

ANNEX 3

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 1 Objectives

The objectives of this Annex are:

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

ARTICLE 2 Definitions

For this Annex, 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.

ARTICLE 3 Scope

1. This Annex shall apply to all sanitary and phytosanitary measures (hereinafter referred to as "SPS measures") of a Party that may, directly or indirectly, affect trade in agricultural and food products traded between the Parties.
2. This Annex 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 control, inspection and approval official systems related to agricultural and food products, operated by the Parties.

ANNEX 3

ARTICLE 4 Rights and Obligations

The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement.

ARTICLE 5 Harmonisation

1. The Parties shall endeavour to work towards harmonisation of SPS measures and other agricultural and food standards, on as wide basis as possible, as provided for under Article 3 of the SPS Agreement.
2. The Parties shall use the international standards, guidelines and recommendations as the basis for adopting and applying their SPS measures. In the absence of them or when they are not appropriate to reach the protection level required by the importing Party, the Parties may adopt the SPS measures that may be deemed pertinent with the due scientific justification.

ARTICLE 6 Equivalence

1. The Parties recognise that the principle of equivalence as set down in Article 4 of the SPS 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 SPS Joint Committee and the Codex Alimentarius Commission, the World Organization of Animal Health and the International Plant Protection Convention, as amended from time to time.
3. The Parties shall try to enter into agreements of equivalence acknowledgment of their sanitary and phytosanitary measures, in order to ease the trade of the products subject to sanitary and phytosanitary measures and to foster mutual confidence between the respective competent authorities.
4. 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.
5. Whenever an equivalent agreement is in the process of negotiation and provided

ANNEX 3

that no final approval is achieved, the Parties could neither stop nor apply sanitary and/or phytosanitary conditions more constraining than those in force in their mutual trade, but those arising out of the sanitary or phytosanitary emergencies.

ARTICLE 7

Risk Assessment and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Sanitary and phytosanitary measures will be based on a risk assessment, 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 competent international organizations, so that the measures adopted may reach the appropriate level of protection.
2. When a Party decides to make a risk assessment of a product for which there is a fluid and regular trade, that Party could not interrupt the trade of the products affected but in the case of a sanitary or phytosanitary emergency situation.

ARTICLE 8

Acknowledgement of Pest or Diseases Free Zones/Areas and Areas of Low Pest or Disease Prevalence

The Parties shall ensure that their SPS measures are adapted to the pest or disease-free zones/areas and areas of low Pest or Disease Prevalence which are recognized by or based on the appropriate criteria or guidelines of the relevant international organization, in accordance with the provisions under Article 6 of the SPS Agreement. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures. The importing Party shall make decision in an appropriate manner with the aim of facilitating bilateral trade.

ARTICLE 9

Control, Inspection and Approval Procedures

1. The application of control, inspection and approval procedures can not turn into disguised restrictions on trade between the Parties, and it shall be performed in accordance with Annex C of the SPS Agreement and the international standards, guidelines and recommendations established by the relevant organizations identified under said Agreement, and if they do not exist, the importing Party shall inform on the procedure to be applied, which can not be an unjustified barrier to trade.

ANNEX 3

2. Any restriction on the access to the market by the importing Party arising out of changes in the control and inspection procedure without the due technical justification will be considered an unjustified barrier to trade.

ARTICLE 10

Transparency

1. The Parties undertake to notify their proposed SPS measures to the contact points of the other Party at least sixty (60) days before they are adopted.
2. Any extension of this time frame adopted by a Party shall be immediately reported to the other Party.
3. In cases of urgency or duly justified emergency, the Parties may adopt the measures and rules specified in the foregoing paragraph, without observing the time frame established. In these cases the Party shall notify the adopted measure to the other Party within five (5) days.
4. In any event, the Party adopting or willing to adopt the measure shall give, without discrimination to the other Party, the possibility of making comments on the adopted or the proposed rules if so requested and shall take into account these comments.
5. The Parties shall cooperate where there is a notification of non-compliance of imported consignments for products subject to SPS measures or food standard requirements, drawing on the guidelines of relevant international organizations where available. In particular, where such non-compliance arises, the importing Party shall notify 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 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.

ARTICLE 11

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 Annex, the Parties shall promote communication to enhance present and future relationships between their competent authorities.
2. The competent authorities for matters within the scope of this Annex are:

ANNEX 3

- (a) in the case of Peru, the Animal and Plant Health Service (SENASA), Ministry of Health and Ministry of Production; and
- (b) in the case of Thailand, the Ministry of Agriculture and Cooperatives.

3. The competent authorities shall designate contact points for communication on all matters arising under this Annex. Each Party shall promptly notify the other Party of any changes to the competent authorities or contact points. As at the date of entry into force of the Protocol, the contact point for Thailand shall be the National Bureau of Agricultural Commodity and Food Standards (ACFS); and for Peru, the contact point shall be the Animal and Plant Health Service (SENASA).

ARTICLE 12 **Joint Committee**

The Parties shall establish a Joint Committee consisting of representatives of the Parties which will meet within one year of the entry into force of the Protocol and at least annually thereafter or as mutually agreed by the Parties. The Joint Committee shall consider any matters relating to the implementation of this Annex, and:

- (a) establish technical working groups, as required. The technical 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 Annex. In case these issues could not be resolved at the level of the established technical working group, they will be reported to the Joint Committee in order to reach a mutually acceptable resolution with the least disruption to trade;
- (b) initiate, develop and review implementing arrangements on technical matters including harmonization, equivalence, control, inspection and approval procedures which further elaborate the provisions of this Annex in order to facilitate trade between the Parties particularly in agricultural and food products;
- (c) review and assess progress of each Party's priority market access interests, and, where agreed as necessary, amend implementing arrangements; and
- (d) strengthen technical cooperation in SPS measures.

ARTICLE 13 **Technical Cooperation**

The Parties agree to develop and promote technical cooperation among them, as well as to foster their service through competent international or regional organizations, relating to SPS-related matters.

ANNEX 3

ARTICLE 14 **Consultations and Dispute Settlement**

1. In the event that a Party considers that an SPS measure or food standard affecting trade between it and the other Party requires technical consultations, it may, through the contact point, request that technical consultations be held. The other Party shall respond promptly to any request for technical consultations.
2. The technical consultations shall be held within forty five (45) days of the request, unless the Parties determine otherwise, and may be conducted via teleconference, video-conference, or through any other means, as mutually determined by the Parties.
3. 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 or food standard that is the subject of the consultations, consistent with the rights and obligations of the Parties under the SPS Agreement.
4. Matters arising under this Annex that cannot be settled through consultations may be forwarded by the complaining Party to the dispute settlement mechanisms under Annex 7 of this Protocol.