

CHAPTER SIX

SANITARY AND PHYTOSANITARY MEASURES

Article 6.1 Definitions

For the purposes of this Chapter:

- (a) the definitions in Annex A of the SPS Agreement and relevant definitions developed by Codex Alimentarius Commission (“Codex”), the World Organisation for Animal Health (“OIE”), and the *International Plant Protection Convention* (“IPPC”) shall apply to the implementation of this Chapter; and
- (b) **SPS Agreement** means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*.

Article 6.2 Objectives

The objectives of this Chapter are to:

- (a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by Codex, OIE, and the relevant international and regional organisations developed under the framework of the IPPC;
- (b) establish a mechanism to facilitate trade between the Parties while protecting human, animal or plant life or health in the territory of the Parties, including through possible development of Implementing Arrangements on matters of mutual interest to the Parties;
- (c) provide a means to improve communication, consultation and cooperation between the Parties on sanitary and phytosanitary issues; and
- (d) strengthen collaboration between the Parties in relevant international bodies that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 6.3

Scope

This Chapter shall apply to all sanitary or phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 6.4

International Obligations

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Nothing in this Chapter or any Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 6.5

Competent Authorities and Contact Points

1. Recognising the importance of close and effective working relationships between the Parties in giving effect to the objectives of this Chapter, the Parties shall promote communication to enhance present and future relationships between their competent authorities.
2. Both Parties shall recognise that the competent authorities are those authorities which are accountable for the implementation of matters within the scope of this Chapter. As at the date of entry into force of this Agreement, the competent authorities shall be as set out in the Implementing Arrangement (Competent Authorities and Contact Points).
3. Where requested by a Party, or where appropriate in the circumstances (for example where proposed changes to sanitary or phytosanitary measures would have a significant effect on bilateral trade), each Party shall provide the other Party through the designated Contact Points information relevant to the implementation of this Chapter. As at the date of entry into force of this Agreement, the Contact Points for such communications shall be those set out in the Implementing Arrangement (Competent Authorities and Contact Points).
4. Each Party shall notify the other Party of any changes to the competent authorities or Contact Points and of any significant changes in the structure, organisation and division of responsibility within its competent authorities or Contact Points.

Article 6.6

Sanitary and Phytosanitary Committee

1. The Parties shall establish a Sanitary and Phytosanitary Committee ("the Committee") consisting of representatives of the competent authorities of the Parties and any other representatives of the Parties. The Committee shall consider any matters relating to the implementation of the Chapter including:

- (a) establishing technical working groups, as required, to identify and address technical and scientific issues arising from this Chapter;
- (b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties;
- (c) establishing, monitoring and reviewing work plans; and
- (d) reporting to the Joint Commission.

2. This Committee shall meet within one year of the entry into force of this Agreement and annually thereafter, or as mutually determined by the Parties. It shall meet in person, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence, including e-mail.

3. Decisions of the Committee shall be by consensus.

Article 6.7

Facilitation of Trade and Implementing Arrangements

1. The Parties may adopt, through the Committee, Implementing Arrangements which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties or to achieve other mutually agreed objectives related to sanitary or phytosanitary measures. Such Implementing Arrangements may set out understandings reached with respect to matters of mutual interest, including competent authorities, Contact Points, equivalence, regionalisation, certification, and verification as provided for, *inter alia*, in Articles 6.5 (Competent Authority and Contact Points), 6.8 (Equivalence), 6.9 (Regionalisation) and 6.10 (Verification).

2. Where Implementing Arrangements have been adopted, they shall be applied to trade between the Parties. Where conditions for trade are not set out in an Implementing Arrangement, trade shall take place under the conditions required by the importing Party to meet its appropriate level of sanitary or phytosanitary protection.

3. Each Party shall take all necessary actions to implement the understandings reached in an Implementing Arrangement within three months of the adoption of the Implementing Arrangement by the Committee under Article 6.6(1)(b) (Sanitary and Phytosanitary Committee), or as otherwise mutually determined by the Parties.

Article 6.8

Equivalence

1. The Parties recognise the principle of equivalence as set down in the SPS Agreement and, in particular, Article 4 of that Agreement, which provides for the recognition of sanitary or phytosanitary measures as equivalent where the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection.

2. Where equivalence is recognised, it may be recognised by the Parties in relation to an individual measure and/or a group of measures and/or systems applicable to a sector or part of a sector. The Parties may mutually decide principles and procedures applicable to determinations of equivalence and record them in an Implementing Arrangement. Any determinations of equivalence shall be recorded in an Implementing Arrangement.

Article 6.9

Regionalisation

1. The Parties recognise the concept of regionalisation, zoning and compartmentalisation, as set down in Article 6 of the SPS Agreement, and as elaborated in OIE and IPPC Standards, which provide, *inter alia*, for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence where the exporting Party objectively demonstrates to the importing Party that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively.

2. Within this framework, the Parties may mutually recognise regionalisation, zoning and compartmentalisation at various levels, including farms and processing establishments, as having appropriate biosecurity measures, as mutually agreed.

3. The Parties may mutually decide principles, procedures and/or certification provisions applicable to regionalisation decisions and record them in an Implementing Arrangement. Where the Parties come to an agreed determination with respect to commodities or situations where regionalisation decisions are, or will be, accepted, these shall be recorded in an Implementing Arrangement.

Article 6.10

Verification

1. In order to maintain confidence in the effective implementation of the provisions in relation to trade, each Party shall have the right to carry out verification and audit of the exporting Party's regulatory control system to enable trade to commence. Audit procedures shall be risk-based and reflect performance. They may include reviews of the exporting Party's central or regional controls, onsite visits to a sample of establishments and/or checks of a proportion of imports from the exporting Party.

2. The Parties may decide on the principles and guidelines that are applicable to any audit procedures. Such principles and guidelines shall be recorded in an Implementing Arrangement.

Article 6.11

Emergency Measures

A Party may, on serious human, animal or plant life or health grounds, take provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Party and, on request, consultations regarding the situation shall be held within 14 days unless otherwise agreed between the Parties. The Parties shall take due account of any information provided through such consultations.

Article 6.12

Notification

The Parties shall notify each other, in a timely and appropriate manner, in writing through the Contact Points of any significant food safety issue or change in animal health, plant health or pest status relevant to existing trade.

Article 6.13

Situations of Non-Compliance

The Parties shall cooperate where there is a notification of non-compliance of imported consignments for products subject to sanitary or phytosanitary measures, drawing on the guidelines of relevant international organisations where available. In particular, where such non-compliance arises, the importing Party shall notify as soon as possible the exporting Party of the consignment details. Unless specifically required by its laws, regulations or policies, the importing Party shall avoid suspending trade based on one consignment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult to ensure that

appropriate remedial actions are undertaken to address the area of non-compliance, and that further consignments are unaffected.

Article 6.14

Explanation of Measures and Consultations

Where a Party considers that a sanitary or phytosanitary measure affecting trade between it and the other Party warrants further discussion, it may, through the Contact Points, request a fuller explanation of the sanitary or phytosanitary measure including explanations as to why it is deemed necessary for trade between the Parties and the objectives of the measure. The request may additionally ask for consultations to be held. The other Party shall respond promptly to any requests for such explanations. Where a Party requests consultations, these consultations shall take place as soon as practicable.

Article 6.15

Cooperation

The Parties shall explore opportunities for further cooperation, collaboration and information exchange on sanitary and phytosanitary matters of mutual interest consistent with the provisions of this Chapter. Such opportunities include technical assistance, capacity building and facilitation of market access for products of interest.

Implementing Arrangement: Competent Authorities and Contact Points

Malaysia

1. Competent Authorities

Control in imports and sanitary and phytosanitary issues is shared between the Department of Agriculture, Department of Fisheries, Department of Veterinary Services of the Ministry of Agriculture and Agro-Based Industry and Food Safety and Quality Division of the Ministry of Health. In this respect the following applies:

- (a) the Department of Agriculture is responsible for the issuance of import permits and ensuring importation of agriculture products are accompanied with phytosanitary certificates;
- (b) the Department of Veterinary Services is responsible for conducting Import Risk Analysis, Veterinary Inspection and Quarantine and issuance of import permits and Veterinary Health Certificates for imports of live animals. For the importation of animal products, the Department undertakes Import Risk Analysis, Plant Inspection, Veterinary Inspection and issuance of Veterinary Health Certificates, and import permits (for all live animal and animal products);
- (c) the Department of Fisheries is responsible for issuance of import permits for the importation of live fish; and
- (d) the Ministry of Health implements food safety and quality programmes to protect the public against health hazards and fraud related to food, as well as to motivate and promote the preparations, handling, distribution, sale and consumption of safe and quality food.

In terms of exports of agriculture products, the Department of Agriculture is responsible for the issuance of export permits/licenses and phytosanitary certificates required by the importing countries. The Department of Veterinary Services is responsible for issuance of Veterinary Health Certificates for exports of animal products; whilst Ministry of Health issues Health Certificates for exports of fish-based products and chilled/frozen shrimps required by the importing country. The Department of Fisheries as and when required by the importing country also issues Sanitary Certificates for exports of shrimps from aquaculture farms.

2. Contact Points

For the purposes of the implementation of Chapter 6 (Sanitary and Phytosanitary Measures), the primary Contact Points for Government to Government communications are as set out below:

- (a) for matters concerning Malaysia's exports to New Zealand of plants and plant products:

Director General
Department of Agriculture
Wisma Tani, Tower Block
Lot4G2, Precint4,
Federal Government Administrative Centre
62624 Putrajaya
Malaysia
Tel: (+603) 8870 3001
Fax: (+603) 8888 5069
E-mail: roseley@doa.gov.my

Director
Crop Protection and Plant Quarantine Services Department of
Agriculture Wisma Tani
Jalan Sultan Salahuddin
50632 Kuala Lumpur
Malaysia
Tel: (+603) 2697 7120
Fax: (+603) 2697 7205
E-mail: wanis@doa.gov.my

- (b) for matters concerning Malaysia's exports to New Zealand of live animals and animal products:

Director General
Department of Veterinary Services
Wisma Tani, Block Podium
Level 2, Lot 4G1, Precint 4
Federal Government Administrative Centre
62624 Putrajaya
Malaysia
Tel: (+603) 8870 2001
Fax: (+603) 8888 6051
E-mail: kpazizj@dvs.gov.my

- (c) for matters concerning exports of Malaysia to New Zealand of live fish and shrimps:

Director General
Department of Fisheries
Wisma Tani
Level 1-7
Lot4G2, Precint4
Federal Government Administrative Centre
62628 Putrajaya
Malaysia
Tel: (+603) 8870 4008
Fax: (+603) 8889 2460
E-mail: kpp01@dof.gov.my

- (d) for matters concerning exports of Malaysia to New Zealand of processed fish products and other processed food:

Director
Food Safety and Quality Division Ministry of Health
Level 3, Block E7, Parcel E
Federal Government Administrative Centre
62590 Putrajaya
Malaysia
Tel: (+603) 8883 3501
Fax: (+603) 88893815
E-mail: noraini_othman@moh.gov.my
shamsinar@moh.gov.my

- (e) SPS Contact Point/National Notification Agency

Undersecretary
Strategic Planning and International Division
Ministry of Agriculture and Agro-Based Industry
Level 14, Wisma Tani,
Lot 4G1, Precint 4
Federal Government Administrative Centre
62624 Putrajaya
Malaysia
Tel: (+603) 8870 1201
Fax: (+603) 8888 8548
E-mail: qbyeoh@moa.gov.my

New Zealand

1. Competent Authorities

Control in sanitary and phytosanitary issues is shared between Biosecurity New Zealand (“BNZ”) of the Ministry of Agriculture and Forestry and the New Zealand Food Safety Authority (“NZFSA”). In this respect the following applies:

- (a) in terms of exports of plants and plant product and exports of live animals and animal germplasm, BNZ is responsible for phytosanitary and zoosanitary matters including certification (official assurances) attesting to the agreed standards and requirements between the Parties;
- (b) in terms of exports of all foods, beverages and animal products other than germplasm, NZFSA is responsible for all sanitary and zoosanitary matters including certification (official assurances) attesting to the agreed standards and requirements; and
- (c) in terms of imports, the BNZ is responsible for plant and animal health issues (phytosanitary and zoosanitary) while NZFSA is responsible for food safety (sanitary) and related standards and requirements.

2. Contact Points

For the purposes of the implementation of Chapter 6 (Sanitary and Phytosanitary Measures), the primary Contact Points for Government to Government communications are set out below:

- (a) for matters concerning New Zealand's exports to Malaysia of plants and plant products and live animals and animal germplasm:

International Coordination Manager
Biosecurity New Zealand
PO Box 2526
Wellington
Ph: (+64 4) 819 0434
Fax: (+64 4) 819 0731
E-mail: Derek.belton@maf.govt.nz

- (b) for matters concerning New Zealand's exports to Malaysia of food, beverages and other animal products:

Director Market Access
NZFSA
PO Box 2835
Wellington
New Zealand
Ph: (+64 4) 894 2500
Fax: (+64 4) 894 2675
E-mail: Tony.zohrab@nzfsa.govt.nz

- (c) for matters concerning Malaysia's exports to New Zealand in terms of phytosanitary or zoosanitary requirements:

International Coordination Manager
Biosecurity New Zealand
PO Box 2526
Wellington
Ph: (+64 4) 819 0434
Fax: (+64 4) 819 0731
E-mail: Derek.belton@maf.govt.nz

- (d) for matters concerning Malaysian exports to New Zealand in terms of sanitary requirements:

Director Market Access
NZFSA
PO Box 2835
Wellington
New Zealand
Ph: (+64 4) 894 2500
Fax: (+64 4) 894 2675
E-mail: Tony.zohrab@nzfsa.govt.nz

- (e) all formal communications should also be copied to:

The High Commissioner
New Zealand High Commission
Level 21, Menara IMC,
8 Jalan Sultan Ismail
Kuala Lumpur 50250
Malaysia
Ph: (+603) 2078 2533
Fax: (+603) 2078 0387
E-mail: nzhckl@streamyx.com