CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives and general provisions

1. The objectives of this Chapter are to:

(a) protect human, animal and plant health in the respective territories of the Parties while facilitating trade between them;

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

(c) facilitate 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 sanitary and phytosanitary measures;

(f) enhance cooperation between and recognise the common objectives of the Parties to combat antimicrobial resistance (hereinafter referred to as "AMR"); and

(g) enhance communication, cooperation and resolution of sanitary and phytosanitary issues that may affect trade between the Parties.

2. In respect of the SPS Agreement, the Parties recall in particular:

(a) the principle that a Party's SPS 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 6.2

Scope

1. The Parties affirm their respective rights and obligations under the Sanitary Agreement.

2. Subject to paragraph 3, this Chapter applies:

(a) to sanitary and phytosanitary measures of a Party that may affect trade between the Parties; and

(b) to cooperation on AMR.

3. This Chapter does not apply to any measure of a Party or matters covered by the Sanitary Agreement.

ARTICLE 6.3

Definitions

For the purposes of this Chapter, the following definitions apply:

(a) the definitions in Annex A of the SPS Agreement;

(b) the definitions adopted under the auspices of the Codex Alimentarius Commission;

(c) the definitions adopted under the auspices of the World Organisation for Animal Health;

(d) the definitions adopted under the auspices of the International Plant Protection Convention (hereinafter referred to as the "IPPC");

(e) "competent authority" means a governmental body listed in Annex 6-A (Competent authorities) and includes the relevant national plant protection organisations; and

(f) "import check" means an assessment that may include inspection, examination, sampling, review of documentation, tests or procedures, including laboratory, organoleptic, or identity, conducted at the border of an importing Party by the competent authority of the importing Party to determine whether a consignment complies with the SPS requirements of the importing Party.

ARTICLE 6.4

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 respective territories. At 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 plants and plant products for which a phytosanitary concern exists. Such 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, regulated non-quarantine pests.

3. Each Party shall limit its import requirements for plants or plant products to those needed to mitigate against the risks of the introduction of regulated pests. Import requirements to mitigate the risk from protected zone quarantine pests shall not apply unless the destination of any plants or plant products 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 plants or plant products is within the scope of the exporting Party's national plant protection organisation.

ARTICLE 6.5

Recognition of pest freedom

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

(a) the Parties recognise the concepts of pest free areas, pest free places of production and pest free production sites as specified in relevant IPPC International Standards for Phytosanitary Measures ("ISPMs");

(b) the Parties shall accept each other's:

(i) pest free areas, pest free places of production and pest free production sites; and

(ii) official controls in the establishment and maintenance of pest free areas, pest free places of production and pest free production sites;

(c) New Zealand shall recognise the concept of protected zones within the territory of the Union as equivalent to a pest free area as specified in IPPC ISPM 4 ("Requirements for the establishment of pest free areas");

(d) the exporting Party, if requested by the importing Party, shall identify pest free areas, pest free places of production, pest free production sites and protected zones, and, if requested by the importing Party, provide a full explanation and supporting data as provided for in the relevant ISPMs or as otherwise deemed appropriate; and

(e) the Trade Committee may adopt a decision to amend Annex 6-B (Regional conditions for plants and plant products) to set out any other matter that may pertain to regionalisation or to specify any appropriate risk-based special conditions.

ARTICLE 6.6

Equivalence

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

2. In determining the equivalence of a specific SPS measure, group of SPS measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as "WTO SPS Committee") and international standards, guidelines and recommendations. The Trade Committee may adopt a decision to set out further guidance and procedures to determine, recognise and maintain equivalence in Annex 6-C (Equivalence recognition of SPS measures).

3. At the request of the exporting Party, the importing Party shall, within a reasonable period of time, explain the objective and rationale of its SPS measure and clearly identify the risk that SPS measure is intended to address.

4. The importing Party shall recognise the equivalence of an SPS measure if the exporting Party objectively demonstrates that its SPS measure achieves the importing Party's appropriate level of protection (hereinafter referred to as "ALOP") in relation to human, animal or plant 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. Without prejudice to Article 6.8(6) (Certification), the Trade Committee may adopt a decision to amend Annex 6-C (Equivalence recognition of SPS measures) in order to:

(a) set out the exporting Party's commodity types which the importing Party recognises as being covered by an SPS measure equivalent to its own or set out the exporting Party's official controls which the importing Party recognises as equivalent to its own; and

(b) specify any appropriate risk-based special conditions or any agreed pest or disease status.

7. If a Party amends an SPS measure in a way that it considers does not affect an equivalence determination specified in this Chapter, the determination shall be applicable to the most recent version of the relevant law or regulation amending that SPS measure.

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

9. If an importing Party amends an SPS measure and considers an equivalence determination specified in this Chapter may be affected it shall:

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

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

ARTICLE 6.7

Trade conditions and approval procedures

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

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

3. Where an import request is received in relation to a specific plant or plant 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 information on the applicable laws and regulations and audit reports of the exporting Party.

5. Except as provided for in Article 6.5 (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 6.10 (Emergency measures), each Party shall recognise as equivalent the official controls applied by the other Party for trade provided that from the date of 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 assurance to the importing Party.

7. Without prejudice to Article 6.10 (Emergency measures), the importing Party shall not refuse or stop the importation of a good of the exporting Party solely for the reason that the importing Party is undertaking a review of its SPS measures, if the importing Party permitted the importation of that good from the other Party when the review was initiated.

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

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

ARTICLE 6.8

Certification

1. In respect of health certification for plants and plant products the competent authorities shall apply the principles laid down in the IPPC ISPM 7 ("Export Certification System") and IPPC ISPM 12 ("Guidelines for Phytosanitary Certificates").

2. Each Party shall promote the implementation of electronic certification and other technologies to facilitate trade.

3. Without prejudice to Articles 6.2 (Scope) and 6.10 (Emergency measures), food safety certification shall not be required for processed foods covered by this Chapter unless supported by a risk analysis.

4. The Trade Committee may adopt a decision to amend Annex 6-E (Certification) in order to specify further guidance, procedures and requirements in relation to certification.

5. If the importing Party has accepted a commodity SPS measure 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 6-E (Certification) on the official health certificate.

6. If an importing Party has, in accordance with Article 6.6(7) (Equivalence) or Article 6.6(8) (Equivalence), determined that equivalence is maintained, the import health certificate provided for in Annex 6-E (Certification) shall, where practicable and if applicable, state the initial laws and regulations of the importing Party on the basis of which equivalence was determined.

7. If an importing Party determines that a special condition included in Annex 6-C (Equivalence recognition of SPS measures) is no longer necessary, guarantees to that special condition shall no longer be required and the Trade Committee shall adopt a decision to amend Annex 6-C (Equivalence recognition of SPS measures) accordingly within a reasonable period of time.

ARTICLE 6.9

Transparency, information exchange and technical consultation

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

(a) findings of epidemiological importance that may relate to a product being traded between the Parties;
(b) food safety matters related to a product being traded between the Parties; or

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

2. If the information listed in paragraph 1 has been made available through a notification to the WTO or to the relevant international standard-setting body in accordance with their rules, or on a publicly accessible website of a Party, the obligation in paragraph 1 shall be deemed to have been fulfilled.

3. If either Party has a serious concern with respect to a sanitary or phytosanitary risk, technical consultations regarding that sanitary or phytosanitary risk shall, on request, take place as soon as possible and in any case within 14 days after the date of delivery of the request.

4. If a Party has a significant concern with a SPS measure 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 after the date of delivery of the request.

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 enable the Parties to reach a mutually acceptable solution that effectively manages any sanitary or phytosanitary risk.

6. The Parties shall seek to resolve any concerns arising from the implementation of this Chapter through technical consultations pursuant to this Article[1] prior to initiating dispute settlement pursuant to Chapter 26 (Dispute settlement).

[1] For greater certainty, technical consultations pursuant to this Article shall not replace consultations under Article 26.3 (Consultations) unless the Parties agree otherwise.

ARTICLE 6.10

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 that 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 after the date of delivery 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 that emergency measure or provide relevant scientific and technical justification for its continuation.

ARTICLE 6.11

Audits

1. For the purpose of maintaining confidence in the implementation of this Chapter, each Party has the right to carry out a system-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 assessed, supported by objective evidence and data that can be verified; and

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

4. The auditing Party shall provide objective evidence and data 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 other 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 shall consider any comments on the report by the audited Party and shall determine whether the report or part of it is made publicly available or is made available in a more limited way.

8. The Trade Committee may adopt a decision to amend Annex 6-D (Guidelines and procedures for an audit or verification) in order to establish or specify audit guidelines and procedures.

ARTICLE 6.12

Import checks and fees

1. The importing Party shall have the right to carry out import checks based on the sanitary or phytosanitary risks associated with imports. Such 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 importing 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 human, animal or plant 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 that importer or its representative 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 such a review.

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

6. The Trade Committee may adopt a decision to amend Annex 6-F (Import checks and fees) in order to set out frequency rates and fees for import checks for certain commodities falling within the scope of this Chapter.

ARTICLE 6.13

Scientific robustness and transparency in specified authorisation processes[2]

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 those authorisation 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. If a person responsible for ensuring that the requirements for obtaining marketing authorisation are met by the business under its control commissions scientific studies in a scientific institution[3] located in a Party with a view to supporting an application for authorisation in the context of certain specified authorisation processes in the other Party, and this is brought to the attention of the Party in which the scientific institution is located, both Parties shall endeavour to share such information with each other.

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

[3] For the purposes of this Article, the term "scientific institution" includes institutions which carry out scientific studies for a fee, for example, universities, laboratories, and testing or research facilities.

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 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 Party which requests a fact-finding visit.

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

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

9. The costs of any such fact-finding visit shall be borne by the Party that requests a fact-finding visit.

10. The Trade Committee may adopt a decision to establish detailed implementing rules and any necessary guidance with respect to paragraphs 3 to 9.

ARTICLE 6.14

Antimicrobial resistance

1. The Parties recognise that AMR 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, including with respect to regulations, guidelines, national plans, standards, expertise and experiences in the field of AMR, and identify common views, interests, priorities and policies in that field.

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; and

(c) initiatives are taken on both sides, within their respective strategies and policies, to promote the phasing out of the use of antibiotic 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) cooperate in relevant international fora on the development of future codes, guidelines, standards, recommendations and initiatives;

(b) cooperate on international action plans, especially with regard to responsible and prudent use of antimicrobial agents in order to combat AMR more effectively; and

(c) within the context of their respective strategies and policies support the implementation of agreed international action plans and strategies on AMR.

5. Any regulations, guidelines, strategic plans, standards and other initiatives on AMR shall not be used to create or implement measures affecting trade unless those measures are consistent with the SPS Agreement and relevant provisions of this Chapter.

6. The Committee on Sanitary and Phytosanitary Measures may establish a technical working group on AMR.

ARTICLE 6.15

Fraud in traded commodities

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

(a) affect the health of humans, animals, plants and consequentially the environment; and

(b) undermine fair commercial practice and consumer confidence.

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

ARTICLE 6.16

Implementation and resources

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

ARTICLE 6.17

Committee on Sanitary and Phytosanitary Measures

1. This Article complements and further specifies Article 24.4 (Specialised committees).

2. The Committee on Sanitary and Phytosanitary Measures shall, with respect to this Chapter, have the following functions:

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

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

(c) promote cooperation in multilateral fora, including in the WTO SPS Committee and international standard-setting bodies, as appropriate;

(d) establish *ad hoc* working groups;

(e) provide a forum for the Parties to update each other at an early stage on regulatory considerations related to SPS measures;

(f) without prejudice to Chapter 26 (Dispute settlement), 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 6.9 (Transparency, information exchange and technical consultation);

(g) take any other action in the exercise of its functions as the Parties may agree; and

(h) consider any other matter related to this Chapter.

3. Unless the Parties decide otherwise, the Committee shall meet and establish its work programme no later than one year after the date of entry into force of this Agreement.