CHAPTER X

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE X.1

Objectives

1. The objectives of this Chapter are to:

(a) Protect human, animal and plant health in the territory of the Parties while facilitating trade between them;

(b) Ensure that the Parties' sanitary and phytosanitary ("SPS") measures do not create unnecessary barriers to trade;

(c) Facilitate the implementation of the SPS Agreement, international standards and related texts, and in particular, regionalisation and equivalence;

(d) Maintain cooperation in international standard-setting bodies;

(e) Promote transparency and understanding on the application of each Party's SPS measures;

(f) Enhance co-operation between and recognise the common objectives of the Parties to combat antimicrobial resistance (AMR); and

(g) Enhance communication, co-operation and resolution of SPS issues that may affect trade between the Parties.

ARTICLE X.2

Scope

1. This Chapter applies, unless otherwise specified within this Article, to SPS measures that may affect trade between the Parties.

2. This Chapter shall not apply to any measure or matters covered by the Sanitary Agreement.

3. This Chapter also applies to cooperation on antimicrobial resistance.

ARTICLE X.3

Definitions

1. The definitions in Annex A of the SPS Agreement, as well as those adopted under the auspices of the Codex Alimentarius Commission (the "Codex"), the World Organisation for Animal Health (the "OIE") and the International Plant Protection Convention (the "IPPC") shall apply.

2. In addition, for the purposes of this Chapter:

(a) SPS Agreement means the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures.

(b) Sanitary Agreement means the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (Council Decision 97/132/EC) and any subsequent amendments.

(c) Competent authority means a governmental body listed in Annex X.1 and includes the relevant National Plant Protection Organisations.

(d) Import check means an assessment that may include inspection, examination, sampling, review of documentation, test or procedure, including laboratory, organoleptic or identity, conducted at the border by an importing Party or its representative to determine if a consignment complies with the SPS requirements of the importing Party.

ARTICLE X.4

Rights and obligations with the SPS Agreement and the relationship of this Chapter with the Sanitary Agreement

1. The Parties affirm their rights and obligations under the SPS Agreement for this Chapter and the Sanitary Agreement.

2. The Parties recall the principles in the SPS Agreement in particular:

(a) That their measures are based on a risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement; and

(b) The concept of provisional SPS measures.

ARTICLE X.5

Specific 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. On the request of a Party, the other Party shall provide the justification for the pest categorisation and related phytosanitary measures.

2. In relation to pest categorisation, each Party shall establish and update a list of regulated pests for products for which a phytosanitary concern exists. The list shall contain:

(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) Protected zone quarantine pests; and

(d) Where applicable, the regulated non-quarantine pests.

3. Each Party shall limit its import requirements for plants or plant products to the risks needed to mitigate against the introduction of regulated pests. Import requirements to mitigate the risk from protected zone quarantine pests shall not apply unless the destination of any consignment is known to be within a protected zone.

4. Pre-export inspection by the importing Party's National Plant Protection Organisation should not be a requirement by the importing Party, where inspection of the commodity is within the scope of the exporting Party's National Plant Protection Organisation.

ARTICLE X.6

Recognition of pest freedom

With respect to regionalisation where regionalisation is defined as a pest free area, pest free place of production, pest free production site, or a protected zone in the plants and plant products sector:

1. The Parties recognize the concepts of Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites as specified in relevant Food and Agriculture Organization (FAO)/IPPC International Standards for Phytosanitary Measures (ISPM).

2. With respect to paragraph 1, and for the purposes of trade the Parties will accept each other's:

(a) Determinations regarding Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites; and

(b) Official controls in the establishment and maintenance of Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites.

3. For the purposes of trade New Zealand will recognize the concept of 'Protected Zones' within the territory of the EU as equivalent to a Pest Free Area as specified in relevant FAO/IPPC International Standards for Phytosanitary Measures (ISPM4).

4. The exporting Party, when requested by the importing Party, shall identify Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, and Protected Zones, and, upon request provide a full explanation and supporting data as provided for in the relevant ISPMs or otherwise deemed appropriate.

5. Annex X.2. of this Chapter may, if necessary, record any other matter that may pertain to regionalisation and any relevant decisions. Annex X.2 may also specify any appropriate risk based special conditions.

ARTICLE X.7

Equivalence

1. The Parties acknowledge that recognition of equivalence is an important means to facilitate trade.

2. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations. The parties may specify further guidance and procedures to determine, recognise and maintain equivalence in Annex X.3.

3. On request of the exporting party, the importing party shall, within a reasonable period of time, explain the objective and rationale of its sanitary or phytosanitary measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.

4. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection (ALOP) in relation to human health, or ALOP in relation to plant or animal health.

5. If an equivalence assessment does not result in an equivalence determination by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

6. Annex X.3 of this Chapter may, unless otherwise specified in this Chapter, set out the exporting Party's commodity types and/or official controls which the importing Party recognises as having an equivalent sanitary and/or phytosanitary measure. Annex X.3 may also specify any appropriate risk based special conditions or any agreed pest and/or disease status.

7. If a Party amends an SPS measure(s) which it considers does not amend an equivalence determination specified in this Chapter or Annex X.3, the most recent version of the relevant legislation shall be applicable to that determination.

8. If a Party considers that a previous equivalence determination is affected, it shall notify the other Party.

9. Where an importing Party amends an SPS measure and considers an equivalence determination specified in Annex X.3 may be affected it shall;

(a) Objectively consider whether the previous determination is no longer sufficient to meet its ALOP; and

(b) Consult with the exporting Party and then decide whether the determination may continue with or without any special conditions.

ARTICLE X.8

Trade conditions and approval procedures

1. The importing Party shall make publicly available its import health requirements and the procedures used to establish its phytosanitary import requirements.

2. If the Parties jointly identify a specific product or products as a priority, the importing Party shall establish specific import requirements for those products without undue delay other than in duly justified circumstances.

3. Where an export request is received in relation to a specific product which has previously been approved for import from the exporting Party, the importing party shall assess the risk profile and, if determined to be the same, complete the approval procedure without undue delay, other than in duly justified circumstances.

4. Each Party shall ensure that procedures used to approve imports from the other party 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 to the importing Party, such as on the legislative framework and audit reports of the exporting Party

5. Except as provided for in Article X.6 (Recognition of pest freedom), each Party shall apply its phytosanitary import conditions to the entire territory of the other Party where the same pest status prevails.

6. Without prejudice to Article X.11 on emergency measures, each Party shall recognise as equivalent the official controls applied by the other Party for trade provided that from the entry into force of this Agreement there are no significant changes in the official control systems of the exporting Party that would lower the level of protection of the importing Party.

7. Without prejudice to Article X.11 (Emergency Measures), the importing Party shall not refuse or stop the importation of a commodity (good) of the exporting Party solely for the reason that the importing Party is undertaking a review of its sanitary and/or phytosanitary measures, if the importing Party permitted the importation of that good of the other Party when the review was initiated.

8. The Parties shall, without any subsequent approval processes, accept each other's establishment lists that are subject to SPS measures for trade.

9. Each Party shall make the lists in paragraph 8 available to one another on request.

ARTICLE X.9

Certification

1. In respect of health certification for plants and plant products the competent authorities shall apply the principles laid down in the FAO International Standards for Phytosanitary Measures No 7 "Export Certification System" and No 12 "Guidelines for Phytosanitary Certificates".

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

3. Without prejudice to Article X.4 (rights and obligations) and X.11 (emergency measures), food safety certification shall not be required for processed foods covered by this Chapter unless supported by a risk analysis.

4. The Parties may agree to specify further guidance, procedures and requirements in relation to certification in Annex X.V.

5. Where the importing Party has accepted a commodity sanitary and/or phytosanitary measure(s) of the exporting Party as equivalent to its own, the exporting Party may include the model health attestation set out in Section 1 of Annex X.V on the official health certificate.

6. Where an importing Party has, in accordance with Article X.7 (7) or (8), determined that equivalence is maintained, the import health certificate provided for in Annex X.V (certification) shall, where practicable and if applicable, state the importing Party’s parent legislation.

7. If an importing Party determines that a special condition included in Annex X.III (equivalence) is no longer necessary, guarantees to that special condition shall no longer be required and must be removed, within a reasonable period of time, from the Annex.

ARTICLE X.10

Transparency, information exchange and technical consultation

1. The Parties shall promptly inform each other of any significant:

(a) Finding(s) of epidemiological importance that may relate to a product(s) being traded between the Parties;

(b) Food safety matter(s) related to a product traded between the Parties; and

(c) Other pertinent information for the adequate implementation of this Chapter.

2. Where the information referred to in paragraph 1 has been made available through; notification to the WTO or to the relevant international standard-setting body(s), in accordance with their rules, or on publicly available web-sites of the Parties, the requirement in paragraph 1 is deemed to be fulfilled.

3. Where either Party has a serious concern with respect to a SPS risk, technical consultations regarding the situation shall, on request, take place as soon as possible and in any case within 14 days.

4. If a Party has a significant concern with a SPS measure(s) that the other Party has proposed or implemented, that Party may request technical consultations with the other Party. The Party to which the request is addressed shall respond within 30 days.

5. With respect to Paragraphs 3 and 4 each Party shall endeavour to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution which effectively manages any SPS risk.

6. The Parties shall seek to resolve any concerns arising from the implementation of this Chapter through technical consultations[1] pursuant to this Article prior to initiating dispute settlement proceedings under this Agreement.

ARTICLE X.11

Emergency measures

1. 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 notify the competent authority of the other Party within 24 hours. If a Party requests technical consultations to address the emergency SPS measure, the technical consultations shall be held within 14 days of the notification of the emergency SPS measure. The Parties shall consider any information provided through the technical consultations.

2. The Party applying the emergency measure shall consider any information provided in a timely manner by the exporting Party when it makes its decision with respect to any consignment that, at the time of adoption of the emergency SPS measure, is being transported between the Parties.

3. Where an emergency measure seriously disrupts or suspends trade, the importing Party shall as soon as practically possible revoke or provide relevant scientific and technical justification for the continuation of its measure.

[1] For greater certainty, technical consultations under this Article shall not replace consultations under Article X.X DS Chapter unless the Parties agree otherwise.

ARTICLE X.12

Audits

1. For the purpose of maintaining confidence in the implementation of this Chapter, each Party has the right to carry out a systems-based audit of all, or part of, the control system of the competent authority of the other Party to determine that it is functioning as intended.

2. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. Any decision or action taken by the auditing Party that may adversely affect trade as a result of the audit shall take into account and be proportionate to:

(a) The risk(s) assessed, supported by objective evidence and data that can be verified.

(b) The auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party.

4. Objective evidence and data shall be provided to the audited Party on request.

5. The auditing Party shall bear its own costs associated with the audits.

6. Each Party shall ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during an audit of the exporting Party's competent authorities, including procedures to remove any confidential information from a final audit report that is made publicly available.

7. The auditing Party will consider any comments on the report by the audited Party and shall determine how and to whom any report is made publicly available.

8. Both Parties may establish audit guidelines and procedures and specify these in Annex IV.

ARTICLE X.13

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 follow international standards, be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's ALOP.

3. The competent authority of the importing Party shall notify the competent authority of the exporting Party when any non-compliance constitutes a serious risk to health.

4. The competent authority of the importing Party shall notify the importer or its representative of a non-compliant consignment including the reason for non-compliance, and provide them with an opportunity for a review of the decision. The competent authority of the importing Party shall consider any relevant information submitted to assist in the review.

5. Any fees imposed for procedures on imported products shall not be higher than any fees charged on like domestic products for comparable checks and not higher than the actual cost of the service.

6. The Parties may agree frequency rates and fees for import checks for certain commodities within the scope of this Chapter and set these out in Annex X.VI.

ARTICLE X.14

Scientific robustness and transparency in specified authorisation[2] processes

1. The Parties recognise that authorisation processes shall be based on robust science and conducted in a transparent manner so as to build and maintain public trust and confidence. The Parties shall cooperate on increasing the robustness and transparency of these processes.

2. The Parties acknowledge that their respective authorisation processes are intended to provide comparable outcomes and that cooperation in this area is desirable.

3. Where a business operator[3] commissions scientific studies in scientific institutions[4] situated in the territory of a Party with a view to support an application for authorisation in the context of certain specified authorisation processes in the territory of the other Party, and this is brought to the attention of the former, both Parties shall endeavour to share such information with each other.

4. The Parties may also exchange information on their authorisation processes.

5. A Party may request a fact-finding visit under this Article to a scientific institution located in the territory of the other Party to collect information concerning the application of relevant standards by the scientific institution when it conducts a scientific study for the purposes of certain specified authorisation processes in the territory of the former Party.

6. If a Party seeks to conduct a fact-finding visit, it shall notify the other Party no later than 60 days before the visit.

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[2] Authorisation processes under this Article covers all pre-market authorisations in the area of the food chain: i.e. cultivation of genetically modified organisms/genetically modified food and feed, feed additives, food additives/enzymes/flavourings, smoke flavourings, plant protection products, novel foods, food contact materials, health claims, addition of vitamins and minerals and other substances to foods.

[3] For the purposes of this Article, "business operator" means the natural or legal person responsible for ensuring that the requirements for obtaining marketing authorisation are met by the business under their control.

[4] For the purposes of this Article, "scientific institutions" include institutions which carry out scientific studies for a fee. It includes, but is not limited to, universities, laboratories, and testing or research facilities.

7. If a Party seeks to conduct a fact-finding visit and the scientific institution agrees to the visit, officials of the other Party may accompany the officials of the Party during the visit.

8. The final report of any fact finding visit shall be made available to the competent authorities of both Parties. The relevant portions of the final report shall also be made available to the scientific institutions that were visited.

9. The costs of any such fact finding visit shall be borne by the Party that a business operator has applied for approval from.

10. To give effect to paragraphs 3 to 9, the Committee may establish detailed implementing rules and any necessary guidance.

11. Any actions taken under this Article in a Party shall be consistent with the law of that Party.

ARTICLE X.15

Antimicrobial resistance (AMR)

1. The Parties recognise that antimicrobial resistance is a serious threat to human and animal health.

2. The Parties shall, in accordance with the One Health approach, cooperate and facilitate the exchange of information, regulations, guidelines, national plans, standards, expertise and experiences in the field of antimicrobial resistance and identify common views, interests, priorities and policies in the area.

3. The Parties acknowledge that:

(a) Their respective antimicrobial regulatory standards, guidelines and surveillance systems deliver comparable controls and health outcomes.

(b) Antimicrobial agents that are critical to human and animal treatment and health are a core focus of their respective AMR strategies.

(c) Initiatives are taken on both sides, within their respective strategies and policies, to promote the phasing out of the use of antibiotics agents as growth promoters, in particular those of medical importance, and to reduce the use of antimicrobial agents in animal production.

4. Furthermore, the Parties shall:

(a) Co-operate in relevant international fora on the development of future codes, guidelines, standards, recommendations and initiatives.

(b) Co-operate on international action plans especially with regard to responsible and prudent use of antimicrobial agents in order to combat AMR more effectively.

(c) Within the context of their respective strategies and policies support the implementation of agreed international action plans and strategies on antimicrobial resistance.

(d) The Parties agree that any regulations, guidelines, strategic plans, standards and other initiatives on antimicrobial resistance shall not be used to create or implement measures for trade unless the measures are in accordance with the SPS Agreement and any other relevant provisions of this Chapter.

(e) The Parties may establish a Technical Working Group on antimicrobial resistance. The working group shall report to and undertake activities specified by the Sanitary Agreement Joint Management Committee.

ARTICLE X.16

Fraud in traded commodities

1. The Parties agree that fraudulent activities by commercial operators engaged in international trade may:

(a) Affect the health of humans, animals, plants or consequentially the environment.

(b) Undermine fair commercial practice and consumer confidence.

2. The Parties undertake to exchange relevant information and to co-operate to deter practices that are, or appear to be, non-compliant with their SPS measures and/or mislead consumers and other relevant stakeholders.

ARTICLE X.17

Implementation and resources

1. Each Party shall ensure that its competent authorities have the necessary resources to effectively implement this Chapter.

ARTICLE X.18

Committee

1. For the purposes of effective implementation and operation of this Chapter, the Parties establish a Committee composed of the representatives of the Parties.

2. The Committee shall only address matters that are within the scope of this Chapter. Any Committee determination shall be consensual.

3. The Committee shall:

(a) Monitor the implementation of this Chapter;

(b) Provide a forum to exchange information on each Party's regulatory system including the scientific and risk assessment basis for its SPS measures, and

(c) Consider any other matter related to this Chapter.

4. The Committee may:

(a) Identify opportunities for cooperation, including trade facilitation initiatives and further work on eliminating unnecessary barriers to trade between the Parties;

(b) Promote cooperation in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures and international standard-setting bodies, as appropriate;

(c) Establish ad hoc working groups;

(d) Provide an opportunity for the Parties to update each other at an early stage on regulatory considerations related to SPS measures;

(e) Serve as a forum to resolve specific trade concerns where the Parties have been unable to reach a mutually acceptable solution through technical consultations pursuant to Article X.11 (Transparency, Information Exchange and Technical Consultation);

(f) Make recommendations or adopt a decision to modify the annexes to this Chapter in accordance with the procedures provided under this Chapter, provided that it notifies the Trade Committee of such a decision[5], and

[5] Subject to legal scrubbing and agreement by both Parties.

(g) Take any other action in the exercise of its functions as the Parties may agree.

5. A Party may refer any matter within the scope of this Chapter to the Committee. The Committee shall consider the issue as expeditiously as possible.

6. Unless the Parties decide otherwise, the Committee shall meet and establish its work programme no later than one year following the entry into force of this Agreement. The Committee shall establish its rules of procedure at its first meeting and may revise them as necessary. The Committee will meet annually unless otherwise decided.

7. The Committee may also decide to meet virtually and may also address issues out of session by correspondence.

8. The Committee and the Joint Management Committee established under Article 16 of the Sanitary Agreement shall inform the Trade Committee of the schedule and agenda of their meetings sufficiently in advance and shall report to the Trade Committee on the results and conclusions from each of their meetings[6].

6 EU to check on placement of this provision and agreed by both Parties.

ANNEX X.I

COMPETENT AUTHORITIES

A. Competent authorities of the European Union

Control is shared between the national authorities of the Member States and the European Commission. In this respect, the following applies:

(a) For exports to New Zealand, the Member States are responsible for the control of the production circumstances and requirements, including statutory inspections or audits and issuing health certification in relation to the agreed SPS measures and requirements;

(b) For imports from New Zealand, the Member States are responsible for the control of compliance of the imports with the European Union's import conditions; and

(c) The European Commission is responsible for the overall coordination, inspection or audits of control systems and the necessary measures, including legislative action to ensure uniform application of standards and requirements of this Chapter.

B. Competent authorities of New Zealand

For the purposes of this Chapter the Ministry for Primary Industries is the competent authority that has the responsibility and technical competence for developing and supervising the implementation and operation of SPS measures and providing official export certification.

ANNEX X.II

REGIONAL CONDITIONS FOR PLANTS AND PLANT PRODUCTS

ANNEX X.III

EQUIVALENCE RECOGNITION OF SANITARY AND PHYTOSANITARY MEASURES

	EU exports to New Zealand			New Zealand exports to the EU		
Commodity	EU Standard	Special risk based conditions	Equivalence	NZ Standard	Special risk based conditions	Equivalence

ANNEX X.IV

GUIDELINES AND PROCEDURES FOR AN AUDIT OR VERIFICATION

ANNEX X.V

CERTIFICATION

SECTION 1

COMMODITIES WITH EQUIVALENCE SPECIFIED IN ANNEX.III

Declarations:

(a) For commodities with equivalence in Annex X.III

i The following model declaration to be used (equivalence for plant health);

"The products herein described, complies/y with the relevant (European Union/New Zealand (*)) standards and requirements which have been recognized as equivalent to the (New Zealand/European Union (*)) standards and requirements as prescribed in the SPS Chapter of the European Union/New Zealand Free Trade Agreement.

* Delete as appropriate.

AND

ii The additional declaration(s) described in Annex X.III, as relevant and referred to as "Special Conditions" within Annex X III are to be used.

SECTION 2

ELECTRONIC DATA TRANSMISSION

(a) The exchange of original sanitary (if required and justified in accordance with Article X.10 (5)) or phytosanitary health certificate(s) or other original document(s), may occur by secure methods of electronic data transmission offering adequate security guarantees.

(b) Electronic data transmission information systems recognised as providing adequate security guarantees:

i. New Zealand – E-cert and E-phyto

ii. EU – Trade Control and Expert System (TRACES)

(c) The importing Party's agreement for the exclusive use of electronic certification must either be recorded in Annex X.V or by correspondence between Competent Authorities.

(d) Where electronic data transmission is exclusively used the following contingency process will be followed in the event of data exchange or complete information system failure;

i. In the event of data exchange failure between the information system(s) an email containing a scanned copy of a signed (paper) certificate must be sent to the destination border inspection post until data exchange resumes.

ii. In the event of a systemic information systems failure where export health certificates cannot be issued the exporting Party will email or convey by other means, the relevant consignment data and attestations to the destination border inspection post until data exchange capability resumes.

SECTION 3

CRISIS RESPONSE

In case of crisis situations derogations to Section 2 must be agreed bilaterally between the Competent Authorities.

ANNEX X.VI

IMPORT CHECKS AND FEES