

**CHAPTER 16**  
**TRANSPARENCY**

**Article 16.1: Definitions**

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 its ambit 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;

**covered regulatory measure** means any regulatory measures as may be determined, from time to time, by each Party to be subject to Article 16.7; and

**regulatory measure** means a measure of general application related to any matter covered by this Agreement adopted by regulatory agencies with which compliance is mandatory.

**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 the internet 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.

### **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 other Party's interests under this Agreement.
2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining 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. 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.
4. The notification referred to in paragraph 1 shall be considered to have been provided when the proposed or actual measure referred to in paragraph 1 has been notified to the WTO in accordance with the WTO Agreement.
5. Subject to paragraph 4, any notification, request or information provided in accordance with this Article shall be conveyed to the other Party through the relevant contact points designated under Article 17.5 (Contact Points) of Chapter 17 (Institutional Provisions).

### **Article 16.4: Administrative Proceedings**

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 administered in a consistent, impartial, objective and reasonable manner.
2. With a view to administering in a consistent, impartial, objective and reasonable manner the measures referred to in paragraph 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 it:
  - (a) provides wherever possible, a person of the other Party that is directly affected by a proceeding with reasonable notice 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) affords such a person a reasonable opportunity to present facts and arguments

in support of their position prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

- (c) follows its procedures 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 procedures<sup>1</sup> 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, 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.

### **Article 16.6: Small and Medium Enterprises (SMEs)**

1. Each Party shall establish or maintain its own publicly accessible website containing information regarding this Agreement, including:

- (a) the text of this Agreement, including all Annexes and Appendices;
- (b) the side instruments to this Agreement;
- (c) a summary of this Agreement; and
- (d) information designed for SMEs that contains:
  - (i) a description of the provisions in this Agreement that the Party considers to be most relevant to SMEs; and

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<sup>1</sup> For greater certainty, such procedures include any ad hoc complaint handling procedures and internal review procedures.

- (ii) any additional information that the Party considers would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.
- 2. Each Party shall also include in its website referred to in paragraph 1 links to:
  - (a) the equivalent website of the other Party; and
  - (b) the websites of its government agencies and other appropriate entities that provide information that the Party considers would be useful to any person interested in trading, investing or doing business in the Area of that Party.
- 3. Subject to each Party's laws and regulations, the information described in paragraph 2(b) may include:
  - (a) customs regulations and procedures;
  - (b) regulations and procedures concerning intellectual property rights;
  - (c) technical regulations, standards and sanitary and phytosanitary measures relating to importation and exportation;
  - (d) foreign investment regulations;
  - (e) business registration procedures;
  - (f) employment regulations; and
  - (g) taxation information.
- 4. Each Party shall regularly review the information and links on the website referred to in paragraph 1 and paragraph 2 to ensure that such information and links are up-to-date and accurate.
- 5. Neither Party shall have recourse to dispute settlement under Chapter 18 (Consultations and Dispute Settlement) for any matter arising under this Article.

#### **Article 16.7: Regulatory Coherence**

1. For the purposes of this Article, regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of policy objectives, and to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.

2. The Parties affirm the importance of:
  - (a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;
  - (b) each Party's right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate;
  - (c) the role that regulation plays in achieving their policy objectives;
  - (d) taking into account input from interested persons in the development of regulatory measures; and
  - (e) developing regulatory cooperation and capacity building, as appropriate.
3. To assist in designing a measure to best achieve the Party's policy objective, a Party may encourage relevant regulatory agencies, consistent with the laws, regulations, policies and practices of the Party, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by that Party.
4. Each Party recognises that new covered regulatory measures, once written, should generally be expressed in plain, clear and concise language and be well organised and easy to understand, noting that some new covered regulatory measures address technical issues and that relevant expertise may be needed to understand and apply them.
5. Subject to its laws, regulations, policies and practices, and where practicable, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and make this information available online.
6. A Party may review, at intervals it deems appropriate, its covered regulatory measures to determine whether such measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives.
7. A Party may, subject to its laws, regulations, policies and practices, provide, online where practicable, annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue.
8. To the extent practicable and in accordance with its laws, regulations, policies and practices, a Party may encourage its relevant regulatory agencies to consider regulatory measures in the other Party, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

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