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CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives

The objectives of this Chapter are to:

- (a) protect human, animal and plant life or health in the territory of each Party while facilitating bilateral trade between the Parties;
- (b) ensure that the Parties' sanitary and phytosanitary ("SPS") measures do not create unjustified barriers to trade and promote resolution of SPS issues that may affect trade;
- (c) reinforce and build upon the implementation of the SPS Agreement;
- (d) promote the implementation by each Party of international standards, guidelines and recommendations;
- (e) promote greater transparency in and understanding of the application of each Party's SPS measures;
- (f) strengthen communication, consultation and cooperation between the Parties, including in international standard setting bodies.

- (g) provide direction for the identification, prioritisation, management and resolution of technical market access requests and other issues.

ARTICLE 6.2

Scope

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

ARTICLE 6.3

Definitions

1. For the purposes of this Chapter

"competent authority" means an authority listed in Annex 6-A (Competent authorities);

"protected zone" means an officially defined geographical area in the European Union in which a specified regulated pest is not established in spite of favourable conditions for its establishment and its presence in other parts of the European Union.

2. The definitions set out in Annex A of the SPS Agreement shall apply.

3. The Parties may take into consideration the glossaries and definitions of the relevant international organisations, such as the Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health ("OIE") and the International Plant Protection Convention ("IPPC"). In the event of an inconsistency between these glossaries and definitions and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

ARTICLE 6.4

Relationship with the SPS Agreement

1. The Parties affirm their rights and obligations with respect to each other under the SPS Agreement, in particular that the Parties shall ensure that their SPS measures are based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement. The Parties further affirm that in cases that where relevant scientific evidence is insufficient, a Party may provisionally adopt SPS measures on the basis of

available pertinent information, including that from the relevant international organisations. In such circumstances, the Party adopting the measure shall seek to obtain the additional information necessary for a more objective assessment of risk, and review the measure accordingly within a reasonable period of time.

2. Nothing in this Chapter shall affect the rights and obligations of each Party under the SPS Agreement.

ARTICLE 6.5

Trade conditions and approval procedures

1. The importing Party shall make publicly available its general SPS import requirements.

2. Each Party shall ensure that all sanitary and phytosanitary control, inspection, assessment and approval procedures are undertaken and completed without undue delay including, if needed, audits and the necessary legislative or administrative measures to complete the approval procedure. Each Party shall in particular avoid unnecessary or unduly burdensome information requests, which shall be limited to what is necessary and take into account information already available in the importing Party, such as on the legislative framework and audit reports of the exporting Party.

3. If the Parties jointly identify a specific good or goods as a priority, the importing Party shall establish specific import requirements for that those good, unless the Parties decide otherwise. In identifying which specific goods are priorities, the Parties shall cooperate within the framework of the SPS Committee to ensure the efficient management of their available resources.

4. Except as provided for in Article 6.8 (Adaptation to Regional Conditions), each Party shall apply its sanitary or phytosanitary import conditions to the entire territory of the other Party.

5. Where an export request is received in relation to a specific product¹ which has previously been approved for import, the importing party shall, without undue delay, assess the risk profile and, if determined to be the same, complete the approval procedure expeditiously, without undue delay, and if possible no later than 12 months, from when the importing party makes its determination, other than in duly justified circumstances.

6. The Parties shall follow any specific guidelines and procedures they may decide to set out in Annex 6-B (Trade conditions and approval procedures).

¹ For greater certainty, in the case of the EU this would mean a specific product from a Member State or group of Member States.

ARTICLE 6.6

Plant health-related conditions

1. In accordance with applicable standards agreed under the IPPC, the Parties shall exchange information on their pest status in their territory in order to justify the categorisation of pests and related phytosanitary measures.
2. To assist in maintaining confidence in each other's categorisation of quarantine pest and related phytosanitary measures each party shall make publicly available information concerning pests for which a phytosanitary concern exists. This information may include, as appropriate:
 - (a) the quarantine pests not present within any part of its territory;
 - (b) the quarantine pests present but not widely distributed and under official control;
 - (c) the protected zone quarantine pests not present in a specific part of its territory (protected zone); and
 - (d) the regulated non-quarantine pests in plants for planting.
3. Each Party shall limit its import requirements for plants or plant products to measures that provide assurance that the plants or plant products can be considered free from quarantine pests², or the applicable tolerance for regulated non-quarantine pests in plants for planting is respected. Such import requirements shall be applicable to the entire territory of the exporting Party taking into account regional conditions.
4. Consignments of products on which phytosanitary conditions apply shall be accepted without pre-clearance programmes.
5. The Parties shall follow any specific guidelines and procedures they may decide to set out in Annex 6-B (Trade conditions and approval procedures).

ARTICLE 6.7

Procedure for listing establishments

1. The exporting Party shall ensure that establishments, facilities and products eligible for export meet the applicable sanitary requirements of the importing Party.

² For greater certainty, 'considered to be free from quarantine pests' has the meaning set out in ISPM 12.

2. If the importing Party maintains a list of authorised establishments or facilities for the import of a specific product, it shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection of that establishment or facility if the exporting Party has requested such an approval and the importing Party has authorised the import of the product on the basis of an evaluation of the control system on animal health and food safety conditions applied by the competent authorities of the exporting Party.

3. The importing Party shall include the establishment or facility on the list of authorised establishments without undue delay. Subject to its laws and regulations, the list may be made publicly available by at least one of the Parties. In duly justified circumstances, the importing Party may refuse the approval of an establishment or facility that is not in compliance with its import requirements. In such cases, the importing Party shall notify the competent authority of the exporting Party and provide a justification for the refusal.

4. The Parties shall follow any specific guidelines and procedures they may decide to set out in Annex 6-B (Trade conditions and approval procedures).

ARTICLE 6.8

Adaptation to Regional Conditions

1. The Parties recognise that adaptation of SPS measures to regional conditions is an important means of facilitating trade.

2. Each Party shall, in adapting its SPS measures to regional conditions, consider relevant international standards, guidelines and recommendations.

3. Accordingly, the Parties shall endeavour to cooperate on the recognition of pest- or disease-free areas, protected zones and areas of low pest or disease prevalence, with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas and areas of low pest or disease prevalence.

4. With respect to live animals, animal products and animal by-products, when an importing Party establishes or maintains a sanitary measure applicable to the exporting Party, the exporting Party may request the importing Party recognise its regional conditions for any animal disease.

5. When the importing Party establishes or maintains a phytosanitary measure applicable to the exporting Party, the importing Party shall, on request of the exporting Party, take into account, *inter alia*, the pest status of an area, such as a pest-free area, pest-

free place of production, pest free production site, area of low pest prevalence and protected zone that the exporting Party has established.

6. In its request, the exporting Party shall provide an explanation and supporting data as provided for in the relevant IPPC International Standards for Phytosanitary Measures (ISPM) and any other relevant information it considers appropriate.

7. Where an importing Party determines that the information provided by the exporting Party with its request is sufficient it shall initiate an assessment within a reasonable period of time as to whether it can accept the exporting party's determination of regional conditions. During the assessment process the Party shall also inform the other Party of the status of the assessment, when requested to do so.

8. Where the importing Party has accepted an exporting Party's determination of regional conditions and the exporting Party modifies those regional conditions, the importing Party may continue to accept the determination of regional conditions and allow trade to continue, provided that the importing Party is satisfied that its ALOP will be maintained. The importing Party may apply any other measure or measures to meet its appropriate level of protection (ALOP). An agreed recognition of disease status and any additional measure may be set out in Annex 6-C (Recognition of sanitary and phytosanitary measures).

9. If an importing Party adopts a measure that recognises specific regional conditions of an exporting Party, the importing Party shall implement the measure within a reasonable period of time and inform the exporting party trade can commence.

10. If the evaluation of the evidence provided by the exporting Party does not result in a decision to recognise the regional conditions of the exporting Party, the importing Party shall provide the exporting Party with the rationale for its determination within a reasonable period of time.

11. If there is an incident that results in the importing Party modifying or revoking a decision recognising the regional conditions of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

12. The Parties may discuss in advance the risk management measures that will apply to trade between them in the event of a change of status.

ARTICLE 6.9

Equivalence

1. The Parties acknowledge that recognition of the equivalence of SPS measures is an important means of facilitating trade.
2. The importing Party shall accept equivalence of the individual SPS measure, group of measures or systems of the exporting Party if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of protection based on relevant supporting science-based and technical information. If required, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing and other relevant procedures. The final determination of equivalence rests with the importing Party.
3. The determination of the equivalence shall be based on relevant international standards, guidelines and recommendations and any specific guidelines and procedures set out in Annex 6-C (Recognition of sanitary and phytosanitary measures).
4. Where the importing Party has concluded an equivalence determination of the exporting Party's measures, the importing Party shall notify the determination to the exporting Party in writing, and undertake any implementation activities to give effect to the determination within a reasonable period of time.
5. Each Party shall accept the measures listed in Annex 6-C (Recognition of sanitary and phytosanitary measures) as equivalent to its own under the terms sets out therein.
6. If a Party adopts, modifies, repeals or removes an SPS measure including a special condition, included in Annex 6-C (Recognition of sanitary and phytosanitary measures), which it considers may affect an equivalence arrangement between the Parties, it shall, where possible, notify the other Party. The importing Party shall continue to accept the determination of equivalence unless it considers that the equivalence arrangement is no longer sufficient to meet its ALOP. If the importing Party considers that equivalence can be maintained under special conditions it shall consult with the exporting Party on their development.

ARTICLE 6.10

Audit and verification³

1. For the purpose of maintaining confidence in an exporting Party's ability to provide required assurances and to comply with the SPS import requirements and related control measures of the importing Party, the importing Party shall have the right to carry out an audit of all or part of the control system of the competent authority of the exporting Party.

³ For the purpose of this Article, the term "audit" is understood to include an audit or verification or both, as appropriate.

2. If possible, audits shall take a systems-based approach which relies on the examination of a sample of system procedures, documents or records and, where required, on-site inspections of facilities within the scope of the audit.
3. Prior to the commencement of an audit the Parties shall discuss the objectives and scope of the audit, the criteria or requirements against which the exporting Party will be assessed, and if the importing Party decides to carry out an audit visit to the exporting Party, agree on the itinerary and procedures for conducting the audit which shall be laid down in an audit plan. Unless otherwise agreed by the Parties, the importing Party shall endeavour to provide the exporting Party an audit plan 60 days prior to the commencement of the audit.
4. The importing Party shall provide a draft audit report including its findings, conclusions and recommendations, if any, to the exporting Party, normally within 60 days of the conclusion of the audit.
5. The importing Party shall provide the exporting Party with the opportunity to comment or seek clarifications on the draft report, before the importing Party finalises its assessment. The exporting Party may make proposals for corrective actions to respond to the findings and conclusions in the draft audit report.
6. The importing Party shall provide a final report in writing to the exporting Party normally within 60 days of the date of receipt of the exporting Party's comments, unless otherwise agreed by the Parties.
7. The nature and frequency of audits shall be determined by the importing Party, taking into account its laws and regulations, the inherent risks of the product, past import checks and other available information, such as audits and inspections previously undertaken.
8. The Parties shall aim to minimise the frequency and number of audit visits. Where an export request is received in relation to a specific product⁴ which has previously been subject to an audit or is already being exported to it, the importing Party shall carry out an audit visit to the exporting Party only in duly justified circumstances and shall provide an explanation to the exporting Party as to why it is required.
9. The costs incurred by the importing Party to conduct an audit shall be borne by the importing Party, unless the Parties agree that additional assistance from the exporting Party is appropriate.

⁴ For greater certainty, in the case of the EU this would mean a specific product from a Member State.

10. Measures taken by the importing Party as a consequence of an audit shall be supported by objective evidence, taking into account the importing Party's knowledge of, relevant experience with and confidence in, the exporting Party, and shall not be more trade restrictive than necessary to achieve the importing Party's appropriate level of protection.

ARTICLE 6.11

Certification

1. If a Party requires import certification, it shall ensure that the requirement for certification is applied only to the extent necessary to meet its SPS objectives and shall take into account guidance of the WTO SPS Committee and relevant international standards, guidelines and recommendations.

2. If the importing Party has accepted the relevant sanitary or phytosanitary measures of the exporting Party as equivalent to its own with respect to animals, animal products, plants, plant products and other objects, the exporting Party may include the model health attestation or declaration, as appropriate, set out in Section 1 of Annex 6-D (Certification) on the official certificate.

3. If an importing Party determines that a special condition included in Annex 6-C (Recognition of sanitary and phytosanitary measures) is no longer necessary, this special condition shall, within a reasonable period of time, be removed from the relevant import certificate of that Party.

4. If an importing party amends or repeals legislation referred to in Annex 6-C (Recognition of sanitary and phytosanitary measures), the relevant import certificate shall, where applicable and practicable, refer to the most recent version of that legislation.

5. The Parties shall follow the guidelines and procedures set out in Annex 6-D (Certification) on export certification.

7. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

ARTICLE 6.12

Import checks and fees

1. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with imports. These checks shall be carried out without undue delay and with minimum trade disrupting effects.
2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party shall be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's appropriate level of protection.
3. The importing Party shall notify the importer or its representative of a non-compliant consignment including the reason for non-compliance, and subject to its laws and regulations, provide them with an opportunity for a review of the decision. The importing Party shall consider any relevant information submitted to assist in the review.
4. Any fees imposed shall be in accordance with paragraph 1(f) of Annex C to the SPS Agreement.
5. The Parties shall follow any specific guidelines and procedures they may decide to set out in Annex 6-E (Import checks and fees).

ARTICLE 6.13

Emergency SPS measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the Party shall promptly notify the other Party of that measure through its contact point as soon as possible and in any case no later than 48 hours after adoption of the measure.
2. On request of the other Party, a Party adopting an emergency measure shall engage in technical consultations under Article 6.15 (Technical Consultations) within 10 days of the receipt of the request.
3. The importing Party shall consider any information provided in a timely manner by the exporting Party when making decisions with respect to one or more consignments that, at the time of adoption of the emergency SPS measure, are being transported between the Parties.
4. If a Party adopts an emergency measure, it shall commence a science-based review of the measure within a reasonable period of time, with the aim of developing a revised SPS measure that would permit trade to recommence. The Party shall then review the need for the emergency measure at least every six months thereafter and provide, on request, the justification for maintaining the emergency measure.

ARTICLE 6.14

Transparency and information exchange

1. Each Party shall designate a contact point to facilitate communication between the Parties on matters arising under this Chapter.
2. The Parties shall promptly inform each other's contact points of any significant:
 - (a) change to plant pest or animal disease status of relevance to trade between the Parties;
 - (b) food safety issue related to a good traded between the Parties;
 - (c) change to the structure or organisation of a Party's competent authority; and
 - (d) matter related to SPS measures arising under this Chapter that may affect trade between the Parties, and any other pertinent information for the adequate implementation of this Chapter.
3. Unless the Trade Committee decides otherwise, when the information referred to in paragraph 2 has been made available via notification to the WTO's Central Registry of Notifications, or to the relevant international standard-setting body, in accordance with its relevant rules, the requirements in paragraph 2 shall be deemed to have been fulfilled.
4. If a Party provides information to the other Party under this Chapter, the Party receiving the information shall maintain the confidentiality of the information, except where such information is:
 - (a) disclosed for the purposes of complying with the legal requirements of the receiving Party;
 - (b) transmitted pursuant to points (a) or (b) of Article 14 (2) of this Chapter;
 - (c) publicly available; or
 - (d) Identified as non-confidential by the providing Party
5. If point (a) applies, the Party that has received the information shall give notice to the other Party, wherever possible in advance of any such disclosure. Such notice shall identify the legal requirements of the Party requiring disclosure.

ARTICLE 6.15

Technical consultations

1. If a Party has specific trade concerns regarding SPS measures proposed or implemented by the other Party, it may request technical consultations.
2. The Parties shall hold such technical consultations within 30 days of the request, unless otherwise agreed by the Parties.
3. The Parties shall endeavour to provide all relevant information necessary to avoid disruption to trade and to reach a mutually acceptable solution.
4. If the Parties do not reach a mutually agreed solution within 30 days after the date of the commencement of technical consultations, either Party may refer the specific trade concern to the SPS Committee.

ARTICLE 6.16

Committee on SPS measures

1. For the purpose of the effective implementation and operation of this Chapter, the parties hereby establish a Committee on Sanitary and Phytosanitary Measures (“the Committee”).
2. The functions of the Committee shall include:
 - (a) monitoring implementation and considering any matter related to this Chapter;
 - (b) providing direction for the identification, prioritisation, management and resolution of technical market access requests and other issues.
 - (c) establishing a work program that reflects *inter alia* the direction provided under subparagraph (b).
 - (d) providing a forum to exchange information on each Party’s regulatory system, including the scientific and risk assessment basis for SPS measures.
 - (e) serving as the primary forum to resolve specific trade concerns where the Parties have been unable to reach a mutually agreed solution through technical consultations pursuant to Article 6.15 (Technical Consultations), without prejudice to Chapter 23 (Dispute settlement).
3. The Committee may, among other things:
 - (a) identify opportunities for cooperation, including trade facilitation initiatives and further work on eliminating unnecessary barriers to trade between the Parties;

- (b) facilitate understanding between the Parties on the implementation of the SPS Agreement, and promote cooperation on SPS issues in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures and international standard-setting bodies, as appropriate;
 - (c) provide an opportunity for the Parties to update each other at an early stage on regulatory developments related to SPS measures; and
4. The Committee may establish ad hoc working groups.
 5. A Party may refer any issue to the Committee. The Committee shall consider the issue as expeditiously as possible. If the Committee is unable to resolve an issue it shall, at the request of a Party, report to the Trade Committee.
 6. The Committee shall meet no later than one year following the entry into force of this Agreement, and thereafter it shall meet at least once a year or as agreed by the Parties.
 7. The Committee shall meet at such venues and times and by such means as may be agreed by the Parties, and it may also address issues by correspondence.
 8. The Committee shall report annually on its activities and work programme to the Trade Committee.

ARTICLE 6.17

Cooperation on scientific robustness and transparency on authorisation processes relating to the food chain

1. The Parties emphasise the importance of robust, science-based and appropriately transparent safety approval and authorisation processes in the food chain in building and maintaining public trust and confidence.
2. The Parties recognise the value of exchanging information, expertise and experiences, and identifying areas of mutual interest in respect of safety approval and authorisation processes in the food chain. The Parties shall cooperate on increasing the robustness and transparency of these processes where practicable and appropriate to do so.

