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## Chapter Nine

### Agricultural and Food Goods

#### **Article 900: Application of General Rules**

For greater certainty, Chapter Four (General Rules) applies to this Chapter, except as otherwise provided in this Chapter.

#### **Article 901: Relationship to Other Chapters**

In the event of an inconsistency between a provision of this Chapter and any other provision of this Agreement, this Chapter prevails to the extent of the inconsistency.

#### **Article 902: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to internal trade in agricultural and food goods.
2. Subject to this Chapter, with respect to agricultural and food goods, this Agreement applies only to measures identified as technical barriers to trade by the Federal-Provincial Agri-Food Inspection Committee (the "Inspection Committee"). The Inspection Committee shall, on or before the date of entry into force of this Agreement, provide written notice to the Committee on Internal Trade of any such measures it identifies by that date. The Inspection Committee shall provide written notice to the Committee on Internal Trade of any such measures it identifies after that date, in which case this Agreement applies to those measures as of the date of the notice.
3. Measures involving technical barriers with policy implications shall be included in the scope and coverage of this Chapter effective September 1, 1997. The Federal-Provincial Trade Policy Committee (the "Trade Policy Committee") shall, on or before September 1, 1997, give written notice to the Committee on Internal Trade of such measures.
4. The Ministers shall, no later than September 1, 1997, complete a review of the scope and coverage of, and any recommendations for changes to, this Chapter with the objective of achieving the broadest possible coverage and further liberalizing internal trade in agricultural and food goods.
5. Other measures that may affect internal trade and that are adopted by the Ministers in accordance with the process set out in Annex 902.5 shall be included in the scope and coverage of this Chapter effective on the date of their adoption.

#### **Article 903: Review**

1. The Parties shall work together in accordance with Annexes 902.5 and 903.1 to reduce or eliminate measures that constitute obstacles to internal trade in agricultural and food goods.

2. The Ministers have, within the framework of their review of Canadian agri-food policy, agreed to:

- (a) undertake a comprehensive review of the framework governing supply managed commodities and implement an action plan towards the development of sustainable orderly marketing systems in the Canadian dairy, poultry and egg industries;
- (b) proceed with a review of the *Western Grain Transportation Act* (Canada);
- (c) continue to review existing federal and provincial agricultural safety net programs; and
- (d) address the internal market aspects of the policy issues referred to in paragraphs (a), (b) and (c) within a time frame consistent with Canada's international obligations.

**Article 904: Sanitary and Phytosanitary Measures**

- 1. A Party proposing to amend or adopt a sanitary and phytosanitary measure that may affect internal trade in an agricultural or food good shall take into consideration the implications of the measure for internal trade.
- 2. Each Party shall ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties, including between that Party and other Parties, where identical or similar conditions prevail.
- 3. No Party shall apply a sanitary or phytosanitary measure in a manner that would constitute a disguised restriction on internal trade.

**Article 905: Non-Sanitary and Non-Phytosanitary Measures**

No Party shall amend an existing measure, other than a sanitary or phytosanitary measure, or adopt such a measure so as to restrict internal trade in an agricultural or food good.

**Article 906: Consultations and Dispute Resolution<sup>56</sup>**

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.

**Article 907: Transparency**

- 1. Further to Article 406 (Transparency), a Party proposing to adopt or amend a measure that may affect trade in an agricultural or food good shall:

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<sup>56</sup> This article was amended by the Seventh Protocol of Amendment.

- (a) at least 20 days prior to the adoption or amendment of the measure, publish a notice of the proposed measure or amendment and provide the Trade Policy Committee and the other Parties with a copy of the notice and the full text of the proposed measure or amendment;
- (b) provide a brief description, in the notice referred to in paragraph (a), of the objective of and reasons for the measure or amendment and identify the good to which it would apply;
- (c) provide a copy of the proposed measure or amendment to any interested person and, where a sanitary or phytosanitary measure or an amendment to such a measure is proposed, wherever possible, identify any provision of the proposed measure or amendment that deviates in substance from relevant national and international standards, guidelines or recommendations; and
- (d) allow other Parties and interested persons to make comments in writing and, on request, discuss the comments and take the comments and the results of any discussions into account.

2. Where a Party considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection, it may omit any step set out in paragraph 1 provided that, on adoption of the necessary sanitary or phytosanitary measure or amendment, the Party:

- (a) immediately provides to the other Parties notice of the type referred to in paragraph 1(b), including a brief description of the urgent problem; and
- (b) thereafter proceeds to fulfil the requirements of paragraphs 1(c) and (d).

## **Article 908: Definitions**

In this Chapter:

**agricultural good** means:

- (a) an animal, a plant or an animal or plant product; or
- (b) a product, including any food or drink, wholly or partly derived from an animal or a plant;

but does not include fish or fish products or alcoholic beverages;

**food good** means any article manufactured, sold or represented for use as food or drink for humans, chewing gum, and any ingredient that may be mixed with food for any purpose whatever, but does not include fish or fish products or alcoholic beverages;

**Ministers** means the respective Ministers of Agriculture of the Parties;

**sanitary and phytosanitary measure** means a measure that a Party adopts or maintains to:

- (a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease;

- (b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease causing organism in a food, beverage or feedstuff;
- (c) protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or
- (d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest;

and includes:

- (e) end product criteria;
- (f) product-related processing or production methods;
- (g) testing, inspection, certification or approval procedures;
- (h) relevant statistical methods;
- (i) sampling procedures;
- (j) methods of risk assessment;
- (k) packaging or labelling requirements directly related to food safety; and
- (l) quarantine treatments, such as relevant requirements associated with the transportation of animals or plants or with material necessary for their survival during transportation;

**technical barriers to trade** means a measure that:

- (a) involves product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory;
- (b) deals exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method;
- (c) involves any procedure used, directly or indirectly, to determine that relevant requirements in technical measures are fulfilled; or
- (d) involves a sanitary or phytosanitary measure;

but does not include purchasing specifications prepared for production or consumption requirements of the Parties that are addressed in Chapter Five (Procurement), according to the coverage of that Chapter.

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## Annex 902.5

### Reports on Measures That May Affect Internal Trade

1. The Parties agree to direct their respective officials to jointly prepare and submit written reports and recommendations with respect to measures that may affect internal trade in agricultural and food goods.

#### National Standards

2. The Parties shall work together to develop and implement common standards on measures that may affect internal trade in agricultural and food goods.

3. The Parties agree that any common standards must be consistent with international commitments of Canada under the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, including the *Agreement Establishing the World Trade Organization*, the *General Agreement on Tariffs and Trade*, the *North American Free Trade Agreement* and, where applicable, the *Canada-United States Free Trade Agreement*.

#### Work Programs

4. A Party may, by delivering a written notice to the other Parties, request the establishment of a work program to produce a report and recommendations on any measure that may affect internal trade in agricultural and food goods.

5. Where a Party requests the establishment of a work program, it shall prepare a schedule of tasks and proposed completion dates. A schedule of tasks shall be implemented when approved by a majority of the Ministers, including the Federal Minister of Agriculture, or by the Federal Minister of Agriculture and the respective Ministers of Agriculture of the other Parties representing a majority of the production in Canada of the agricultural or food good affected by the measure.

6. The Ministers shall, within the framework of their review of Canadian agri-food policy, direct their respective officials to establish industry consultation and review work programs for the purpose of jointly preparing reports and recommendations in relation to the measures agreed to by the Ministers, in accordance with the record of decision of their meeting held on July 4-6, 1994.

7. Subject to any changes that may be agreed to by all Parties, the Parties shall adopt, with an effective date no later than September 1, 1997, the measures referred to in paragraph 6 and the recommendations made in relation to those measures that are contained in the reports prepared under that paragraph.

8. The dates for the adoption of recommendations concerning imitation dairy products and butter blends are to be determined by the Ministers.

## Annex 903.1

### **Memorandum of Understanding on Procedures for the Elimination or Reduction of Interprovincial Barriers to Trade in Agricultural and Food Products**

#### I BACKGROUND

On December 11, 1989, Ministers responsible for Agriculture signed a Memorandum of Understanding (MOU) confirming their commitment to the reduction of barriers to interprovincial trade. In the MOU, Ministers recognized that policies and practices, which hinder trade, fragment the domestic market and adversely impact on the international competitiveness of the Canadian agri-food sector. Similarly, it was recognized that, as a general rule, increased interregional trade will lead to productivity improvements and import substitution and thereby benefit all regions of the country.

Against this background, it was agreed that the federal and provincial governments will:

- a) undertake collective action with the intent of reducing or eliminating barriers to trade in agricultural and food products among provinces;
- b) establish a broad, best effort Moratorium on the introduction of new barriers to trade;
- c) provide information and the opportunity for consultation, in advance, when any new regulation is under consideration which might affect interprovincial trade;
- d) identify barriers as prime candidates for further work with a view to developing them as additional priorities; and
- e) establish a formal mechanism to eliminate/reduce barriers to interprovincial trade in agricultural products as well as a binding dispute mechanism.

#### II UNDERSTANDINGS

With this Memorandum, Ministers establish the procedures to be followed in order to implement these undertakings.

##### 1. Framework to Eliminate/Reduce Barriers

Ministers recognize that interprovincial trade barriers may be classified as technical or non-technical. Technical barriers can arise because of differing product and grade standards, plant and animal health regulations, transportation and other legislation affecting the movement of products between provinces. Non-technical barriers can result from government policies and programs such as price and income stabilization, supply management, credit and other financial assistance programs.

As a beginning, with regard to technical barriers, and recognizing that the proliferation of different technical standards and norms can constitute significant impediments to trade, Ministers agree to work towards the adoption of common national standards within the next five years. National technical standards acceptable to provincial governments will be negotiated taking into account both domestic and international considerations. This would remove technical barriers to interprovincial trade in the agri-food industry.

Ministers agree that officials will draw up an implementation plan for the establishment of national technical standards, in consultation with farm organizations and industry associations.

With respect to non-technical barriers to interprovincial trade, many of these relate to government programs and practices which are currently being addressed within the framework of the Agri-food Policy Review.

## 2. Information Exchange and Consultation

Ministers agree that provincial governments as well as the Federal Government will provide information to the Federal-Provincial Agricultural Trade Policy Committee (FPATPC) on new or revised legislation or changed regulations which could adversely affect interprovincial trade. The provincial contact point will be the provincial Committee member or a designate. A period of 20 working days will be allowed for reaction to the new or revised legislation or proposed changes in regulations.

Ministers agree to consider the interprovincial trade implications of any changes in legislation or regulations when these are being contemplated.

## 3. Dispute Settlement

Ministers agree that any government may request consultations regarding any actual or proposed measure that it considers to impair interprovincial trade. The governments involved will make every effort to reach a mutually satisfactory solution of any issue raised. In the event it is necessary to resort to dispute settlement, such a mechanism should be credible, transparent, effective, accessible, timely and public.

Affected trade interests in the private sector will also be encouraged to indicate their concerns on specific barriers to interprovincial trade to the federal or provincial governments.

In view of First Ministers request to the Committee of Ministers on Internal Trade to develop a compliance mechanism to support the reduction of interprovincial barriers to trade, Ministers agree that this mechanism should be used to settle disputes that cannot be settled by consultations between governments, once the mechanism has been approved by all governments.

## III REVIEW OF AGREEMENT

The Agreement represented by this Memorandum of Understanding will be subject to a general review each year and the FPATPC will report on progress and necessary improvements as part of the review process at the annual Conference of Agriculture Ministers.

