party.
- After receiving such notification from the exporter, the importer shall continue to apply its determination of equivalence -- unless it considers that the equivalence arrangement is no longer sufficient to meet its appropriate level of protection.
- If the importer considers that equivalence cannot be maintained and is no longer applicable, the exporter may request consultations to achieve a bilateral recognition arrangement of equivalence.

III. Contact Points and Competent Authorities

ECTA focuses on the efficient and transparent exchange of information between the importer and the exporter. Parties have to appoint a contact point and give a list of competent authorities that will deal with matters arising from the SPS agreement.

Each Party must appoint a point of contact for communication between the entities concerned regarding matters under the relevant chapter and provide a list of competent authorities to the other Party responsible for administering SPS measures. Any change in contact points and composition of competent authorities shall be notified.

IV. Transparency and Exchange of Information

One of the main objectives of India Australia ECTA is to encourage transparency in trade between India and Australia. To achieve the same, prompt exchange of information regarding the SPS measures or any change there must be provided to the other party.

Following transparency obligations, contact points of each Party must inform the other of any changes in the SPS measures, including emergency measures to protect human, animal, and plant life. Such information should also be provided through WTO's Central Registry of Notifications.

- Each Party shall respond within a reasonable time for any clarification regarding SPS measures and model certifications or attestations.
- A Party shall request the other Party for any other information regarding their SPS measures if the former has not been informed in the notification to the SPS Committee (or otherwise) and such a request must be answered within a reasonable period of time.
- If the importer determines significant non-conformity patterns with SPS measures, it must inform the exporter.
- The Party proposing an SPS measure must allow 60 days for the other Party to provide written comments on such a measure after it makes a notification to the WTO. The Party proposing the measure may allow more than 60 days except in case of urgent problems of human, animal or plant life or health.

V. Certifications

Certifications under the SPS measures are necessary to ensure safe import and export under ECTA, especially in agricultural commodities. These certificates need to be aligned with the goods being imported or exported to prevent risks to human, animal, and plant life or health.

The Parties shall promote the implementation of paperless electronic SPS certification required in trade to protect human, animal, and plant life or health. Such certification must be applied according to provisions of the SPS Agreement and the importer will have to accept certificates issued by the authorities representing the exporter.

VI. Audits

India Australia ECTA is all about transparency, promoting mutual trust, communication, and cooperation between India and Australia. One way of enforcing such goals is through regular audits done by both Parties regarding SPS Measures as per the SPS agreement and other international guidelines.

- The Party must take audits according to provisions of the SPS Agreement and WTO SPS Committee. The such audit must be system-based to assess the effectiveness of the regulatory controls of authorities representing the exporter to provide assurance and meet SPS measures of the importer.
- Prior to the commencement of an audit, any relevant information regarding the scope and objectives of the audit shall be shared among the Parties. The cost of the audit must be borne by the auditing Party unless otherwise agreed.
- The exporter shall be given an opportunity to comment on the findings of the importer. The importer must consider such comments before reaching a conclusion. The conclusions and summary of the report will have to be provided in writing.
- The consequence of an audit shall be supported by evidence and data, taking into account the importer's knowledge of, relevant experience with, and confidence in, the exporter, and shall not be more trade-restrictive.
- Parties must prevent any disclosure of confidential information during the audit process.

VII. Cooperation and Capacity Building

The Parties shall explore opportunities for further cooperation, collaboration, and information exchange, including through their competent authorities on SPS matters of mutual interest aligned with this chapter such as the provision of technical assistance and capacity building, as per the availability of appropriate resources.

The Parties shall also endeavor to coordinate with bilateral, regional, or multilateral work programs to avoid unnecessary duplication and maximize the use of resources.

VIII. Technical Consultations

There are times when Parties involved may require specific clarifications on certain trade concerns. They may request each other for an explanation regarding the same before adopting any other means of dispute settlement.

- If any Party has specific trade concerns, it shall request technical consultation which shall be granted promptly or within 30 days of such a request.
- If any Party feels that the SPS measures of the other Party are affecting trade between them, then - through any established communication channel - it may request clarification on the same, and such request must be promptly answered.

IX. Emergency SPS Measures

- If a Party needs to adopt an emergency measure necessary for the protection of human, plant, animal life or health it shall, through contact points, inform the other Party as soon as possible and as per provision of Agreement, engage in technical consultations.
- The importer shall consider any information provided promptly by the

exporter when making decisions regarding goods being transported at the time of adoption of the emergency SPS measures.

- On adoption of an emergency measure, the Party shall review the scientific basis of the measure within 6 months to develop a revised measure to permit trade and also provide the results of the review to the other Party.
- If the emergency measure is maintained after the review, the importer shall reconsider the measure at least every 6 months based on the latest available information and shall explain the reasons for the continuation of the emergency measure.
- If the exporter considers that an emergency measure is being maintained by the importer without reason, it may provide that evidence to the other Party and request that the other Party review the measure or engage in technical consultations.

X. Subcommittee on SPS Measures

The [SPS Committee](#) established by the WTO focuses on providing a platform for consultations among the Parties. It also serves as a set of guidelines for Parties on different SPS matters. The sub-committee established under this chapter will allow Parties to address various concerns under India Australia ECTA with regards to SPS Measures like certifications, equivalence, and more.

- The Parties must appoint a subcommittee on SPS measures consisting of representatives of the government of each Party to review the progress made by the Parties in implementing their commitments under this chapter.
- The subcommittee provides a platform for the Parties to raise any matter related to SPS including any request for recognition of equivalence or of regional conditions and innovations for certification to facilitate trade between the Parties.
- The subcommittee shall meet within 1 year after the date of entry after the agreement and thereafter as mutually decided by the Parties. It shall report to the Joint Committee.

Conclusion

This trade deal with Australia is an exciting development and is expected to improve Indo-Pacific trade relations. India will gain the benefits of preferential market access in all the varied areas of concern under ECTA and also import raw materials like coal, wine, etc on 70% tariff lines. The SPS measures outlined in the agreement will allow both parties involved to have fair and transparent commercial transactions while keeping safeguarding health and welfare.

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