

ANNEX 704.3

Agricultural Grading and Marketing Standards

Each Party shall comply with Sections I and II.

Section I

United States and Mexico

1. When either the United States or Mexico adopts or maintains a measure regarding the classification, grading or marketing of a domestic agricultural good, it shall, with respect to the like agricultural good imported from the territory of the other destined for processing, accord treatment no less favorable than the treatment it accords under the measure to the domestic agricultural good destined for processing. The importing Party may also adopt or maintain measures to ensure that such imported good is processed.
2. Paragraph 1 shall be without prejudice to the rights of either the United States or Mexico under the GATT or under Article 301 of this Agreement with respect to measures concerning the classification, grading or marketing of an agricultural good (whether or not destined for processing).
3. Mexico and the United States agree to form a Working Group to review, in coordination with the Committee on Standards-Related Measures established under Chapter 9, the operation of grade and quality standards regarding agricultural goods as they affect the other Parties to this Agreement, and to resolve issues which may arise. This Working Group shall report to the Committee on Agriculture established under Article 708, and shall meet at least once a year or as otherwise agreed by the two Parties.

Section II

Canada and Mexico

Mexico and Canada agree to form a Working Group to review, in coordination with the Committee on Standards-Related Measures established under Chapter Nine (Standards-Related Measures), the operation of grade and quality standards regarding agricultural goods as they affect the other Parties to this Agreement, and to

resolve issues which may arise. This Working Group shall report to the Committee on Agriculture established under Article 708, and shall meet at least once a year or as otherwise agreed by the two Parties.

ANNEX 704.4

Special Safeguards

Section I

Mexican Special Safeguard Goods

MEXICO HTS NUMBER DESCRIPTION

0103.91.99 Live swine, weighing less than 50 kilograms each, except purebred breeding animals and those with pedigree or selected breed certificate

0103.92.99 Live swine, weighing 50 kilograms or more each, except purebred breeding animals and those with pedigree or selected breed certificate

0203.11.01 Meat of swine, carcasses and half-carcasses, fresh or chilled

0203.12.01 Hams, shoulders or cuts thereof, with bone in, fresh or chilled

0203.19.99 Other swine meat, fresh or chilled

0203.21.01 Meat of swine, carcasses and half-carcasses, frozen

0203.22.01 Hams, shoulders and cuts thereof, with bone in, frozen

0203.29.99 Other swine meat, frozen

0210.11.01 Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked

0210.12.01 Bellies (streaky) and cuts thereof, salted, in brine,

dried or smoked

0210.19.99 Other swine meat, salted, in
brine, dried or smoked

0710.10.01 Potatoes, uncooked or cooked
by steaming or boiling in
water, frozen

0712.10.01 Dried potatoes, whole cut,
sliced, broken or in powder,
but not further prepared

0808.10.01 Apples, fresh

2004.10.01 Potatoes prepared or preserved
otherwise than by vinegar or
acetic acid, frozen

2005.20.01 Potatoes prepared or preserved
otherwise than by vinegar or
acetic acid, not frozen

2101.10.01 Extracts, essences or
concentrates, of coffee, and
preparations with a basis of
these extracts, essences or
concentrates or with a basis
of coffee

Section II

U.S. Special Safeguard Goods

U.S. HTS NUMBER DESCRIPTION

Note: A new U.S. HTS number will be established for each item

0702.00.XX Tomatoes (except cherry
tomatoes), fresh or chilled;
if entered during the period
from November 15 to the last
day of the following February,
inclusive

0702.00.XX Tomatoes (except cherry

tomatoes), fresh or chilled;
if entered during the period
from March 1 to July 14,
inclusive

0703.10.XX Onions and shallots, fresh or
chilled (not including onion
sets and not including pearl
onions not over 16 mm in
diameter) if entered January 1
to April 30, inclusive

0709.30.XX Eggplants (aubergines), fresh
or chilled, if entered during
the period from April 1 to
June 30, inclusive

0709.60.XX "Chili" peppers; if entered
during the period from October
1 to July 31, inclusive
(current 0709.60.00.20)

0709.90.XX Squash, fresh or chilled; if
entered during the period from
October 1 to the following
June 30, inclusive

0807.10.XX Watermelons, fresh; if entered
during the period from May 1
to September 30, inclusive

Section III

Canadian Special Safeguard Goods

Canadian HTS NUMBER DESCRIPTION

- 0603.10.90 Fresh cut flowers
- 0702.00.91 Tomatoes n.e.s., fresh or
chilled (dutyable period)
- 0703.10.31 Onions or shallots, green
(dutyable period), fresh
- 0707.00.91 Cucumber, fresh or chilled,
n.e.s. (dutyable period)
- 0710.80.20 Broccoli and cauliflowers,
blanched or not, frozen

0811.10.10 Strawberries, for processing,
frozen

0811.10.90 Strawberries, frozen, other
than for processing

2002.90.00 Tomatoes, other than whole
(tomato paste)

ANNEX 709

Country-Specific Definitions

For purposes of this Subchapter, sugar and syrup goods means:

(a) for imports into Mexico, goods classifiable under current subheadings 1701.11.01, 1701.11.99, 1701.12.01, 1701.12.99, 1701.91 (except those that contain added flavoring matter), 1701.99.01, 1701.99.99, 1702.90.01, 1806.10.01 (except those with a sugar content less than 90 per cent) and 2106.90.05 (except those that contain flavoring matter) of the Mexican Tariff Schedules;

(b) for imports into the United States, goods classifiable under current subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the U.S. Harmonized Tariff Schedule, without regard to the quantity imported; and

(c) for imports into Canada, goods classifiable under current subheadings 1701.11.10, 1701.11.20, 1701.11.30, 1701.11.40, 1701.11.50, 1701.12.00, 1701.91.00, 1701.99.00, 1702.90.31, 1702.90.32, 1702.90.33, 1702.90.34, 1702.90.35, 1702.90.36, 1702.90.37, 1702.90.38, 1702.90.40, 1806.10.00 (except those with a sugar content less than 90 per cent) and 2106.90.20 (except those that contain flavoring matter) of the Canadian Tariff Schedule.

Subchapter B - Sanitary and Phytosanitary Measures

Article 751: Scope

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures, this Subchapter applies to any such measure of a Party that may, directly or indirectly, affect trade between the Parties.

Article 752: Relation to Other Chapters

Articles 301 (National Treatment), 309 (Import and Export Restrictions) and 310 (Non-Discriminatory Administration of Restrictions), and the provisions of Article XX(b) of the GATT as incorporated into Article 2101(1), do not apply to any sanitary or phytosanitary measure.

Article 753: Reliance on Non-Governmental Entities

Each Party shall ensure that any non-governmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with this Subchapter.

Article 754: Basic Rights and Obligations

Right to Take Sanitary and Phytosanitary Measures

1. Each Party may, in accordance with this Subchapter, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Subchapter, each Party may, in protecting human, animal or plant life or health, establish its appropriate level of protection in accordance with Article 757.

Scientific Principles

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is:

(a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;

(b) not maintained where there is no longer a scientific basis for it; and

(c) based on a risk assessment, as appropriate to the circumstances.

Non-Discriminatory Treatment

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

Unnecessary Obstacles

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction to trade between the Parties.

Article 755: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal, or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other

Parties.

2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, guideline or recommendation shall be presumed to be consistent with Article 754. A measure that results in a level of sanitary or phytosanitary protection different from that which would be achieved by a measure based on a relevant international standard, guideline or recommendation shall not for that reason alone be presumed to be inconsistent with this Subchapter.

3. Notwithstanding paragraph 1 and in accordance with the other provisions of this Subchapter, a Party may adopt, maintain or apply a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation.

4. Where a Party has reason to believe that a sanitary or phytosanitary measure of another Party is adversely affecting or may adversely affect its exports and the measure is not based on a relevant international standard, guideline or recommendation, it may request, and the other Party shall provide in writing, the reasons for such measure.

5. Each Party shall, to the greatest extent practicable, participate in relevant international and North American standardizing organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention, and the North American Plant Protection Organization, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

Article 756: Equivalence

1. Without reducing the level of protection of human, animal, or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Subchapter, pursue equivalence of their respective sanitary or phytosanitary measures.

2. Each importing Party:

(a) shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with

the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed upon by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;

(b) may, where it has a scientific basis, determine that the exporting Party's measure does not achieve the importing Party's appropriate level of protection; and

(c) shall, upon the request of the exporting Party, provide its reasons in writing for a determination under subparagraph (b).

3. For purposes of establishing equivalency, each exporting Party shall, upon the request of an importing Party, take such reasonable measures as may be available to it to facilitate access in its territory for inspection, testing, and other relevant procedures.

4. Each Party should, in the development of a sanitary or phytosanitary measure, consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties.

Article 757: Risk Assessment and Appropriate Level of Protection

1. In conducting a risk assessment, each Party shall take into account:

(a) relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;

(b) relevant scientific evidence;

(c) relevant processes and production methods;

(d) relevant inspection, sampling, and testing methods;

(e) the prevalence of relevant diseases or pests, including the existence of pest-free or disease-free areas or areas of low pest or disease prevalence;

(f) relevant ecological and other environmental conditions;
and

(g) relevant treatments, such as quarantines.

2. Further to paragraph 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing such risk, also take into account the following economic factors, where relevant:

(a) loss of production or sales that may result from such pest or disease;

(b) costs of control or eradication of the pest or disease in its territory; and

(c) the relative cost-effectiveness of alternative approaches to limiting risks.

3. Each Party, in establishing its appropriate level of protection:

(a) should take into account the objective of minimizing negative trade effects; and

(b) shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.

4. Notwithstanding paragraphs (1) through (3) and Article 754(3)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including from international or North American standardizing organizations and from sanitary or phytosanitary measures of other Parties. Such Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its assessment, review and where appropriate revise the provisional measure in light of such assessment.

5. Where a Party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, upon the request of another Party and in accordance with this Subchapter, allow for such a phased application, or grant specified exceptions for limited periods from such measure, taking into account the requesting Party's export interests.

Article 758: Adaptation to Regional Conditions

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment, or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such measure is produced and the area in its territory to which such good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between such areas. In assessing such characteristics of an area, including whether an area is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, each Party shall take into account, among other factors:

(a) the prevalence of relevant pests or diseases in that area;

(b) the existence of eradication or control programs in that area; and

(c) any relevant international standard, guideline or recommendation.

2. Further to paragraph 1, each Party shall, in determining whether an area is a pest-free or disease-free area or an area of low pest or disease prevalence, base such determination on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

3. Each importing Party shall recognize that an area in the territory of the exporting Party is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, where the exporting Party provides to the importing Party scientific evidence or other information sufficient to so demonstrate to the satisfaction of the importing Party. For this purpose, each exporting Party shall provide reasonable access in

its territory to the importing Party for inspection, testing and other relevant procedures.

4. Each Party may, in accordance with this Subchapter:

(a) adopt, maintain or apply a different risk assessment procedure for a pest-free or disease-free area than for an area of low pest or disease prevalence; or

(b) make a different final determination for the disposition of a good produced in a pest-free or disease-free area than for a good produced in an area of low pest or disease prevalence,

taking into account any relevant conditions, including those relating to transportation and handling.

5. Each Party shall, in adopting, maintaining or applying a sanitary or phytosanitary measure relating to the introduction, establishment, or spread of an animal or plant pest or disease, accord a good produced in a pest-free or disease-free area in the territory of another Party no less favorable treatment than it accords a good produced in a pest-free or disease-free area, in another country, that poses the same level of risk. Such Party shall use equivalent risk assessment techniques to evaluate relevant conditions and controls in the pest-free or disease-free area and in the area surrounding that area and take into account any relevant conditions, including those relating to transportation and handling.

6. Each importing Party shall pursue an agreement with an exporting Party, upon request, on specific requirements the fulfillment of which allows a good produced in an area of low pest or disease prevalence in the territory of an exporting Party to be imported into the territory of the importing Party and achieves the importing Party's appropriate level of protection.

Article 759: Control, Inspection and Approval Procedures

1. Each Party, with respect to any control or inspection procedure that it conducts:

(a) shall initiate and complete such procedure as expeditiously as possible and in no less favorable manner for a good of another Party than for a good of such Party or a like good of any other country;

(b) shall publish the normal processing period for each such procedure or communicate the anticipated processing period to the applicant upon request;

(c) shall ensure that the competent body

(i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the procedure in a form that is precise and complete so that such applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with such procedure if the applicant so requests, and

(iv) informs the applicant, upon request, of the status of the application and the reasons for any delay;

(d) shall limit the information the applicant is required to supply to that necessary for conducting such procedure;

(e) shall accord confidential or proprietary information arising from, or supplied in connection with, such procedure conducted for a good of another Party

(i) treatment no less favorable than for a good of such Party, and

(ii) in any event, treatment that protects the applicant's legitimate commercial interests, to the extent provided under the Party's law;

(f) shall limit any requirement regarding individual specimens or samples of a good to that which is reasonable and necessary;

(g) should not impose a fee for conducting such procedure that is higher for a good of another Party than is equitable in relation to any such fee it imposes for

its like goods or for like goods of any other country, taking into account communication, transportation and other related costs;

(h) should use criteria for selecting the location of facilities at which a procedure is conducted that do not cause unnecessary inconvenience to an applicant or its agent;

(i) shall provide a mechanism to review complaints concerning the operation of such procedure and to take corrective action when a complaint is justified;

(j) should use criteria for selecting samples of goods that do not cause unnecessary inconvenience to an applicant or its agent; and

(k) shall limit such procedure, for a good modified subsequent to a determination that such good fulfills the requirements of the applicable sanitary or phytosanitary measure, to that necessary to determine that such good continues to fulfill the requirements of such measure.

2. Each Party shall apply, with such modifications as may be necessary, paragraphs 1(a) through (i) to its approval procedures.

3. Where an importing Party's sanitary or phytosanitary measure requires the conduct of a control or inspection procedure at the level of production, an exporting Party shall, upon the request of the importing Party, take such reasonable measures as may be available to it to facilitate access in its territory and to provide assistance necessary to facilitate the conduct of the importing Party's control or inspection procedure.

4. A Party maintaining an approval procedure may require its approval for the use of an additive, or its establishment of a tolerance for a contaminant, in a food, beverage or feedstuff, under such procedure, prior to granting access to its domestic market for a food, beverage or feedstuff containing such additive or contaminant. Where such Party so requires, it shall consider using a relevant international standard, guideline or recommendation as the basis for granting access until it completes such procedure.

Article 760: Notification, Publication and Provision of Information

1. Further to Articles 1802 and 1803, each Party proposing to adopt or modify a sanitary or phytosanitary measure of general application at the federal level shall:

(a) at least 60 days prior to the adoption or modification of such measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure and provide to the other Parties and publish the full text of the proposed measure, in such a manner as to enable interested persons to become acquainted with the proposed measure;

(b) identify in such notice and notification the good to which the proposed measure would apply, and provide a brief description of the objective and reasons for such measure;

(c) provide a copy of such proposed measure to any Party or interested person that so requests and, wherever possible, identify any provision that deviates in substance from relevant international standards, guidelines or recommendations; and

(d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, upon request, discuss such comments and take the comments and the results of such discussions into account.

2. Each Party shall seek, through appropriate measures, to ensure, with respect to a sanitary or phytosanitary measure of a state or provincial government:

(a) that, at an early appropriate stage, a notice and notification of the type referred to in paragraphs 1(a) and (b) are made prior to their adoption; and

(b) observance of paragraphs 1(c) and (d).

3. Where a Party considers it necessary to address an urgent problem relating to sanitary and phytosanitary protection, it may omit any step set out in paragraph 1 or 2, provided that, upon adoption of a sanitary or phytosanitary measure, it shall:

(a) immediately provide to the other Parties a notification of the type referred to in paragraph 1(b), including a brief description of the urgent problem;

(b) provide a copy of such measure to any Party or interested person that so requests; and

(c) without discrimination, allow other Parties and interested persons to make comments in writing and shall, upon request, discuss such comments and take such comments and the results of such discussions into account.

4. Except where necessary to address an urgent problem referred to in paragraph 3, each Party shall allow a reasonable period between the publication of a sanitary or phytosanitary measure of general application and the date that it becomes effective to allow time for interested persons to adapt to such measure.

5. Each Party shall designate a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for such purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

6. Where an importing Party denies entry into its territory of a good of another Party because it does not comply with a sanitary or phytosanitary measure, the importing Party shall provide a written explanation to the exporting Party, upon request, that identifies the applicable measure and the reasons that the good is not in compliance.

Article 761: Inquiry Points

1. Each Party shall ensure that there is one inquiry point that is able to answer all reasonable enquiries from other Parties and interested persons, and to provide relevant documents, regarding:

(a) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure, proposed, adopted or maintained in its territory at the federal, provincial, or state government level;

(b) such Party's risk assessment procedures and factors it considers in conducting such assessment and in establishing its appropriate levels of protection;

(c) the membership and participation of such Party, or its relevant federal, provincial or state government authorities in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements within the scope of this Subchapter, and the provisions of such systems and arrangements; and

(d) the location of notices published pursuant to this Subchapter or where such information can be obtained.

2. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Subchapter, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 762: Technical Cooperation

1. Each Party shall, upon the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance that Party's sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants, for the purpose of acquiring technical expertise, training and equipment to allow the Party to adjust to and comply with a Party's sanitary or phytosanitary measure.

2. Each Party shall, on the request of another Party:

(a) provide to that Party information on its technical cooperation programs regarding sanitary or phytosanitary measures relating to specific areas of interest; and

(b) consult with the other Party during the development of, or prior to the adoption or change in the application of, any sanitary or phytosanitary measure.

Article 763: Limitations on the Provision of Information

Nothing in this Subchapter shall be construed as requiring a Party to:

- (a) communicate, publish texts or provide particulars or copies of documents other than in an official language of such Party; or
- (b) furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Article 764: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Committee should facilitate:

- (a) the enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;
- (b) activities of the Parties pursuant to Articles 755 and 756;
- (c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and
- (d) consultations on specific matters relating to sanitary or phytosanitary measures.

3. The Committee:

- (a) shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available scientific and technical advice and minimize duplication of effort;
- (b) may draw upon such experts and expert bodies as it considers appropriate;

(c) shall report annually to the Commission on the implementation of this Subchapter;

(d) shall meet upon the request of any Party and, unless the Parties otherwise agree, at least once each year;
and

(e) may, as it considers appropriate, establish and determine the scope and mandate of working groups.

Article 765: Technical Consultations

1. A Party may request consultations with another Party on any matter covered by this Subchapter.

2. Each Party should use the good offices of relevant international and North American standardizing organizations, including those referred to in Article 755(5), for advice and assistance on sanitary and phytosanitary matters within their respective mandates.

3. Where a Party requests consultations regarding the application of this Subchapter to a Party's sanitary or phytosanitary measure, and so notifies the Committee, the Committee may facilitate such consultations, if it does not consider the matter itself, by referring the matter for non-binding technical advice or recommendations to a working group, including an ad hoc working group, or to another forum.

4. The Committee should consider any matter referred to it under paragraph 3 as expeditiously as possible, particularly regarding perishable goods, and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

5. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 3, such consultations shall, upon the agreement of the Parties involved, constitute consultations conducted for purposes of Article 2006 (Consultations).

6. The Parties confirm that a Party asserting that a sanitary

or phytosanitary measure of another Party is inconsistent with the provisions of this Subchapter shall have the burden of establishing such inconsistency.

Article 766: Definitions

For purposes of this Subchapter:

animal includes fish and wild fauna;

appropriate level of protection means the level of protection of human, animal or plant life or health in the territory of a Party that the Party considers appropriate;

approval procedure means any registration, notification or other mandatory administrative procedure for:

(a) approving the use of an additive for a stated purpose or under stated conditions; or

(b) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage or feedstuff prior to permitting the use of such additive or the marketing of a food, beverage or feedstuff containing such additive or contaminant;

area means a country, part of a country or all or parts of several countries;

area of low pest or disease prevalence means an area in which a specific pest or disease occurs at low levels;

contaminant includes pesticide and veterinary drug residues and extraneous matter;

control or inspection procedure means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing or use of a good, but does not mean an approval procedure;

international standard, guideline or recommendation means a standard, guideline or recommendation:

(a) regarding food safety, adopted by the Codex Alimentarius Commission, including one regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(b) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(c) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in co-operation with the North American Plant Protection Organization; or

(d) established by or developed under any other international organization agreed upon by the Parties;

pest includes a weed;

pest-free or disease-free area means an area in which a specific pest or disease does not occur;

plant includes wild flora;

risk assessment means an evaluation of:

(a) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(b) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff;

sanitary or phytosanitary measure means a measure that a Party adopts, maintains or applies to:

(a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease,

(b) protect human or animal life or health in its territory

from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff,

(c) to protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof,

(d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest,

including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labelling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation; and

scientific basis means a reason based on data or information derived using scientific methods.