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SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

CHAPTER EIGHT
TECHNICAL BARRIERS TO TRADE

ARTICLE 8.1 : SCOPE AND COVERAGE

1. Except as provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations, and conformity assessment procedures of the central government that may, directly or indirectly, affect trade in any product between the Parties.
2. Technical specifications prepared by government bodies for the production or consumption requirements of such bodies are not subject to the provisions of the Chapter, but are addressed in Chapter Fifteen (Government Procurement), according to its coverage.
3. This Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

ARTICLE 8.2 : AFFIRMATION OF TBT AGREEMENT

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

ARTICLE 8.3 : REGIONAL GOVERNMENTS

Each Party shall provide information to authorities of regional governments to encourage their adherence to the provisions of this Chapter as appropriate.

ARTICLE 8.4 : INTERNATIONAL STANDARDS

1. Consistent with Article 2.4 of the TBT Agreement, each Party shall use, to the maximum extent possible, relevant international standards as a basis for its technical regulations
2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2, 5, and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev.8, 23 May 2002, Section IX (*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*), issued by the WTO Committee on Technical Barriers to Trade

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3. The Parties shall consult and exchange views on matters under discussion in relevant international or regional bodies that develop standards, guidelines, recommendations, or policies relevant to this Chapter.

ARTICLE 8.5 : TECHNICAL REGULATIONS

1. The Parties shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own technical regulation, it shall, at the request of the other Party, explain the reasons for not accepting the technical regulation of the other Party as equivalent. The Parties may agree to further engagement on accepting equivalence of particular technical regulations, including through the possible establishment of an *ad hoc* working group, as provided for in Article 8.9.3.

3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

ARTICLE 8.6 : CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:

- (a) the importing Party's reliance on a supplier's declaration of conformity;
- (b) voluntary arrangements between conformity assessment bodies from each Party's territory;
- (c) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;
- (d) accreditation procedures for qualifying conformity assessment bodies;
- (e) government designation of conformity assessment bodies; and
- (f) facilitating a request by the other Party for the recognition of the results of conformity assessment procedures, including through negotiation of agreements in a sector nominated by that Party.

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The Parties shall exchange information on the variety of mechanisms to facilitate the acceptance of conformity assessment results.

2. Where a Party does not accept the results of a conformity assessment procedure performed in the territory of the other Party, it shall, on request of the other Party, explain its reasons.
3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.
4. Where a Party declines a request from the other Party to engage in or conclude negotiations to reach agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of the other Party, it shall, on request, explain its reasons. The Parties may agree to further engagement, including through the possible establishment of an *ad hoc* working group, as provided for in Article 8.9.3.

ARTICLE 8.7 : TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures on terms no less favourable than those accorded to its own persons.
2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.
3. The Parties acknowledge the importance of transparency in decision-making, including the meaningful opportunity for persons to provide comments. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, the Party shall:
 - (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and
 - (b) transmit the proposal electronically to the other Party through the inquiry point established under Article 10 of the TBT Agreement at the

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same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least 60 days from the transmission under subparagraph (b) for persons and the other Party to make comments in writing on the proposal.

4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time, transmit the notification to the other Party, electronically, through the inquiry point referenced in subparagraph 3(b).
5. Each Party shall publish, in print or electronically, or otherwise make available to the public, its responses to significant comments no later than the date of publication of the final technical regulation or conformity assessment procedure.
6. Each Party shall, on request of the other Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

ARTICLE 8.8 : TRADE FACILITATION

1. The Parties shall work co-operatively in the fields of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's markets. In particular, the Parties shall seek to identify bilateral initiatives that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as co-operation through recognition of conformity assessment procedures.
2. At the request of the other Party, each Party shall encourage non-governmental bodies in its territory to cooperate with the non-governmental bodies in the territory of the other Party with respect to particular standards or conformity assessment procedures.

ARTICLE 8.9 : CHAPTER COORDINATORS

1. In order to facilitate implementation of this Chapter and cooperation between the Parties, each Party shall designate a Chapter Coordinator who shall be responsible for coordinating with interested persons in the Party's territory and communicating with the other Party's Coordinator in all matters pertaining to this Chapter. The Coordinators' functions shall include:

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- (a) monitoring the implementation and administration of this Chapter;
 - (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
 - (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
 - (d) exchanging information on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
 - (e) considering and facilitating any sector-specific proposal a Party makes for further co-operation among governmental and non-governmental conformity assessment bodies;
 - (f) facilitating the consideration of a request by a Party for the recognition of the results of conformity assessment procedures, including a request for the negotiation of an agreement, in a sector nominated by that Party;
 - (g) facilitating cooperation in the areas of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
 - (h) upon request of a Party, consulting on any matter arising under this Chapter; and
 - (i) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments.
2. The Coordinators shall normally carry out their functions through agreed communication channels as necessary for the efficient and effective discharge of their functions.
3. Where a matter covered under this Chapter cannot be clarified or resolved through the Chapter Coordinators, the Parties may agree to establish an *ad hoc* technical working group with a view to identifying a workable and practical solution that would facilitate trade. Such working groups shall comprise representatives of both Parties, including regional government representatives, with responsibility for the standards, technical regulations, or conformity assessment procedures in question. Where a Party declines a request from the other Party to establish such an *ad hoc* technical working group, it shall, upon request, explain its reasons.

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ARTICLE 8.10 : INFORMATION EXCHANGE

Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time.

ARTICLE 8.11 : DEFINITIONS

For the purposes of this Chapter, **technical regulation, standard, and conformity assessment procedures** shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

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ANNEX 8-A
CHAPTER COORDINATOR

For the purposes of Article 8.9, Chapter Coordinators shall be:

- (a) in the case of Australia, _____ or its successor; and
- (b) in the case of the United States, the Office of the U.S. Trade Representative, or its successor.