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CHAPTER 3

AGRICULTURE

Article 3.1: Definitions

For the purposes of this Chapter:

agricultural goods means those agricultural products referred to in Article 2 of the Agreement on Agriculture;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture; and

Agreement on Agriculture, means the *Agreement on Agriculture*, set out in Annex 1A to the WTO Agreement.

Article 3.2: Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to trade in agricultural goods.
2. In the event of any inconsistency between this Chapter and another provision of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

Article 3.3: International Cooperation

The Parties shall work together in the World Trade Organization to promote increased transparency and to improve and further develop multilateral disciplines on the three pillars of agricultural trade (domestic support, export competition and market access) with the objective of substantial progressive reductions in agriculture support and protection resulting in fundamental reform.

Article 3.4: Export Competition

1. No Party shall adopt or maintain an export subsidy on any agricultural good destined for the territory of another Party.
2. If a Party considers that export financing support granted by another Party results or may result in a distorting effect on trade between the Parties, or considers that an export subsidy is being granted by another Party, with respect to an agricultural good, it may request to discuss the matter. The responding Party shall agree to meet with the requesting Party as soon as practicable.

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Article 3.5: Export Restrictions – Food Security

1. Parties recognize that under Article XI:2(a) of the GATT 1994, a Party may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of the GATT 1994 on foodstuffs¹ to prevent or relieve a critical shortage of foodstuffs, subject to meeting the conditions set out in Article 12.1 of the *Agreement on Agriculture*.

2. In addition to the conditions set out in Article 12.1 of the *Agreement on Agriculture* under which a Party may apply an export prohibition or restriction, other than a duty, tax, or other charge, on foodstuffs:

- (a) a Party that:
 - (i) imposes such a prohibition or restriction on the exportation or sale for export of foodstuffs to another Party to prevent or relieve a critical shortage of foodstuffs, shall notify the measure to the other Parties prior to the date it takes effect and, except when the critical shortage is caused by an event constituting *force majeure*, shall notify the measure to the other Parties at least 30 days prior to the date it takes effect; or
 - (ii) as of the date of entry into force of this Agreement, maintains such a prohibition or restriction, shall, within 30 days of that date, notify the measure to the other Parties.
- (b) A notification under this paragraph shall include the reasons for imposing or maintaining the prohibition or restriction, as well as an explanation of how the measure is consistent with Article XI:2(a) of the GATT 1994, and shall note alternative measures, if any, that the Party considered before imposing the prohibition or restriction.
- (c) A measure shall not be subject to notification under this paragraph or paragraph 4 if it prohibits or restricts the exportation or sale for export only of a foodstuff or foodstuffs of which the Party imposing the measure has been a net importer during each of the three calendar years preceding the imposition of the measure, excluding the year in which the Party imposes the measure.
- (d) If a Party that adopts or maintains a measure referred to in subparagraph (a) has been a net importer of each foodstuff subject to that measure during each of the three calendar years preceding imposition of the measure, excluding the year in which the Party imposes the measure, and that Party does not provide the other Parties with a notification under subparagraph (a), the Party shall, within a reasonable period of time, provide to the other Parties trade data demonstrating that it was a net importer of the foodstuff or foodstuffs during these three calendar years.

¹ For the purpose of this Article, foodstuffs include fish and fisheries products, intended for human consumption.

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3. A Party that is required to notify a measure under paragraph 2(a) shall:
 - (a) consult, on request, with any other Party having a substantial interest as an importer of the foodstuffs subject to the measure, with respect to any matter relating to the measure;
 - (b) on the request of any Party having a substantial interest as an importer of the foodstuffs subject to the measure, provide that Party with relevant economic indicators bearing on whether a critical shortage within the meaning of Article XI:2(a) of the GATT 1994 exists or is likely to occur in the absence of the measure, and on how the measure will prevent or relieve the critical shortage; and
 - (c) respond in writing to any question posed by any other Party regarding the measure within 14 days of receipt of the question.
4. A Party which considers that another Party should have notified a measure under paragraph 2(a) may bring the matter to the attention of that other Party. If the matter is not satisfactorily resolved promptly thereafter, the Party which considers that the measure should have been notified may itself bring the measure to the attention of the other Party.
5. A Party should ordinarily terminate a measure subject to notification under paragraph 2(a) or 4 within six months of the date it is imposed. A Party contemplating continuation of a measure beyond six months from the date it is imposed shall notify the other Parties no later than five months after the date the measure is imposed and provide the information specified in paragraph 2(b). Unless the Party has consulted with the other Parties that are net importers of any foodstuff the exportation of which is prohibited or restricted under the measure, the Party shall not continue the measure beyond 12 months from the date it is imposed. The Party shall immediately discontinue the measure when the critical shortage, or threat thereof, ceases to exist.
6. No Party shall apply any measure that is subject to notification under paragraph 2(a) or 4 to food purchased for non-commercial humanitarian purposes.

Article 3.6: Domestic Support

1. The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects. If a Party supports its agricultural producers, the Party shall consider domestic support measures that have minimal or no trade distorting or production effects.
2. If a Party raises concerns that another Party's domestic support measure has had a negative impact on trade between the Parties, the Parties shall share relevant information regarding the domestic support measure with each other and discuss the matter with a view to seeking to minimize the negative trade impact.

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Article 3.7: Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade (“Committee”), composed of government representatives of each Party.
2. The Committee’s functions shall include:
 - (a) promoting trade in agricultural goods between the Parties under this Agreement;
 - (b) monitoring and promoting cooperation on the implementation and administration of this Chapter;
 - (c) providing a forum for the Parties to consult and endeavor to address issues or trade barriers and improve access to their respective markets, in coordination or jointly with other committees, working groups or any other subsidiary bodies established under this Agreement;
 - (d) endeavoring to exchange information on trade in agricultural goods between the Parties, including information covered by Article 3.9.1 (Transparency and Consultations) or any other relevant transparency provision in this Chapter;
 - (e) fostering cooperation among the Parties in areas of mutual interest, such as rural development, technology, research and development and capacity building, creating joint programs as mutually agreed between the agencies involved in agriculture, among others;
 - (f) undertaking any additional work, including that the Commission may assign or another Committee may refer;
 - (g) recommending to the Commission any modification of or addition to this Chapter; and
 - (h) reporting annually on its activities to the Commission.
3. The Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.
4. The Committee shall meet within one year of the date of entry into force of this Agreement and once each year thereafter unless the Parties decide otherwise.

Article 3.8: Consultative Committees on Agriculture

1. The activities of the Consultative Committees on Agriculture (CCAs) established by:

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- (a) the *Terms of Reference to the Record of Understanding Between the Governments of the United States of America and Canada Regarding Areas of Agricultural Trade* (ROU) on December 4, 1998;
- (b) the *Memorandum of Understanding Between the U.S. Department of Agriculture and the Office of the U.S. Trade Representative, and the Secretariat of Agriculture, Livestock, Rural Development, Fish and Food and the Secretary of Economy of the United Mexican States Regarding Areas of Food and Agriculture Trade* (US-MX MOU) on October 1, 2001 and re-established on March 6, 2007; and
- (c) the MOU between the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food of the United Mexican States and Agriculture and Agri-Food Canada (MX-CA MOU) on February 1, 2002;

shall as of the date of entry into force of this Agreement be organized under this Agreement.

- 2. The CCAs shall be governed by and operate according to their respective ROU, MOUs, and all implementing or administrative documents, as may be amended.
- 3. The CCAs may inform the Committee on Agricultural Trade, the Committee on Sanitary and Phytosanitary Measures, or the Committee on Technical Barriers to Trade of their activities.

Article 3.9: Agricultural Special Safeguards

Originating agricultural goods traded under preference from any Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the *Agreement on Agriculture*.²

Article 3.10: Transparency and Consultations

- 1. Each Party shall endeavor, as appropriate, to share with another Party, on request, available information regarding a measure relating to trade in agricultural goods taken by a regional level of government in its territory that may have a significant effect on trade between those Parties of any of these goods.
- 2. On request of a Party, a Party shall meet to discuss, and where appropriate resolve, matters arising from grade, quality, technical specifications, and other standards as they affect trade between the Parties.

Section A - Agricultural Biotechnology

² For greater certainty, goods for which MFN tariff treatment applies may be subject to additional duties applied by a Party pursuant to a special safeguard taken under the *Agreement on Agriculture*.

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Article 3.A.1: Definitions

For the purposes of this Section:

agricultural biotechnology means technologies including modern biotechnology used for the deliberate manipulation of an organism to introduce, remove or modify one or more heritable characteristics of a product for agriculture and aquaculture use and that are not technologies used in traditional breeding and selection;

modern biotechnology means the application of:

- (a) *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or organelles; or
- (b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection.

product of agricultural biotechnology means an agricultural good, or a fish or fish product covered by Chapter 3 of the Harmonized System, developed using agricultural biotechnology, but does not include a medicine or a medical product; and

product of modern biotechnology means an agricultural good, or a fish or fish product covered by Chapter 3 of the Harmonized System, developed using modern biotechnology, but does not include a medicine or a medical product.

Low Level Presence (LLP) Occurrence means low levels of recombinant DNA plant materials that have passed a food safety assessment according to the Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003) in one or more countries, which may on occasion be inadvertently present in food or feed in importing countries in which the food safety of the relevant recombinant-DNA plant has not been determined.

Article 3.A.2: Contact Points

Each Party shall designate and notify a contact point or contact points for the sharing of information on matters related to this Section, in accordance with Article 30.5 (Administrative and Institutional Provisions – Agreement Coordinator and Contact Points).

Article 3.A.3: Trade in Products of Agricultural Biotechnology

1. The Parties confirm the importance of encouraging agricultural innovation and facilitating trade in products of agricultural biotechnology, while fulfilling legitimate objectives, including by promoting transparency and cooperation, and exchanging information related to the trade in products of agricultural biotechnology.

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2. This Section does not require a Party to mandate an authorization for a product of agricultural biotechnology to be on the market.
3. Each Party shall make available to the public and, to the extent possible on-line:
 - (a) the information and documentation requirements for applicants to submit for any authorization , if required, of a product of agricultural biotechnology.
 - (b) any summary of any risk or safety assessment that has led to the authorization, if required, of a product of agricultural biotechnology; and
 - (c) any list of the products of agricultural biotechnology that have been authorized in its territory.
4. To reduce the likelihood of disruptions to trade in products of agricultural biotechnology:
 - (a) Each Party shall continue to encourage applicants to submit timely and concurrent applications to Parties for authorization, if required, of products of agricultural biotechnology;
 - (b) Party requiring any authorization for a product of agricultural biotechnology shall:
 - (i) accept and review applications for the authorization, if required, of products of agricultural biotechnology on an ongoing basis year-round;
 - (ii) adopt or maintain measures that allow the initiation of the domestic regulatory authorization process of a product not yet authorized in another country;
 - (iii) if an authorization is subject to expiration, take steps to help ensure that the review of the product is completed and a decision is made in a timely manner, and if possible, prior to expiration; and
 - (iv) communicate between the Parties regarding any new and existing authorizations of products of agricultural biotechnology so as to improve information exchange.

Article 3.A.4: LLP Occurrence

1. Each Party shall adopt or maintain policies or approaches designed to facilitate the management of LLP occurrences.
2. To address an LLP occurrence, and with a view to preventing future LLP occurrences, on request of an importing Party, an exporting Party shall:

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- (a) provide any summary of the specific risk or safety assessments that the exporting Party conducted in connection with any authorization of the product of modern biotechnology that is the subject of the LLP occurrence;
 - (b) provide, upon receiving permission of the entity, if required, a contact point for any entity within its territory that received authorization for the product of modern biotechnology that is the subject of the LLP occurrence and that is on the basis of this authorization, likely to possess:
 - (i) any existing, validated methods for the detection of the product of modern biotechnology that is the subject of the LLP occurrence;
 - (ii) any reference sample of the product of modern biotechnology that is the subject of the LLP occurrence necessary for the detection of the LLP occurrence; and
 - (iii) relevant information³ that can be used by the importing Party to conduct a risk or safety assessment, if appropriate, in accordance with the relevant international standards and guidelines; and
 - (c) encourage the entity within its territory that received authorization related to the product of modern biotechnology that is the subject of the LLP occurrence to share the information referred to in paragraph 2(b) with the importing Party.
3. In the event of an LLP occurrence, the importing Party shall:
- (a) inform the importer or the importer's agent of the LLP occurrence and of any additional information, including the information referenced in para X.4.2(b), that will be required to be submitted to assist the importing Party to make a decision on the management of the LLP occurrence;
 - (b) upon request, and if available, provide to the exporting Party any summary of any risk or safety assessment that the importing Party has conducted in accordance with its domestic law in connection with the LLP occurrence;
 - (c) ensure that the LLP occurrence is managed without unnecessary delay and that any measure⁴ applied to manage the LLP Occurrence is appropriate to achieve compliance with its laws and regulations and takes into account any risk posed by the LLP Occurrence; and
 - (d) take into account, as appropriate, any relevant risk or safety assessment provided, and authorization granted, by another Party or non-Party when deciding how to manage the LLP occurrence.

³ For example, relevant information includes the information contained in Annex 3 of the *Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants* (CAC/GL 45-2003).

⁴ For purposes of this paragraph, "measure" does not include penalties.

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Article 3.A.5: Working Group for Cooperation on Agricultural Biotechnology

1. The Parties hereby establish a Working Group for Cooperation on Agricultural Biotechnology (Working Group) for information exchange and cooperation on policy and trade-related matters associated with products of agricultural biotechnology. The Working Group shall be co-chaired by government representatives of each of the Parties, and shall be comprised of policy officials responsible for issues related to agricultural biotechnology of each of the Parties. The Working Group shall report to the Agriculture Committee on its activities and progress on related matters.

2. The Working Group shall provide a forum for the Parties to:

- (a) exchange information on issues, including on existing and proposed domestic laws, regulations, and policies, and on any risk or safety assessments subject to appropriate confidentiality arrangements, related to the trade in products of agricultural biotechnology;
- (b) exchange information, and collaborate when possible, on issues pertaining to products of agricultural biotechnology, including on regulatory and policy developments;
- (c) consider work, based upon accumulated knowledge and experience of certain products, in areas of regulatory affairs and policy to facilitate trade in products of agricultural biotechnology;
- (d) work collaboratively to consider common approaches for the management of LLP occurrences; and
- (e) consider the work conducted under other trilateral cooperation mechanisms focused on agricultural biotechnology, including the Trilateral Technical Working Group.

3. The Working Group shall coordinate efforts to advance transparent, science and risk-based regulatory approaches and trade policies for products of agricultural biotechnology in other countries and in international organizations.

4. The Working Group shall meet annually, unless otherwise agreed, and may meet in person, or by any other means as mutually determined by the Parties.