

CHAPTER 16

TRANSPARENCY AND ANTI-CORRUPTION

Section A: Transparency

Article 16.1: Definition

For the purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Article 16.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, including through official websites where feasible, or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

- (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
- (b) provide, where appropriate, interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its laws and regulations, are made publicly available and the date when they enter into force.

Article 16.3: Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any proposed or actual laws, regulations, procedures or administrative rulings of general application that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the interests of the other Party under this Agreement.
2. On request of the other Party, a Party shall promptly provide information and respond to questions related to any proposed or actual measure referred to in paragraph 1 that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of it.
3. A Party may give notification, convey any request or provide information under this Article to the other Party through its contact points designated under Article 17.6 (Contact Points) of Chapter 17 (Administrative and Institutional Provisions).
4. Without prejudice to paragraph 3, the information referred to under this Article related to laws, regulations, procedures or administrative rulings of general application shall be considered to have been notified or provided by a Party when the information has been made available by notification to the WTO in accordance with the WTO Agreement.
5. Any notification, response or information provided in accordance with this Article shall be without prejudice as to whether the measure referred to in paragraph 1 is consistent with this Agreement.

Article 16.4: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner the measures referred to in Article 16.2.1 with respect to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying these measures to a particular person, good or service of the other Party in specific cases that:

- (a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in question;
- (b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of the position of that person prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) the procedures are in accordance with its laws.

Article 16.5: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures¹ for the purposes of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures referred to in paragraph 1, the parties to the proceeding 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 the laws of the Party, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Section B: Anti-Corruption

Article 16.6: General Provisions

1. The scope of this Section is limited to measures to prevent and combat corruption with respect to any matter covered by this Agreement.

2. The Parties affirm their commitment to combat bribery and corruption in international trade and investment, recognising the harmful moral, social and political implications that arise and their negative impact on governance, institutions and sustainable economic development.

3. The Parties emphasise the importance of integrity in public and private sectors, through the promotion of transparency, accountability and responsible management of public assets. The Parties undertake to adopt appropriate measures within their respective laws and regulations to prevent, detect, combat and deter bribery and corruption in matters affecting international trade and investment.

¹ For greater certainty, such procedures include any *ad hoc* complaint handling procedures and internal review procedures.

Article 16.7: International Instruments

1. Each Party affirms its existing obligations under the *United Nations Convention against Corruption*, done at New York on October 31, 2003 (UNCAC). This Agreement shall not affect their existing rights and obligations under other international anti-corruption agreements.
2. The Parties recognise the importance to support APEC's anti-corruption principles, including the *APEC Conduct Principles for Public Officials*, done at Cairns on July 3, 2007, and the *APEC Principles on the Prevention of Bribery and Enforcement of Anti-Bribery Laws*, done at Beijing on November 6, 2014, as well as the need to promote awareness within their private sectors regarding available anti-corruption guidance, such as the *APEC Anti-Corruption Code of Conduct for Business, Business Integrity and Transparency Principles for the Private Sector*, done at Sydney on September 5, 2007, along with *APEC General Elements of Effective Voluntary Corporate Compliance Programs*, done at Beijing on November 6, 2014.
3. The Parties acknowledge the significance of regional and multilateral efforts to combat corruption and bribery in international trade and investment, including cooperation within the WTO, APEC, the United Nations and other relevant fora, with an emphasis on implementing relevant findings and recommendations.

Article 16.8: Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Section.