CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Definitions

For the purposes of this Chapter, the definitions under Annex A of the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures* (hereinafter referred to as the "SPS Agreement") shall be applicable, *mutatis mutandis*.

Article 5.2: Objectives

The objectives of this Chapter are to:

(a) facilitate bilateral trade in food, plants and animals including their products while protecting human, animal or plant life or health in the territory of each Party;

(b) ensure and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organisations;

(c) strengthen consultation and cooperation between the government agencies of the Parties in the relevant international bodies work;

(d) deepen mutual understanding of regulations and procedures of each Party; and

(e) ensure that sanitary and phytosanitary measures (hereinafter referred to as "SPS measures") of each Party do not constitute an unjustified trade barrier.

Article 5.3: Scope

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

2. This Chapter shall also apply to:

(a) assessments of manufacturers or manufacturing processes of products exported from one Party to the other Party; and

(b) assessments of control, inspection and approval on official SPS measures systems, operated by the Parties.

Article 5.4: Rights and Obligations

The Parties affirm and incorporate their rights and obligations with respect to each other under the SPS Agreement in the development and application of any SPS measure.

Article 5.5: Harmonisation

1. The Parties shall endeavour to work towards harmonisation of SPS measures on as wide basis as possible, as provided for under Article 3 of the SPS Agreement.

2. The Parties shall take into account international standards, guidelines and recommendations as the basis for adopting and applying their SPS measures, developed by relevant international organisations. In the absence of them or when they are not appropriate to reach the level of protection required by the importing Party, the Parties may adopt SPS measures that may be deemed pertinent with due scientific justification.

Article 5.6: Equivalence

1. The Parties recognise that the principle of equivalence as established in Article 4 of the SPS Agreement, as applied to SPS measures, has mutual benefits for both exporting and importing countries.

2. The procedures of the Parties for determining the equivalence of SPS measures, including control, inspection and approval procedures, shall be based on the work developed by the Committee on Sanitary and Phytosanitary Measures, the *Codex Alimentarius Commission*, the World Organisation of Animal Health and the *International Plant Protection Convention*, as amended from time to time.

3. The Parties shall endeavour to enter into agreements acknowledging the equivalence of their SPS measures, in order to ease the trade of the products subject to SPS measures and to foster mutual confidence between their respective competent authorities.

Article 5.7: Risk Analysis and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. SPS measures will be based on a risk analysis, in line with the circumstances of the risks existing for human, animal and plant life and health, taking into account the risk analysis techniques developed by the relevant international organisations in order to reach the appropriate level of protection.

2. The importing Party shall give due consideration to a risk analysis request from the exporting Party and avoid undue delay in commencing the risk analysis following the reception of such a request.

3. The commencement of risk analysis process should not interrupt existing bilateral trade of the product, except in case of a justified emergency situation.

4. After the importing Party has concluded the risk analysis and decided trade can commence or resume, it shall take the necessary regulatory measures to commence or resume trade within a reasonable period of time.

Article 5.8: Recognition of Pest- or Disease-Free Zones/Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise and apply the principle of recognition of pest or disease-free zones/areas and areas of low pest or disease prevalence as provided for in Article 6 of the SPS Agreement and the standards and guidelines established by relevant international organisations.

2. The exporting Party requesting the recognition of a pest or disease-free zone/area or area of low pest or disease prevalence shall provide necessary evidence of that status and shall give, upon request, reasonable access to the importing Party for inspection, testing and other relevant procedures. The importing Party shall avoid undue delay for the commencement of the procedure for recognition of a pest or disease-free zone/area or area of low pest or disease prevalence.

Article 5.9: Control, Inspection and Approval Procedures

1. The application of control, inspection and approval procedures cannot turn into disguised restrictions on trade between the Parties and shall be performed in accordance with Annex C of the SPS Agreement and the international standards, guidelines and recommendations established by the relevant organisations identified under such agreement, and if they do not exist, the importing Party shall inform the procedure to be applied, which shall be carried out in a manner that is less restrictive to trade.

2. In case any non-compliance of imported consignments for products subject to SPS measures is found, the importing Party shall notify the exporting Party of the consignment details. Unless required by its laws, regulations or policies, 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 and discuss what action may be needed to prevent similar problems in the future.

3. Any restriction on market access on access to the market by the importing Party without due technical justification will be considered an unjustified barrier to trade.

Article 5.10: Transparency

1. The Parties recognise the value of sharing information about their SPS measures on an ongoing basis.

2. Each Party undertakes to notify their proposed SPS measures to the contact points of the other Party at least 60 days before they are adopted.

3. Any extension of this time frame adopted by a Party shall be immediately reported to the other Party.

4. The Parties shall make available to the public, by electronic means in an official journal or website in English, the text or the description of the proposed SPS measure and its legislative basis.

5. In cases of urgency or duly justified emergency, the Parties may adopt the measures specified in paragraph 2, without observing the time frame established. In such cases, a Party shall notify the other Party of such adopted measures within five working days.

6. In any event, the Party adopting or willing to adopt an SPS measure shall ensure, without discrimination to the other Party, the possibility of making comments on the adopted or proposed measure if so requested, and shall take into account such comments.

7. If a proposed SPS measure does not conform to international standards, guidelines or recommendations adopted by relevant international organisations, the importing Party shall provide, on request of the exporting Party, relevant documentation considered in developing such a measure, including the risk analysis and any relevant studies and expert opinions.

Article 5.11: 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. The contact points for matters within the scope of this Chapter are:

   (a) in the case of Peru, the Vice Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism (*Viceministerio de Comercio Exterior del Ministerio de Comercio Exterior y Turismo* - MINCETUR), or its successor; and

   (b) in the case of Thailand, the National Bureau of Agricultural Commodity and Food Standards (ACFS) of the Ministry of Agriculture and Cooperatives (MOAC), or its successor.

Article 5.12: Sub-Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "SPS Sub-Committee") compose of representatives of the Parties which will meet within one year of the date of entry into force of this Agreement and at least once a year thereafter or as mutually agreed by them. The SPS Sub-Committee meeting may be conducted via teleconference, video conference or through any other means mutually agreed by the Parties.

2. The SPS Sub-Committee shall consider any matters relating to the implementation of this Chapter and:

(a) establish technical working groups, as required. These working groups may consist of expert-level representatives of the Parties as agreed, which shall identify, address, and attempt to resolve technical and scientific issues arising from this Chapter. In case these issues could not be resolved at the level of the established technical working group, they shall be reported to the SPS Sub-Committee in order to reach a mutual acceptable resolution with the least disruption to trade;

(b) initiate, develop and review implementing arrangements on technical matters including harmonisation, equivalence, control, inspection and approval procedures which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties;

(c) review and assess progress of priority market access interests of each Party; and

(d) strengthen technical assistance and cooperation between the Parties on sanitary and phytosanitary matters.

Article 5.13: Cooperation on Sanitary and Phytosanitary Matters

The Parties agree to develop and promote cooperation and information exchange on sanitary and phytosanitary matters of mutual interest, capacity building on sanitary and phytosanitary risks management in the development of national adaptation strategies on climate change, and the interaction between trade and sanitary and phytosanitary risk associated with climate change.

Article 5.14: Technical Consultations on SPS Measures

1. The Parties shall endeavour to resolve any disagreement under this Chapter through a mutually agreed solution, including but not limited to the SPS Sub-Committee established under Article 5.12 (Sub-Committee on Sanitary and Phytosanitary Measures).

2. In the event that a Party considers that any SPS measure affects its trade, the Parties shall enter into technical consultations by notifying the contact points that technical consultations will be held. The other Party shall respond to any request for technical consultations.

3. The technical consultations shall be held within 45 days of receiving the request, unless otherwise agreed by the Parties, and may be conducted via teleconference, video-conference or through any other means mutually agreed by the Parties.

4. The purpose of such technical consultations is to share information and increase mutual understanding, with a view to resolving any concerns about the specific SPS measure consistent with the SPS Agreement.

5. A Party may forward any matter arising under this Chapter that cannot be settled through technical consultations to the dispute settlement mechanism under Chapter 15 (Dispute Settlement).