

This document is the European Union's (EU) proposal for the EU-Australia FTA. It has been tabled for discussion with Australia. The actual text in the final agreement will be a result of negotiations between the EU and Australia.

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER XX

TRANSPARENCY

ARTICLE X.1

Objective

- 1 Recognising the impact which their respective regulatory environment may have on trade and investment between them, the Parties aim at providing a predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises.
- 2 The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down clarifications and improved arrangements for transparency, consultation and better administration of measures of general application.

ARTICLE X.2

Definitions

For the purposes of this Chapter:

- (a) “administrative decision” means a decision or action with a legal effect that applies to a specific person, good or service in an individual case, and covers the failure to take an administrative decision as provided for in the Party's domestic law and legal system;
- (b) “interested person” means any natural or legal person that may be affected by a measure of general application;
- (c) “measure of general application” means laws, regulations, judicial decisions, procedures and administrative rulings of general application pertaining to any matter covered by Part [TRADE].

ARTICLE X.3

Publication

Each Party shall ensure that a measure of general application with respect to any matter covered by Part [TRADE]:

- (a) is promptly published via an officially designated medium and where feasible, electronic means, or otherwise made available in such a manner as to enable any person to become acquainted with them;
- (b) provides an explanation of the objective of, and rationale for, the measure; and
- (c) allows for sufficient time between publication and entry into force of laws and regulations, except where it is not possible on grounds of urgency. This provision does not apply in relation to judicial decisions and administrative rulings.

ARTICLE X.4

Enquiries

- 1 Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations, with respect to any matter covered by Part [TRADE].
2. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any law or regulation whether in force or planned, with respect to any matter covered Part [TRADE], unless a specific mechanism is established under another Chapter of this Part [TRADE].

ARTICLE X.5

Administration of measures of general application

- 1 Each Party shall administer in an objective, impartial, and reasonable manner all measures of general application with respect to any matter covered by this Part [TRADE].
2. Each Party, in applying such measures to particular [natural and legal]¹ persons, goods or services of the other Party in specific cases shall:
 - (a) endeavour to provide persons who are directly affected by administrative proceedings, with reasonable notice, in accordance with its laws and regulations, when proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issues in controversy;

¹ Note – to drop if the agreement defines "person" as natural and legal person.

- (b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision in so far as time, the nature of the proceedings [and the public interest] permit.

ARTICLE X.6

Review and appeal

- 1 Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of administrative decision with respect to any matter covered by this Part [TRADE]. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory and impartial manner by its tribunals. Those tribunals shall be impartial and independent of the authority entrusted with administrative enforcement and shall not have any interest in the outcome of the matter.
- 2 Each Party shall ensure that the parties to the proceedings in paragraph 1 are provided with the right to:
 - (a) a reasonable opportunity to support or defend their respective positions; and
 - (b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.
3. The decision in paragraph 2 shall, subject to appeal or further review as provided for in its law, be implemented by the authority entrusted with administrative enforcement.

ARTICLE X.7

Relation to other chapters

The provisions set out in this Chapter supplement the specific rules set out in other Chapters of Part [TRADE]].