EU-New Zealand FTA In Confidence
Without Prejudice

Competition Working Group

Competition and Consumer Protection Chapter Text

New Zealand proposal, November 2018

New Zealand provides herewith a text proposal for consideration by the EU, and reserves the right to propose additions, amendments and deletions to this text during the course of the negotiations.

The following text proposal is formatted as follows :

- Text in black font reflects text agreed between the EU and Chile, which New Zealand can also agree to:
- Text in blue font reflects text agreed between EU and Chile, which New Zealand is not in a position to agree to; and
- Text in red font reflects new text proposals from New Zealand for consideration by the EU."

COMPETITION POLICY AND CONSUMER PROTECTION

Article X.1

Principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anti-competitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. The Parties believe that proscribing such conduct, implementing competition policy, promoting consumer welfare, and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement.

Article X.2

Legislative Framework

1. Each Party shall (adopt or) maintain a competition law which applies to all sectors of the economy[1] and addresses all of the following practices in an effective manner:

   (a) horizontal and vertical agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

   (b) abuses by one or more enterprises of a dominant position; and

   (c) concentrations between enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. All enterprises, private or public, shall be subject to the competition law referred to in this Article. The application of the competition law should not obstruct the performance, in law or in fact, of particular tasks of public interest that may be assigned to the enterprises in question. Exemptions to the competition law of a Party should be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

[1] For greater certainty, competition rules in the EU apply to the agricultural sector in accordance with Regulation 1308/2013 of the European Parliament and Council establishing a common organisation of the markets in agricultural products and its subsequent amendments or replacements, if any (Official Journal L347/2013).

Article X.3

Implementation

1. Each Party shall (establish or) maintain an operationally independent authority responsible for, and appropriately equipped with the powers and resources necessary for the full application and the effective enforcement of the competition law referred to in Article X.2 (Legislative Framework).

2. The Parties shall apply their respective competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the enterprises concerned, irrespective of their nationality or ownership status.

3. Each Party shall make publicly available its competition laws and regulations, and any guidelines used in relation to the enforcement of such laws and regulations, excluding internal operating procedures.

4. Each Party shall apply and enforce its competition laws and regulations in a manner which does not discriminate on the basis of nationality.

5. Each Party shall ensure that, before a sanction or remedy is imposed in an enforcement proceeding, the respondent is afforded the opportunity to be heard and provide evidence in its defense. In particular, each Party shall ensure that the respondent has a reasonable opportunity to review and contest the evidence on which the determination may be based.

6. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any sanction or remedy, available to the addressees subject to that sanction or remedy.

7. Each Party shall guarantee that the addressees of a decision imposing a sanction or a remedy for violation of their respective competition laws are given the opportunity to seek judicial review of such decision.

Article X.4
Private Rights of Action

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of the Party's competition laws, either independently or following a finding of violation by the Party's competition authority or authorities.

2. Recognising that a private right of action is an important supplement to the public enforcement of national competition laws, each Party shall adopt or maintain laws or other measures that provide an independent private right of action.

Article X.5

Consumer Protection

[Subject to change in placement]

1. The Parties recognise the importance of consumer protection laws and enforcement of such laws, as well as cooperation between the Parties on matters related to consumer protection.

2. Each Party shall adopt or maintain laws or regulations against misleading and deceptive conduct that causes harm, or is likely to cause harm, to consumers. Such laws may include general contract or negligence law and may be civil or criminal in nature. "Misleading and deceptive conduct" includes:

   (a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity or origin of goods or services; or

   (b) advertising goods or services for supply without intention to supply; or

   (c) failing to deliver products or provide services to consumers after the consumers have been charged; or

   (d) charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain laws or regulations that:

   (a) require, at the time of delivery, goods and services provided to be of acceptable and satisfactory quality, consistent with the supplier's claims regarding the quality of the goods and services; and

   (b) provide consumers with appropriate redress when they are not.

4. Each Party shall make publicly available and easily accessible its consumer protection laws and regulations.

Article X.6

Cooperation

1. In order to achieve the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge [NZ alt: the importance of cooperation to promote effective competition law and consumer protection enforcement] that it is in their common interest to promote cooperation with regard to competition and consumer protection policy development and the investigation of antitrust and merger cases.

2. For this purpose, the competition authorities of the Parties may coordinate, where this is possible and appropriate, their enforcement activities relating to the same or related cases, and on matters of mutual interest related to consumer protection.

3. To facilitate the cooperation referred to in paragraph 1, the Parties' competition authorities may exchange information in a manner compatible with each Party's laws and regulations.

4. In implementing the objectives of this Article, the competition authorities of the Parties may agree upon a separate framework on cooperation on anti-competitive activities.

Article X.7

Non-application of dispute settlement

The provisions of this Chapter shall not be subject to dispute settlement in accordance with Chapter [x.] Dispute settlement.

SECTION C

GENERAL PROVISIONS

Article X.14

Confidentiality

1. When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.

2. Notwithstanding any other provision of this Chapter, the Parties are not required to communicate information if such communication is prohibited by the laws of the Party possessing the information.

3. When a Party communicates information under this Agreement, the receiving Party shall maintain the confidentiality of the communicated information.

Article X.15

Review Clause

The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the [appropriate body established by the Agreement]. The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.

EU-New Zealand FTA In Confidence
Without Prejudice

Dispute Settlement and Other Legal Issues Working Group

Exceptions Chapter Text
New Zealand proposal, September 2018

New Zealand provides herewith a text proposal for consideration by the EU, and reserves the right to propose additions, amendments and deletions to this text during the course of the negotiations.

Proposed to be inserted in 'Exceptions' Chapter text

ARTICLE [ ]

Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods, trade in services and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter [ ] (*Dispute Settlement*) shall otherwise apply to this Article. A panel established under Article [ ] (*Establishment of a Panel*) may be requested by the European Union to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.

SPS Measures and Animal Welfare Working Group

SANITARY AND PHYTOSANITARY MEASURES Chapter Text

New Zealand proposal, 13 July 2018

New Zealand provides herewith a text proposal for consideration by the EU, and reserves the right to propose additions, amendments and deletions to this text during the course of the negotiations.

CHAPTER [XX]

SANITARY AND PHYTOSANITARY MEASURES

Article X.1

Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis.*

2. Relevant definitions developed by Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health ("OIE"), and the International Plant Protection Convention ("IPPC"), *mutatis mutandis.*[1]

3. In addition, for the purposes of this Chapter:

   (a) **SPS Agreement** means the Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the Marrakesh Agreement establishing the World Trade Organization (WTO).

   (b) **Sanitary Agreement** means the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (Council Decision 97/132/EC) and any subsequent amendments.

   (c) **Competent authority** means a governmental body listed in Annex X1 that has the responsibility and technical competence for developing and supervising the implementation and operation of sanitary and/or phytosanitary measures and providing official assurances certification.

   (d) **Emergency measure** means a sanitary and/or phytosanitary measure applied by either Party to the other Party to address an urgent problem of human, animal or plant health protection that arises or threatens to arise in the territory of the Party applying the measure.

   (e) **Food** means any product of plant and/or animal origin intended for human consumption that is within the scope of this Chapter.

   (f) **Food safety certification** means consignment by consignment documentation issued by the exporting Party's competent authority.

[1] For greater certainty where there is an inconsistency between the definitions adopted under the auspices of the Codex, the OIE, the IPPC and the definitions under the SPS Agreement the definitions under the SPS Agreement prevail.

(g) **Fresh plant produce** means fresh (or chilled) fruit and vegetables

(h) **Import check** means an assessment that may include inspection, examination, sampling, review of documentation, test or procedure, including laboratory, organoleptic or identity, conducted at the border by an importing Party or its representative to determine if a consignment complies with the sanitary and/or phytosanitary requirements of the importing Party.

(i) **SPS objective in relation to human health** means the specified level of control of hazards that is required at the defined step (or steps) where the measure (or group of measures) is applied to achieve the importing Party's appropriate level of protection. The specified level of control of hazards should, where practicable, be qualitatively or quantitatively expressed and linked to the risk to human health as expressed by the importing party's appropriate level of protection.

(j) **SPS objective in relation to plant or animal health** means the specified level of control of hazards required at a defined step (or steps) that is quantitatively expressed, and justified by risk assessment in achieving the importing Party's appropriate level of protection.

(k) **Regionalisation means** the legal establishment of Pest Free Areas, Pest Free Places of Production, and Pest Free Production Sites and which are subject to specific control measures.

(l) **Processed food** means, within the scope of this Chapter, any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration or milling. Processed foods includes, but is not limited to, the freezing or dehydration of fruits and vegetables or transforming grain and animal products into bakery products.

Article X.2

Scope

1. Except as provided in Paragraph 2 the scope of this Chapter applies to any sanitary and phytosanitary measure that is applied for trade by either Party.

2. [*Text to be inserted ensuring that the Chapter does not amend the Sanitary Agreement, or apply to the measures covered by that Agreement, unless expressly provided for in the Chapter]*.

Article X.3

Objectives

1. The objectives of this Chapter are to:

   (a) Facilitate trade between the Parties while protecting human, animal or plant health.

   (b) Preserve the content and efficient and effective functioning of the Sanitary Agreement.

   (c) Reinforce and build on the WTO SPS Agreement.

   (d) Strengthen communication, consultation and cooperation between the Parties on SPS matters, and in particular between their Competent Authorities on phytosanitary matters.

Article X.4

Rights and obligations

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. Nothing in this Chapter shall limit the rights and obligations that each Party has under the SPS Agreement.

Article X.5

Equivalence

1. The Parties acknowledge that recognition of equivalence is an important means to facilitate trade.

2. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. On request of the exporting Party, the importing Party shall explain the SPS objective in relation to human health or SPS objective in relation to plant or animal health, and the rationale of its measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.

4. When the importing Party receives a request for an equivalence assessment it shall initiate the equivalence assessment within a reasonable period of time.

5. The importing Party shall recognise[2] the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates that its measure achieves the importing Party's SPS objective in relation to human health, or SPS objective in relation to plant or animal health.

6. If an equivalence assessment does not result in an equivalence determination by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

7. Annex X2 of this Chapter sets out the exporting Party's commodity types and/or official controls which the importing Party recognises as having equivalent sanitary and/or phytosanitary measures. Annex X2 may also specify any appropriate risk based special conditions or any agreed pest and/or disease status.

Article X.6

Regionalisation in the Plant and Plant Products Sector

With respect to regionalisation in the plants and plant products sector;

1. The Parties recognize the concepts of Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites as specified in relevant FAO/IPPC International Standards for Phytosanitary Measures (ISPM).

2. The Parties agree that when establishing or maintaining phytosanitary measures, the importing Party shall take into account:

   (a) The absence of a pest or disease in the territory of the exporting Party.

   (b) Pest free areas, pest free places of production and pest free production sites established by the exporting Party.

   (c) The relevant guidance of the WTO SPS Committee and relevant FAO/IPPC International Standards for Phytosanitary Measures.

[2] For greater certainty, implementation of recognition decision shall be guided by the importing Party's policy and/or legal framework.

3. When the importing Party receives a request for regionalisation assessment it shall initiate the assessment within a reasonable period of time.

4. The exporting Party when requested by the importing Party shall identify Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites and, upon request, provide a full explanation and supporting data as provided for in the relevant ISPMs or otherwise deemed appropriate.

5. The importing Party shall recognise[3] regionalisation decisions of the exporting Party if it objectively demonstrates that its measure achieves the importing Party's appropriate level of protection.

6. If the assessment does not result in a regionalisation determination by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

7. Annex X3 of this Chapter shall record any regionalisation decisions. Annex X3 may also specify any appropriate risk based special conditions.

Article X.7

Audit and Verification

1. For the purpose of maintaining confidence in the implementation of this Chapter, a Party may carry out an audit to verify that all or part the regulatory control programme of a competent authority of the other Party is functioning as intended.

2. Any audit shall be systems-based and designed to check the effectiveness of the regulatory controls of a competent authority of the exporting Party.

3. In undertaking an audit, a Party shall take into account relevant guidance of the SPS Committee and international standards, guidelines and recommendations.

4. Prior to the commencement of an audit, the competent authorities of the Parties shall discuss the rationale and mutually agree: the objectives and scope of the audit; the criteria or requirements against which the exporting Party will be assessed; and the itinerary and procedures for conducting the audit.

5. The auditing Party shall provide the audited Party the opportunity to comment on the findings of the audit and take any such comments into account before the auditing Party makes its conclusions and takes any action. The auditing Party shall provide a written final report setting out its conclusions to the audited Party within a reasonable period of time.

6. Any decision or action taken by the auditing Party that may adversely affect trade as a result of the audit shall;

[3] For greater certainty, implementation of recognition decision shall be guided by the importing Party's policy and/or legal framework.

(a) Be supported by objective evidence and data that can be verified.

(b) Take into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party.

Objective evidence and data shall be provided to the audited Party on request.

7. The auditing Party and audited Party shall;

(a) Each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

(b) Jointly determine how and to whom any report is made available.

8. The costs incurred by the auditing Party shall be borne by the auditing Party, unless both Parties decide otherwise.

Article X.8

Risk analysis

1. Parties shall ensure that its sanitary and phytosanitary measures conform to the relevant international standards, guidelines or recommendations, or if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, that they are based on risk analysis as appropriate to, and commensurate with, the risks to human, animal, or plant health.

2. When conducting its risk analysis, each Party shall:

(a) Take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations;

(b) Select a risk management option that is not more trade restrictive than required to achieve the SPS objective in relation to human health, or SPS objective in relation to plant or animal health, taking into account technical and economic feasibility.

3. When requested by the exporting Party the importing Party shall provide its risk analysis within a reasonable period of time.

4. Without prejudice to Article X9 (Emergency Measures), the importing Party shall not refuse or stop the importation of a commodity (good) of the exporting Party solely for the reason that the importing Party is undertaking a review of its sanitary and/or phytosanitary measures, if the importing Party permitted the importation of that good of the other Party when the review was initiated.

Article X.9

Emergency Measures

1. A Party shall notify the other Party of an emergency SPS measure within 24 hours of its decision to implement the measure, and, on request by the other Party, consultations regarding the situation are to be held within 14 days.

2. The Party applying the emergency measure shall consider any information supplied by the other Party when it makes a decision on the applicability of the measure to a consignment that, at the time of adoption of the emergency SPS measure, is being transported between the Parties

3. The Party applying the emergency measure shall either revoke the measure within six months of its application, or justify the continuance of the measure through a risk assessment in accordance with Article 8 (Risk Analysis) of this Chapter.

Article X.10

Import checks and fees

1. Each Party shall ensure that its import checks programme is based on the risks associated with importations, and the import checks are carried out without undue delay.

2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party shall be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's SPS objective in relation to human health, or SPS objective in relation to plant or animal health.

3. If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the importing Party shall provide a notification about the adverse result to: the importer or its agent. The competent authority of the exporting Party shall also be notified in writing when the non-compliance constitutes a serious risk to human, animal or plant health

4. The Parties may agree frequency rates and fees for import checks for certain commodities within the scope of this Chapter and set these out in Annex X4.

Article X.11

Certification and listing

1. In respect of health certification for plants and plant products the competent authorities shall apply the principles laid down in the FAO International Standards for Phytosanitary Measures No 7 "Export Certification System" and No 12 "Guidelines for Phytosanitary Certificates".

2. The Parties shall, without any subsequent approval processes, accept each other's food establishment lists that are subject to sanitary measures for trade.

3. Each Party shall make the lists in paragraph 2 available to one another on request.

4. Without prejudice to Article X9, food safety certification shall not, unless mutually agreed otherwise, be required for processed foods covered by this Chapter.

Article X.12

Antimicrobial resistance (AMR)

1. The Parties recognise that antimicrobial resistance constituents a serious threat to human and animal health and that the agricultural and aquaculture sectors may contribute[4] to this health threat.

2. The Parties acknowledge that;

   (a) Farming practices and antimicrobial usage in their respective agricultural sectors are substantively different.

   (b) Their respective antimicrobial regulatory standards and systems are intended to deliver comparable controls and health outcomes.

   (c) Antimicrobial agents that are critical to human treatment and health are a core focus of their respective AMR strategies.

3. The Parties shall cooperate and exchange information on antimicrobial resistance and in particular on regulations, guidelines, strategic plans, standards and other initiatives.

4. The Parties agree that any regulations, guidelines, strategic plans, standards and other initiatives on antimicrobial resistance shall not be used to create or implement measures for trade unless the measures are in accordance with the SPS Agreement and any other relevant provisions of this Chapter.

Article X.13

Information exchange and technical consultation

1. The Parties shall exchange information relevant to the implementation of this Chapter on a uniform and systematic basis, to provide assurance, engender mutual confidence and demonstrate the efficacy of the programmes controlled. Where appropriate, achievements of these objectives may be enhanced by exchanges of officials.

2. Where either Party has a serious concern with respect to a SPS risk, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 14 days. Each Party shall endeavour in such situations to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution which effectively manages any SPS risk.

[4] Quantitative scientific data is required to determine any actual contribution.

3. The competent authority contact points for this exchange of information are set out in Annex X5 of this Chapter.

Article X.14

Sanitary Agreement – SPS Chapter; Interface and Amendments

1. The Parties hereby reaffirm their commitment to the Sanitary Agreement

2. The Joint Management Committee established under Article 16 of the Sanitary Agreement shall consider any sanitary matter[5] arising from the implementation of this Chapter, and shall report periodically to the European Union/New Zealand FTA Joint Committee.

3. The Parties hereby amend the Sanitary Agreement as follows;

   (a) Definitions i) and j) in Article 1 (3) of this Chapter shall be incorporated into the list of definitions in Article 5 of the Sanitary Agreement.

   (b) Article 7, 2. of the Sanitary Agreement shall be revoked and replaced with;

   "Equivalence shall be applied in relation to sanitary measures for live animal or animal products sectors, or parts of sectors, in relation to legislation, inspection and official controls (including veterinary supervision), part of systems, or in relation to specific legislation, inspection and/or hygiene requirements."

   (c) Article 8, 1. of the Sanitary Agreement shall be revoked and replaced by the following text;

   "1. In reaching a determination of whether a sanitary measure applied by an exporting Party achieves the importing Party's SPS objective in relation to human health, or SPS objective in relation to plant or animal health, the Parties shall follow a process that includes the following steps:

   (i) the identification of the sanitary measure which recognition of equivalence is sought;
   (ii) the explanation by the importing Party of the sanitary objective of its sanitary measure, including assessment, as appropriate to the circumstances the risk, or risks, that the sanitary measure is intended to address;
   (iii) the demonstration by the exporting Party that its sanitary measure achieves the importing Party's SPS objective;
   (iv) the determination by the importing Party of whether the exporting Party's sanitary measure achieves its SPS objective;

[5] For greater certainty, the Committee may only amend any Annex to this Chapter if it has, or is intended to have, a sanitary scope.

(v) the importing Party shall accept the sanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's SPS objective.

Where equivalence has not been recognized, trade shall take place under the conditions required by the importing Party to meet its sanitary objective as set out in Annex V. The exporting Party may agree to meet the importing Party's conditions, without prejudice to the result of the process set out in paragraph 1."

(d) A footnote shall be inserted after the heading; Article 9 Recognition of sanitary measures, that states: "The inspection and official controls of the Parties are deemed equivalent for the purposes of trade".

(e) Articles X8, X9, and X12 of this Chapter are incorporated into the Sanitary Agreement as: Articles 12 bis, 13 bis and 14 bis respectively.

(f) The Parties agree that all Letters of Exchange issued under the auspices of the Sanitary Agreement shall continue to be applied *mutatis mutandis*.

Article X.15

Joint Phytosanitary Committee

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Phytosanitary Measures (Committee), composed of the competent authorities of each Party responsible for phytosanitary matters.

2. The Committee may consider any phytosanitary matter that may arise when implementing this Chapter. Modifications to the Annexes of this Chapter will be jointly determined.

3. The Committee may decide to meet by videoconference or teleconference, and it may also address issues out of session by correspondence.

4. The Committee shall, at its first meeting, agree to a terms of reference, which it may update as required.

5. The Committee may establish technical working parties to address issues arising from this Chapter.

6. The Joint Phytosanitary Committee shall report periodically to the European Union/New Zealand FTA Joint Committee.

Article X.16

Dispute Settlement

Unless otherwise provided in this Chapter, Chapter YY (Dispute Settlement) shall apply to this Chapter and the Sanitary Agreement.

ANNEX - X1

COMPETENT AUTHORITIES

TBC

ANNEX - X2

EQUIVALENCE

TBC

Horizontal issues	EU Standard	Special risk based guarantees	Equivalence	NZ Standard	Special risk based guarantees	Equivalence
Phytosanitary Official Controls, other official activities and export certification	Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products	n/a	yes	The New Zealand Assurance System Framework for the export of plant products as detailed in the MPI Certification Standard: Assurance System Framework,	n/a	yes

Agreed pest and/or disease status	New Zealand fresh plant produce is recognised as low-risk[6] for the purposes of Regulation (EU) 2016/2031

[6] Low-risk means that the plant produce, taking into account the source country, is not included in the lists prescribed by Articles 40, 41 and 42.

ANNEX - X3

REGIONALISATION

TBC

ANNEX - X4

IMPORT CHECKS

TBC

ANNEX - X5

CONTACT POINTS

TBC

Working Group on Transparency and Good Regulatory Practice

CHAPTER XX: GOOD REGULATORY PRACTICE AND REGULATORY COOPERATION

Chapter Text

New Zealand proposal, 2 July 2018

New Zealand provides herewith a text proposal for consideration by the EU, and reserves the right to propose additions, amendments and deletions to this text during the course of the negotiations.

CHAPTER XX: GOOD REGULATORY PRACTICE AND REGULATORY COOPERATION

Article X.1

Definitions

For the purposes of this Chapter:

Domestic regulation means those measures of general application adopted by regulatory agencies within the Parties and with which compliance is mandatory, and includes primary legislation.

Good regulatory practices means the principles, processes, systems, tools and methods for improving the quality of regulation used in planning, designing, issuing, implementing and reviewing regulatory measures.

Regulatory agencies means the domestic bodies of a Party that develop or implement domestic regulation, and includes regulators.

Regulatory cooperation activities means efforts, both formal and informal, between the Parties to enhance regulatory cooperation in order to further domestic policy objectives, improve the effectiveness of domestic regulation in the face of increased cross-border activity and promote international trade and investment, economic growth and employment.

Article X.2

Regulatory Coherence/Good Regulatory Practice

1. The Parties agree on the importance of using good regulatory practices to facilitate the achievement of domestic policy objectives as well as to promote international trade and investment, economic growth and employment. In particular, the Parties acknowledge the importance of:

    a. Considering material impacts on trade and being transparent about those impacts when undertaking regulatory impact analysis

    b. In the development of domestic regulation:

        i. Considering the adoption of international models, norms and rules

        ii. Identifying regulatory options that seek to minimise barriers to trade

    c. Giving interested or affected parties from other countries the opportunity to comment on regulatory impact analysis and the development of domestic regulation, and taking their comments into account.

2. Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles[1] underlying its regulatory management system.

3. The Parties affirm that each Party shall be free to identify its regulatory priorities and to prepare and adopt regulatory measures to address those priorities ensuring the levels of protection that the Party considers appropriate.

Article X.3

Regulatory cooperation

1. The Parties affirm the importance of regulatory cooperation and its role in:

    a. facilitating economic activity, trade and investment, including the efficient operation of value chains ;

    b. helping to reduce or remove potential regulatory barriers;

    c. improving the effectiveness of domestic regulation;

    d. facilitating innovation, including the adoption of new technologies and dealing with the risks and opportunities arising out of new technologies that require a regulatory response;

    while furthering domestic policy objectives, such as protecting human health, the environment or national security, and ensuring certainty and predictability for businesses.

2. The Parties acknowledge that:

    a. Regulatory agencies have a key role to play in regulatory cooperation.

    b. Successful regulatory cooperation is built on a foundation of trust and confidence between regulatory agencies, particularly regulators, from different states.

    c. Regulatory agencies should consider the range of regulatory cooperation activities available to increase the alignment of domestic regulation with that of key trading partners and with international models and norms.

    d. Formal cooperation requires adequate resourcing. Decisions about whether and how to undertake formal regulatory cooperation (such as mutual recognition, equivalence or harmonisation) should be based on a clear case that cooperation will produce tangible benefits. Informal cooperation should be encouraged, among other things, as a way to reduce resource pressure on regulators.

[1] For the EU, such principles include those included in and derived from the Treaty on the Functioning of the European Union.

e. Support for regulatory cooperation needs to be built by developing a solid empirical base through research and stakeholder engagement, and by being responsive to business needs.

3. The Parties also agree on the importance of undertaking regulatory cooperation in the most efficient way, having regard to the full range of regulatory cooperation activities. Activities include considering unilateral recognition or adoption and less formal arrangements such as information sharing and joint capacity building, along with equivalence, harmonisation and mutual recognition.

4. The Parties recognise the value of regulatory cooperation with their relevant trading partners both bilaterally and multilaterally. The Parties will, whenever practicable and mutually beneficial, approach regulatory cooperation in a way that is open to participation by other international trading partners. The Parties agree to share information and, where appropriate, to take a coordinated approach to influencing regulatory settings in third countries and the development of international models in international fora.

5. Differences in regulatory settings or regulatory implementation between states that create problems for businesses participating in supply or value chains do not always fall neatly within the chapter structure of a free trade agreement. The Parties therefore recognise the value in creating a simple mechanism to:

    a. proactively identify potential opportunities for undertaking regulatory cooperation between regulatory agencies of the Parties;

    b. consider undertaking regulatory cooperation to respond to business concerns or issues for regulatory agencies, where those concerns or issues span multiple Parts of this Agreement or do not fit within the scope of a particular Part; and

    c. prioritise those cases that would reduce regulatory barriers for SMEs or best support the efficient operation of value chains that operate between the Parties, including those that extend into other regions.

Article X.4

Contact Points

1. Each Party shall establish a contact point which shall have responsibility for consulting or coordinating with its respective regulatory agencies and regulators, as appropriate, on matters arising under this Part.

2. The Parties shall provide each other with the name of the governmental organisation that shall be their contact point and the contact details of relevant officials in that organisation, including telephone, email and other relevant details.

3. The Parties shall notify each other promptly of any change of their contact point or any amendments to the details of the relevant officials.

Article X.5

Cooperation

1. The Parties shall cooperate in order to facilitate the implementation of this Part and to maximise the benefits arising from it. Regulatory cooperation activities shall take into consideration each Party's needs, and may include:

    a. bilateral information exchanges, dialogues or meetings between policy officials in agencies responsible for central oversight of regulatory management of the Parties;

    b. bilateral information exchanges, dialogues or meetings between policy officials in regulatory agencies or regulators of the Parties;

    c. formal cooperation, such as mutual recognition, equivalence or harmonisation;

    d. engaging with affected parties/stakeholders, including business and consumers; and

    e. other activities that the Parties may agree.

2. The Parties may undertake regulatory cooperation activities on a voluntary basis. For greater certainty, a Party is not required to enter into any particular regulatory cooperation activity.

3. The Parties acknowledge the importance of regulators having a mandate and powers that enable them to cooperate with each other. The Parties shall consider reviewing the powers and mandate of their regulators to achieve this. Each Party, through its contact point, shall encourage its regulators to consider cooperating informally with their counterparts in the other Party to reduce barriers to trade and investment.

4. The contact points shall ensure that regulatory cooperation activities under this Part offer value in addition to initiatives underway in other relevant fora or parts of this Agreement and avoids undermining or duplicating such efforts.

5. The Parties shall use the English language for regulatory cooperation activities under this Part to facilitate cooperation between relevant regulatory agencies and regulators.

Article X.6

Relation to Other Parts

In the event of any inconsistency between this Part and another Part of this Agreement, the other Part shall prevail to the extent of the inconsistency.

Article X.7

Dispute Settlement

No Party shall have recourse to dispute settlement under Part X for any matter arising under this Part.