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Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

1.2 Scope of the SPS Agreement

1. The Panel in *Australia – Salmon (Article 21.5 – Canada)*, in reading the obligations of the provisions of Article 1.1 and 13 of the SPS Agreement together, found that a measure taken by a regional government within Australia's territory, was a measure taken by an "other than central government body" and would fall under the responsibility of Australia as WTO Member when it comes to observance of SPS obligations. Thus, the Panel concluded that it was entitled to consider whether the measure taken by the regional government observed the SPS Agreement¹:

"Article 13 of the *SPS Agreement* provides unambiguously that: (1) 'Members are fully responsible under [the SPS] Agreement for the observance of all obligations set forth herein'; and (2) 'Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies'. Reading these two obligations together [Article 1.1 and Article 13]..., we consider that sanitary measures taken by the Government of Tasmania, being an 'other than central government' body as recognized by Australia, are subject to the *SPS Agreement* and fall under the responsibility of Australia as WTO Member when it comes to their observance of SPS obligations."²

Current as of: June 2022

¹ Panel Report, *Australia – Salmon (Article 21.5 – Canada)*, paras. 7.12-7.13.

² Panel Report, *Australia – Salmon (Article 21.5 – Canada)*, para. 7.13.