

ELEVENTH PROTOCOL OF AMENDMENT

The undersigned, Parties to the Agreement on Internal Trade, hereby agree to make the following additions, revisions and corrections to the Agreement on Internal Trade.

Note: All changes relate to both the English and French versions of the Agreement, except where noted.

A. AGRICULTURAL AND FOOD GOODS

1. Chapter Nine (Agricultural and Food Goods)

- 1.1 Replace the Chapter with the new Chapter Nine that is found as Attachment 1 to this Protocol of Amendment.

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 technical measures adopted or maintained by a Party relating to internal trade in agricultural and food goods.
2. For greater certainty, that nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures relating to supply management systems regulated by federal and provincial governments, and provincially regulated marketing boards, that are not technical measures. This includes measures relating to the right to invest in the production of, or to produce:
 - a. poultry and eggs or any other farm products regulated pursuant to the Farm Products Agencies Act; and
 - b. milk and dairy products regulated pursuant to the Canadian Dairy Commission Act and the Agricultural Products Marketing Act

Article 903: Extent of Obligations

Further to Article 102 (Extent of Obligations) each Party is responsible for compliance with this Chapter by its other governmental bodies, including Crown corporations, and by non-governmental bodies that exercise authority delegated by law.

Article 904: Working Group on Agriculture and Food Goods

1. The Parties shall establish a Working Group on Agriculture and Food Goods composed of representatives of each party.
2. The Working Group shall review and report on Chapter Nine to Ministers of Agriculture periodically with the purpose of:

- a. assessing whether the Chapter has met its objectives;
- b. identifying and resolving outstanding implementation issues respecting this Chapter;
- c. reviewing the opportunities for progress and harmonization on matters related to internal trade in agricultural and food goods

3. For the purposes of this chapter, the notification obligations enumerated in Article 406.2 may be met by providing notification to the Working Group with respect to the proposed measure.

Article 905: Right to Establish Technical Measures

1. For greater certainty, in adopting or maintaining any technical measure a Party may establish the level of protection it considers appropriate in the circumstances to achieve a legitimate objective.
2. For greater certainty, each Party shall, in ensuring that any technical measure that it adopts or maintains is not more trade restrictive than necessary to achieve a legitimate objective, take into account the risks that non-fulfillment of that legitimate objective would create and ensure proportionality between the trade restrictiveness of the technical measures and those risks.
3. Each Party shall ensure that any technical measure adopted or maintained for a legitimate objective does not arbitrarily or unjustifiably discriminate between or among Parties, including between that Party and other Parties, where identical or similar conditions prevail.
4. No Party shall adopt or apply a technical measure in a manner that would constitute a disguised restriction on internal trade.
5. Each Party shall, where appropriate and to the extent practicable, specify its technical measures in terms of results, performance or competence.
6. Each Party shall ensure that its technical measures have a scientific, factual or other reasonable basis and that where appropriate, such technical measures are based on an assessment of risk.

Article 906: Consultations and Dispute Resolution

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

Article 907: 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;

conformity assessment procedure means a procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

food good means an 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 mean the respective Ministers of Agriculture of the Parties;

provincially regulated marketing board means a board or agency authorized under the law of a province to exercise powers of regulation in relation to the marketing of any agricultural product locally within the province

sanitary and phytosanitary measure means a measure applied to:

- (a) protect animal or plant life or health within the territory of the Party from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) protect human or animal life or health within the territory of the Party from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- (c) protect human life or health within the territory of the Party from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests;
- (d) prevent or limit other damage within the territory of the Party from the entry, establishment or spread of pests; and
- (e) includes inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures

and methods of risk assessment; and packaging and labelling requirements directly related to food safety;

standard means a document approved by a recognized Body including those accredited by Canada's National Standards System, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

technical measure means a measure that is a technical regulation, a standard, a sanitary or phytosanitary measure or a conformity assessment procedure but does not include purchasing specifications prepared for production or consumption requirements of a Party that are addressed in Chapter Five (Procurement), according to the coverage of that Chapter.

technical regulation means a document or instrument of a legislative nature which defines product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory by law. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.