

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES AND FOOD STANDARDS

ARTICLE 601

Objectives

The objectives of this Chapter are:

- (a) to protect human, animal or plant life or health in the territory of each Party;
- (b) to facilitate safe bilateral trade in food, plants and animals, including their products, and animal feed;
- (c) to strengthen cooperation between Thai and Australian government agencies having responsibility for matters covered by this Chapter and to deepen mutual understanding of each Party's regulations and procedures; and
- (d) to strengthen collaboration between the Parties in relevant international bodies implementing agreements or developing international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

ARTICLE 602

Definitions

For the purposes of this Chapter:

- (a) "agricultural and food standard" means a mandatory requirement being either a sanitary or phytosanitary measure or other technical regulation, that is made pursuant to relevant laws administered by either Party;
- (b) "sanitary or phytosanitary measure" (SPS measure) shall have the same meaning as in Annex A, paragraph 1, of the SPS Agreement; sanitary or phytosanitary measures include control, inspection and approval procedures, guidelines for use of which are given in Annex C of the SPS Agreement;
- (c) "technical regulation" means a non-SPS measure which shall have the same meaning as in Annex 1 of the TBT Agreement; and

- (d) “appropriate level of sanitary or phytosanitary protection” shall have the same meaning as in Annex A of the SPS Agreement.

ARTICLE 603

Scope

1. This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade in agricultural and food products traded between the Parties, regardless of the origin of those products.
2. It shall also apply to:
 - (a) all other agricultural and food standards related to agricultural and food products traded between the Parties;
 - (b) assessments of manufacturers or manufacturing processes of agricultural and food products exported from one Party to the other Party; and
 - (c) assessments of official control, inspection and approval systems related to agricultural and food products operated by the Parties.

ARTICLE 604

Obligations

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement and the TBT Agreement to the extent that these rights and obligations are applicable to trade in agricultural and food products.
2. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations:
 - (a) SPS measures necessary to achieve its appropriate level of protection of human, animal or plant life or health; and
 - (b) other technical requirements set out in a Party’s laws, regulations and policies as appropriate to its national circumstances.
3. Each Party, consistent with Paragraphs 1 and 2, shall retain all authority under its laws to implement sanitary and phytosanitary measures and other standards related to this Chapter. This includes the authority to take appropriate measures for goods that do not conform to that Party’s SPS measures and such other standards.

ARTICLE 605

Harmonisation

1. Noting their commitments under Article 604 (1), the Parties shall endeavour to work towards harmonisation of sanitary and phytosanitary measures and other agricultural and food standards, on as wide a basis as possible, as provided for under Article 3 of the SPS Agreement and Article 2 of the TBT Agreement.
2. Harmonisation shall be pursued without requiring either Party to change its appropriate level of protection of human, animal or plant life or health, that the Party determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

ARTICLE 606

Equivalence

1. The Parties recognise that the principle of equivalence as set down in Article 4 of the SPS Agreement and Article 2 of the TBT Agreement, as applied to SPS measures and other agricultural and food standards, has mutual benefits for both exporting and importing countries.
2. The Parties shall follow the procedures for determining the equivalence of SPS measures and other agricultural and food standards, including control, inspection and approval procedures, developed by the relevant WTO bodies and the Codex Alimentarius Commission, the Office Internationale des Epizooties and the International Plant Protection Convention, as amended from time to time.
3. Compliance by an exported food product with a food standard that has been accepted as equivalent to a food standard of the importing Party shall not remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.

ARTICLE 607

Control, Inspection and Approval Procedures

1. The Parties recognise that they operate different systems for giving effect to their international rights and obligations relating to control, inspection and approval procedures.
2. Each Party shall, on the request of the other Party, following the procedures set down from time to time by the relevant WTO bodies and the Codex Alimentarius Commission, the Office Internationale des Epizooties or the International Plant Protection Convention, give consideration to accepting the relevant control, inspection and approval procedures of the other Party, provided that it is satisfied that these achieve the same outcomes as its own regulatory requirements.
3. Each Party shall on request and in accordance with its international obligations and applicable laws, regulations and policies, review its inspection, testing, certification and other relevant import and export approval systems or procedures to ensure these are reasonable and necessary, so as to further facilitate access of traded goods to its territory and minimise the costs of doing business.
4. The Parties shall cooperate on a product trace back system for the notification of non-compliance of imported consignments for commodities subject to SPS measures or other agricultural and food standards requirements, drawing on the guidelines of relevant international organisations where available.
5. In particular:
 - (a) where non-compliance with SPS measures or other agricultural and food standards arises, the importing Party shall notify the exporting Party of the consignment details;
 - (b) unless specifically required by laws, regulations or policies in effect at the time this Agreement enters into force, the importing Party shall avoid suspending trade based on one shipment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult on what remedial action might be taken by the exporting Party to ensure that further shipments are not affected;
 - (c) the exporting Party shall investigate and advise the importing Party of its findings regarding the non-compliance referred to in Sub-paragraph (a), including any corrective action that will apply to future shipments. The Parties shall, upon the request of either Party, jointly examine the import or export control, inspection and approval procedures concerned; and

- (d) if, after investigation and review, the Parties mutually determine that the issue is an incident arising from an isolated technical problem, the importing Party shall separate the incident clearly from the overall institutional and procedural arrangements applying to relevant control, inspection and approval systems. In this event, the importing Party shall confine any treatment measures taken only to that particular shipment and shall also endeavour to ensure that the incident is not used as a basis for refusing to accept the arrangements applying to other shipments of the products concerned.

ARTICLE 608

Information Exchange and Cooperation

1. Recognising the importance of close and effective working relationships between the Parties' regulatory and other relevant agencies in giving effect to the objectives of this Chapter, the Parties shall enhance their consultation processes in order to facilitate cooperation.
2. In particular, each Party shall:
 - (a) establish an overall coordination contact point, as well as contact points for relevant specialised areas, to disseminate and exchange information expeditiously and to facilitate timely and favourable consideration of requests for information or clarification from the other Party. The overall coordination contact point shall be included in all consultations made pursuant to this Article;
 - (b) provide notice to the relevant contact points of the other Party of new or proposed changes to its SPS measures and other agricultural and food standards, as far in advance as practicable before the changes come into effect, where these are likely to affect, directly or indirectly, trade between the Parties;
 - (c) where considerations of public, animal or plant health and safety warrant more urgent action, notify the other Party no later than the date the changes enter into force;
 - (d) where it implements emergency management measures in response to a confirmed threat to human, plant or animal life or health, ensure that all pertinent information about the incident is provided to the other Party and the Parties shall consult expeditiously with the aim of minimising disruption to trade.
3. The Parties shall explore opportunities for further cooperation and collaboration on regulatory issues at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter.

4. The Parties shall enhance cooperation on priority proposals in relevant areas of technical assistance and capacity-building activities to ensure that existing or future opportunities for funding or other support are used effectively to further the objectives of this Chapter.

ARTICLE 609

Consultative Forum on Sanitary and Phytosanitary Measures and Food Standards

1. The Parties shall establish an Expert Group on Sanitary and Phytosanitary Measures and Food Standards as a consultative forum to promote the objective set out in Article 601 (c) and to reflect their commitments under Article 608 (1) to strengthen cooperation between regulatory agencies having responsibility for sanitary and phytosanitary measures and for food standards.
2. The Expert Group, along with the existing Joint Working Group on Agriculture, shall together form an integrated means of enhanced regular and comprehensive consultation and cooperation on agriculture and related matters so as to facilitate safe trade between the Parties.
3. The Expert Group shall meet as often as required and mutually determined by the Parties, but this shall not be less than once a year. In principle, the Parties shall meet biannually during the initial two year work program of the Expert Group. The Expert Group shall meet consecutively with the regular meetings of the Joint Working Group, alternately in each Party's territory.
4. The Parties may mutually determine an alternative process for addressing any matter and for this purpose shall make full use of the coordination and contact points established under Article 608 (2)(a).
5. The Expert Group may adopt a work program and work procedures independently of the established scope and modalities of the Joint Working Group. The Expert Group shall inform the Joint Working Group of the outcomes from its meetings.
6. The Expert Group may establish temporary task forces to address particular issues.

7. The Party hosting the Expert Group shall provide the chair for the meeting who shall be a representative from the agriculture ministry of the relevant Party. Delegations to the Expert Group may be composed of relevant technical and policy officials or other designated officials as each Party determines appropriate from time to time. Each Party shall ensure, reflecting the agenda agreed for each meeting, that appropriate representatives with responsibility for SPS measures and food standards participate in meetings of the Expert Group.

8. The Parties shall consult on dates and venues for planned meetings of the Expert Group and Joint Working Group well in advance. Agendas for meetings of the Expert Group shall be mutually determined at least 30 days prior to each meeting.

9. To achieve the objectives of Paragraph 2 on matters related to this Chapter, the Expert Group shall at its first meeting develop and implement a work program, with the initial phase to be completed and reviewed within two years of the signature of this Agreement, with the aim of:

- (a) reviewing progress and monitoring the implementation of this Chapter on an ongoing basis;
- (b) enhancing mutual understanding of each Party's sanitary and phytosanitary measures, agricultural and food standards, and related regulatory processes;
- (c) consulting on matters related to the development or application of SPS measures and other agricultural and food standards that affect or may affect trade between the Parties;
- (d) reviewing and assessing progress of each Party's priority market access interests, which at the time of signature of this Agreement are listed in Annex 6.1;
- (e) consulting on requests for recognition of equivalence of SPS measures or other agricultural and food standards. In respect of control, inspection and approval arrangements, the priority sectors of each Party at the time of signature of this Agreement are listed in Annex 6.2;
- (f) consulting on matters relating to the harmonisation of standards;
- (g) consulting or coordinating positions on matters related to meetings of the WTO SPS Committee, the Codex Alimentarius Commission, the Office Internationale des Epizooties, the International Plant Protection Convention or other forums dealing with human, plant or animal health;
- (h) coordinating and prioritising capacity building and technical cooperation programs related to SPS measures and other relevant agricultural and food standards; and
- (i) progressing resolution of disputes that arise in connection with the matters covered by this Chapter.

ARTICLE 610

Dispute Settlement

1. Matters arising under this Chapter that cannot be settled through consultations within the Expert Group established under Article 609 may be forwarded by either Party for consideration by the FTA Joint Commission.
2. Chapter 18 shall not apply to the provisions of this Chapter.