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1 ARTICLE 5 OF THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES

1.1 Text of Article 5

Article 5

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

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.³

(footnote original) ³ For purposes of paragraph 6 of Article 5, a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall

seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure.¹

1.2 Article 5.5

1.2.1 Guidelines to further the practical implementation of Article 5.5

1. At its meeting of 21-22 June 2000, the Committee on Sanitary and Phytosanitary Measure (SPS Committee) adopted the Guidelines to Further the Practical Implementation of Article 5.5 (Guidelines) of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).² These guidelines address both "the application of the concept of the appropriate level of protection, and subsequently its practical implementation".³

2. The SPS Committee emphasized that the guidelines do not add to nor detract from the existing rights and obligations under the SPS Agreement nor any other WTO covered agreement.⁴

3. The Guidelines provide that a Member should indicate in a sufficiently clear manner the level of protection that it considers to be appropriate so as to permit examination of the extent to which any measure achieves that level.⁵ Further, the Guidelines provide that:

"A Member should, when determining an appropriate level of protection, either as an overall policy objective or for a specific situation, consider:

whether there is a difference between the level of protection under consideration and levels already determined by the Member in different situations and, if so,

whether these differences are arbitrary or unjustifiable, and, if so,

whether they may result in discrimination or in a disguised restriction on international trade."⁶

4. The Guidelines also suggest that, in determining a new or modified appropriate level of protection, a Member should compare any proposed decision on the level of protection with the level it has previously considered to be appropriate in comparable situations. A Member should also examine any relevant international standards, guidelines, or recommendations.⁷

5. With respect to the practical implementation of the concept of an appropriate level of protection, the Guidelines suggest that a Member should establish clear and effective communication and information flows within and between responsible authorities, and establish common approaches or consistent procedures for use by the authorities assessing risks and evaluating the measures which might be applied.⁸

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¹ See also paras. 4 and 5 of Annex 1A.

² [G/SPS/R/19](#), Section VII. The text of the adopted Guidelines can be found in document [G/SPS/15](#).

³ [G/SPS/15](#).

⁴ [G/SPS/15](#).

⁵ [G/SPS/15](#), para. A.1.

⁶ [G/SPS/15](#), para. A.2.

⁷ [G/SPS/15](#), paras. A.4 and A.6.

⁸ [G/SPS/15](#), paras. B.1 and B.2.

