UNITED STATES-PANAMA AGREEMENT REGARDING CERTAIN SANITARY AND PHYTOSANITARY MEASURES AND TECHNICAL STANDARDS AFFECTING TRADE IN AGRICULTURAL PRODUCTS

WHEREAS, in the course of negotiations regarding a free trade agreement between their governments, delegations of the United States of America ("United States") and the Republic of Panama ("Panama") ("the Parties") discussed the application of sanitary and phytosanitary measures and technical standards to trade in agricultural products;

WHEREAS, the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures ("WTO SPS Agreement") establishes that "Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection," and that "[f]or this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures" (Article 4.1);

WHEREAS, the World Trade Organization ("WTO") Committee on Sanitary and Phytosanitary Measures Decision on the Implementation of Article 4 of the WTO SPS Agreement (G/SPS/19/Rev.2, paragraph 5) provides that "historic trade provides an opportunity for an importing Member to become familiar with the infrastructure and measures of an exporting Member, and to develop confidence in the regulatory procedures of that Member. This information and experience, if directly relevant to the product and measure under consideration, should be taken into account in the recognition of equivalence of measures proposed by the exporting Member. In particular, information already available to the importing Member should not be sought again with respect to procedures to determine the equivalence of measures proposed by the exporting Member";

WHEREAS, the United States has been an historical exporter of a wide range of agricultural products to Panama;

WHEREAS, Panama has conducted, over the course of many years, numerous on-site inspections of plants and establishments located in the United States, covering a broad range of agricultural products from a sanitary and phytosanitary perspective, that have resulted in the approval of these plants and establishments in light of their appropriate level of sanitary and phytosanitary protection;

WHEREAS, from February 13 to 18, 2006, further to the recommendation of the Interagency Technical Scientific Commission appointed by Panama to analyze the equivalence of the U.S. sanitary system, experts of the Ministry of Agricultural Development and the Ministry of Health of Panama undertook audits *in situ* and met with representatives of the agencies of the United States responsible for the enforcement of sanitary and phytosanitary measures;

WHEREAS, the United States has provided Panama with technical and scientific information regarding the equivalence of its sanitary, phytosanitary, and related regulatory systems in accordance with the WTO SPS Agreement;

WHEREAS, Panama's Technical Scientific Commission concluded that the U.S. sanitary system is equivalent to that of Panama based on, among other elements, (1) information on the U.S. sanitary system derived from years of accumulated history and experience with U.S. agricultural imports; (2) the information on the U.S. sanitary system already available to the Ministry of Agricultural Development and the Ministry of Health; (3) the findings of the Commission's February 2006 visit to several U.S. agencies responsible for sanitary and phytosanitary matters; and (4) other relevant information, evidence, and documentation;

WHEREAS, the United States has provided Panama with technical and scientific information regarding the measures taken by the United States with regard to Bovine Spongiform Encephalopathy ("BSE"), avian influenza, and Newcastle disease and the United States' conformance with World Animal Health Organization ("OIE") guidelines;

WHEREAS, the WTO SPS Agreement allows WTO Members to adopt "measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade";

The Parties now agree as follows:

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO SPS Agreement.

2. Panama recognizes that the U.S. sanitary, phytosanitary, and related regulatory systems are equivalent to those of Panama for meat (including but not limited to beef and pork), poultry, and products thereof, and all other processed products, including but not limited to dairy products, intended for human or animal consumption.

3. In particular, Panama recognizes that the U.S. food safety inspection system for meat (including but not limited to beef and pork), poultry, and products thereof is equivalent to Panama's inspection system for those products, and shall not require, as a condition for the importation or sale of those products, approval of individual U.S. establishments by any Panamanian authority.

4. Panama further recognizes that the U.S. food safety regulatory system for all processed products, including but not limited to dairy products, intended for human or animal consumption is equivalent to Panama's regulatory system for those products, and shall not require, as a condition for the importation or sale of those products, approval of individual U.S. establishments by any Panamanian authority.

5. Panama shall accept a U.S. Department of Agriculture ("USDA") Food Safety and Inspection Service ("FSIS") Export Certificate of Wholesomeness or any other applicable export certificate that U.S. authorities issue as meeting all of Panama's requirements for the importation and sale of meat, poultry, and products thereof, including Panama's sanitary certification and import licensing or permitting requirements.[1] Panama shall not require any additional certification statements to the standard applicable U.S. export certificate, except as provided in this Agreement.

6. Panama shall not require certification of individual shipments, including sanitary or phytosanitary certification, or import licensing or permitting, as a condition for the importation or sale of any processed products.

7. Panama shall not require any product registration as a condition for the importation or sale of any agricultural product[2] of the United States that is accompanied by the appropriate export certificate issued by a U.S. authority; a Certificate of Free Sale issued within the last 12 months by a U.S. state, federal, or other authority; or a Supplier's Declaration on the manufacturer's or supplier's letterhead stationery attesting that the product is fit for consumption in the United States. For other agricultural products of the United States subject to product registration requirements of the Panamanian Food Safety Authority, Panama shall issue automatically, free of cost, and within one working day of receiving basic product information about a product,[3] a product registration statement containing a product registration number, which shall remain in effect as long as the information provided remains unchanged.

8. Panama recognizes that the measures the United States has taken with regard to BSE conform with OIE guidelines. Panama, consistent with OIE guidelines, shall permit the importation of (a) all beef and beef products of the

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[1] No such export certificate shall be required for products containing, by weight, less than three percent meat, poultry, or products thereof.

[2] For purposes of this Agreement, "agricultural products" means those goods referred to in Article 2 of the WTO Agreement on Agriculture.

[3] For purposes of this Agreement, "basic product information" means the product name; the name and address of product manufacturer, packer, or distributor, as specified on the label; the product description; and product ingredients (in descending order by weight).

United States for human consumption that are accompanied by a USDA FSIS Export Certificate of Wholesomeness,[4] and (b) all pet food of the United States containing animal origin ingredients accompanied by a USDA Animal and Plant Health Inspection Service ("APHIS") export certificate, with the additional certification statements set forth in the Annex to this Agreement.

9. Panama recognizes that the measures the United States has taken with respect to avian influenza and Newcastle disease conform with OIE guidelines. Panama, consistent with OIE guidelines, shall permit the importation of all poultry and poultry products of all 50 states of the United States that are accompanied by a standard USDA FSIS Export Certificate of Wholesomeness or any other applicable standard export certificate that is issued by U.S. authorities.

10. For purposes of the importation and sale of beef and beef products of the United States, Panama shall continue to recognize the U.S. beef grading system, and U.S. beef cuts nomenclature, without review or further action. Panama shall not require, as a condition of the importation or sale of any beef or beef product of the United States, that such products be labeled with any grade or any cuts nomenclature other than U.S. beef grade and beef cuts nomenclature.

11. To facilitate communication between the Parties on regulatory matters, and to promote scientific and expeditious resolution of sanitary and phytosanitary issues, involving products of the United States, Panama shall, within 24 hours after a Panamanian authority detains a shipment of a product from the United States due to a suspected quarantine pest, disease, or other sanitary or phytosanitary concern, notify representatives of APHIS and the Foreign Agricultural Service ("FAS") at the U.S. Embassy in Panama City of the finding, provide a summary of the evidence found, and indicate the proposed disposition of the shipment. Panama also shall notify these representatives before implementing any new sanitary or phytosanitary requirement with respect to a product of the United States.

12. Panama shall bring its laws, regulations, and other relevant legal instruments into conformity with this Agreement by no later than February 28, 2007.

[4] No such export certificate shall be required for products containing, by weight, less than three percent meat, poultry, or products thereof.

This Agreement shall enter into force on this day.

Done in Washington, DC and Panama City on December 20, 2006.

FOR THE GOVERNMENT OF THE UNITED STATES:

Susan C. Schwab
U.S. Trade Representative

FOR THE GOVERNMENT OF PANAMA:

The Board of Directors of the Panamanian Food Safety Authority

Alejandro Ferrer
Minister of Commerce and Industry

Guillermo Salazar
Minister of Agricultural Development

Dr. Camilo Alleyne
Minister of Health

ANNEX

Additional Certification Statements on USDA FSIS Export Certificate of Wholesomeness to Accompany U.S. Beef/Beef Product Exports to Panama

Beef/beef products for human consumption

Additional certification statements:

1. The beef/beef products were derived from cattle that received ante and post mortem inspections and were not suspected or confirmed to have Bovine Spongiform Encephalopathy (BSE).

2. The beef/beef products were not derived from cattle subject to a stunning process, prior to slaughter, with a device injecting compressed air or gas into the cranial cavity, or to a pithing process.

3. The beef/beef products were produced and handled in a manner which ensures that such products do not contain and are not contaminated with the following specified risk materials: for cattle over 30 months of age, the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column, and the dorsal root ganglia; and for any cattle regardless of age, the tonsils and distal ileum of the small intestine.

4. The beef/beef products were produced and handled in a manner which ensures that such products do not contain and are not contaminated with mechanically separated meat from the skull and vertebral column of cattle over 30 months of age.

5. The beef/beef products were derived from federally certified slaughter or processing facilities, operating under the supervision of the FSIS.

Beef tallow for human consumption

The following certification statement:

The maximum content of insoluble impurities of the tallow does not exceed 0.15 percent of its weight.

Additional Certification Statements on USDA APHIS Export Certificate to Accompany U.S. Exports of Pet Food Containing Animal Origin Ingredients to Panama

This office has on file a notarized affidavit from [company name] verifying the accuracy of the statements below:

1. The products may be freely sold in the United States as pet food.

2. Dry, semi-moist, and dehydrated products were sufficiently heat processed to assure destruction of pathogens of concern.

3. Canned (hermetically sealed products) were treated to an F_0 of 3.0 or more.

4. Precautions were taken after processing to avoid contamination of the products.

5. All products have been packed using new containers and packaging materials.

6. The products either contain no ruminant ingredients (except milk), or if they do include ruminant ingredients (except milk), such ingredients may include the following: protein-free tallow with a maximum level of insoluble impurities of 0.15 percent in weight; ruminant ingredients legally imported into the United States; or U.S.-origin bovine ingredients that were not derived from and do not contain the following specified risk materials: for cattle over 30 months of age, the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column, and the dorsal root ganglia; and for any cattle regardless of age, the tonsils and distal ileum of the small intestine.