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1 ARTICLE 2 AND ANNEX 1

1.1 Text of Article 2 and Annex 1

Article 2

Product Coverage

This Agreement applies to the products listed in Annex 1 to this Agreement, hereinafter referred to as agricultural products.

Annex 1

Product Coverage

1. This Agreement shall cover the following products:

- (i) HS Chapters 1 to 24 less fish and fish products, plus*
- (ii)

| | | |
|-------------|----------------|---|
| HS Code | 2905.43 | (mannitol) |
| HS Code | 2905.44 | (sorbitol) |
| HS Heading | 33.01 | (essential oils) |
| HS Headings | 35.01 to 35.05 | (albuminoidal substances, modified starches, glues) |
| HS Code | 3809.10 | (finishing agents) |
| HS Code | 3823.60 | (sorbitol n.e.p.) |
| HS Headings | 41.01 to 41.03 | (hides and skins) |
| HS Heading | 43.01 | (raw furskins) |
| HS Headings | 50.01 to 50.03 | (raw silk and silk waste) |
| HS Headings | 51.01 to 51.03 | (wool and animal hair) |
| HS Headings | 52.01 to 52.03 | (raw cotton, waste and cotton carded or combed) |
| HS Heading | 53.01 | (raw flax) |
| HS Heading | 53.02 | (raw hemp) |

2. The foregoing shall not limit the product coverage of the Agreement on the Application of Sanitary and Phytosanitary Measures.

*The product descriptions in round brackets are not necessarily exhaustive

1.2 General

1. In *Canada – Dairy*, the Panel referred to Article 2 in finding that the Agreement on Agriculture was applicable in that case:

"Both complainants invoke the Agreement on Agriculture. Article 2 of this agreement provides that it applies to the agricultural products listed in Annex I. The 'agricultural products' set out in Annex I include the products at issue in this dispute (butter, cheese and 'other milk products'), all of which fall under HS Chapter 4. We thus find that the Agreement on Agriculture applies to the issue at hand."¹

2. In *Chile – Price Band System*, the Panel noted that:

"[T]he Chilean PBS applies exclusively to agricultural products, as defined in Annex 1 to the Agreement on Agriculture. Consequently, the provisions of the Agreement on Agriculture are applicable to the Chilean PBS."²

3. In *US – Upland Cotton*, the Panel observed that "Article 2 and Annex I of the *Agreement on Agriculture* set out the product coverage of that agreement; the core distinction between "scheduled" and "unscheduled" products is rooted in the scheduled commitments under the *Agreement on Agriculture*".³ The Panel concluded that upland cotton, and the other agricultural products eligible under the export credit guarantee programmes at issue, are products covered by the Agreement on Agriculture.⁴ The Panel in *US – Upland Cotton* also referred to Article 2 as relevant context for the purpose of interpreting the term "commodity" in Article 13(b)(ii):

"The word 'commodity' must be read in the context of Article 2 of the *Agreement on Agriculture* which provides that the agreement applies to the products listed in Annex 1 to the Agreement. The product coverage of the Agreement is narrower than this dictionary definition, because it covers only agricultural products and not all things of use or value nor all things that are the object of trade nor all raw materials. The product coverage of the Agreement is broader than an agricultural crop because it covers products such as livestock, meat, dairy products and wool. All products within the coverage of the Agreement are covered by the chapeau of paragraph (b) and there is no reason to assume that support to any of them is excluded from the scope of the condition in subparagraph (ii). Therefore, we will treat the word 'commodity', in this context, as basically synonymous with one of the 'agricultural products' defined in Article 2 and Annex 1 but it cannot be assumed that any provision which refers to 'agricultural products', as defined, necessarily applies to a commodity within the meaning of Article 13(b)(ii)."⁵

4. In *US – Upland Cotton*, the Panel also referred to Article 2 in the context of finding that it could not directly transpose the findings of the panel and Appellate Body in *US – FSC* to the case before it:

"The ETI Act of 2000 examined in the *US – FSC (Article 21.5 – EC)* dispute applies in respect of a range of industrial and agricultural products. It therefore applies not only with respect to products falling within the product scope of the *Agreement on Agriculture*, but also in respect of products outside that scope. By contrast, the measure subject to this particular claim by Brazil is the ETI Act of 2000 in respect of upland cotton *only*. As we have already noted, upland cotton falls within the product scope of the *Agreement on Agriculture*."⁶

5. In *EC – Chicken Cuts*, the Appellate Body referred to Annex 1 in the context of examining the link between the Harmonized System and the WTO Agreements:

¹ Panel Report, *Canada – Dairy*, para. 7.18.

² Panel Report, *Chile – Price Band System*, para. 7.13.

³ Panel Report, *US – Upland Cotton*, para. 6.37.

⁴ Panel Report, *US – Upland Cotton*, para. 7.199.

⁵ Panel Report, *US – Upland Cotton*, para. 7.480.

⁶ Panel Report, *US – Upland Cotton*, para. 7.970.

"This close link to the Harmonized System is particularly true for agricultural products.⁷ Annex 1 to the *Agreement on Agriculture*, which forms an integral part of that Agreement, defines the product coverage of that Agreement by reference to headings of the Harmonized System, both at the level of whole chapters and at the four-digit level in respect of specific products. Moreover, it is undisputed that the Uruguay Round tariff negotiations for agricultural products were held on the basis of the Harmonized System and that all WTO Members have followed the Harmonized System in their Schedules to the GATT 1994 with respect to agricultural products."⁸

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⁷ (*footnote original*) In response to questioning at the oral hearing, the participants noted that the so-called Modalities Paper provides that market access commitments relating to agricultural products had to be based on the Harmonized System. (Articles 3(3)(i) and 3(3)(ii) of the Modalities for the Establishment of Specific Binding Commitments Under the Reform Programme, MTN.GNG/MA/W/24, 20 December 1993)

⁸ Appellate Body Report, *EC – Chicken Cuts*, para. 189.