

CHAPTER 22

GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

ARTICLE 22.1

General principles

1. Each Party shall be free to determine its approach to good regulatory practices and regulatory cooperation under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles¹ underlying its regulatory management system.
2. Nothing in this Chapter shall be construed as to require a Party to:
 - (a) deviate from domestic procedures for preparing and adopting regulatory measures;
 - (b) take actions that would risk compromising or undermining the public policy objective of a particular regulatory measure;
 - (c) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or
 - (d) achieve any particular regulatory outcome.

¹ For the Union, such principles are the principles that are included in and derived from the TFEU.

3. Each Party shall be free to identify its regulatory priorities and to prepare and adopt regulatory measures to address those regulatory priorities ensuring the levels of protection that the Party considers appropriate.

ARTICLE 22.2

Definitions

For the purposes of this Chapter, the following definitions apply:

(a) “regulatory authority” means:

(i) for the Union, the European Commission; and

(ii) for New Zealand, the Executive Government of New Zealand;

(b) “regulatory measures” means, unless otherwise provided in this Chapter:

(i) for the Union:

(A) regulations and directives, as provided in Article 288 TFEU; and

(B) delegated and implementing acts, as provided in Article 290 and Article 291 TFEU, respectively;

(ii) for New Zealand:

(A) Government bills that may become Public Acts of the Parliament of New Zealand, except for the purposes of Articles 22.9 (Periodic review of regulatory measures in effect) and 22.10 (Access to regulatory measures) where it means Public Acts of the Parliament of New Zealand; and

(B) regulations made by Order in Council.

ARTICLE 22.3

Scope

1. This Chapter applies to regulatory measures issued or initiated by the regulatory authority of a Party in respect to any matter covered by this Agreement.
2. For greater certainty, this Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States.

ARTICLE 22.4

Transparency of processes and mechanisms

1. The regulatory authority of each Party shall make publicly available and for free descriptions of the general processes and mechanisms under which the regulatory authority prepares, develops, evaluates or reviews its regulatory measures. This shall be done through a digital medium.
2. The descriptions of the general processes and mechanisms referred to in paragraph 1 shall refer to any relevant guidelines, rules or procedures, including those guidelines, rules or procedures regarding opportunities for the public to provide comments.

ARTICLE 22.5

Internal coordination of regulatory development¹

Further to Article 22.4 (Transparency of processes and mechanisms), for the preparation or development of regulatory measures, the regulatory authority of each Party shall maintain internal processes or mechanisms for internal coordination, consultation and review. Such processes or mechanisms shall, *inter alia*, seek to:

- (a) foster good regulatory practices, such as those set forth in this Chapter;

¹ For greater certainty, a Party may comply with Articles 22.5 (Internal coordination of regulatory development) and 22.9(1) (Periodic review of regulatory measures in effect) through any combination of separate or combined processes or mechanisms.

- (b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;
- (c) ensure compliance with international trade and investment obligations; and
- (d) promote the consideration of effects of the regulatory measures being prepared or developed, which may include those on SMEs.

ARTICLE 22.6

Early information on planned regulatory measures¹

1. Each Party shall, on at least an annual basis, list planned major regulatory measures² that it reasonably expects to adopt within a year and make such list or lists publicly available.
2. With respect to each major regulatory measure, referred to in paragraph 1, the regulatory authority of each Party should make publicly available, as early as possible:
 - (a) a brief description of its scope and objectives; and

¹ In the case of New Zealand, for the purposes of this Article the term “regulatory measures” means regulations made by Order in Council referred to in point (b)(ii)(B) of Article 22.2 (Definitions).

² For the purposes of this Chapter, the regulatory authority of each Party may determine what constitutes a major regulatory measure.

- (b) the estimated timing for its adoption, including opportunities for public consultation.

ARTICLE 22.7

Public consultation

1. When preparing or developing major regulatory measures, the regulatory authority of each Party shall, to the extent possible and appropriate:
 - (a) make publicly available, such as by publishing draft regulatory measures or consultation documents, sufficient details about those major regulatory measures to allow any person to assess whether and how the person's interests might be significantly affected;
 - (b) offer reasonable opportunities for any person, on a non-discriminatory basis, to provide comments; and
 - (c) consider the comments received.
2. For the purpose of providing information and receiving comments related to public consultations, the regulatory authority of each Party shall make information accessible to the public by digital means, preferably through a dedicated electronic portal.

3. The regulatory authority of each Party shall endeavour to make publicly available a summary of the results of the consultations and comments received, except to the extent necessary to protect confidential information or withhold personal data or inappropriate content.

ARTICLE 22.8

Impact assessment

1. The regulatory authority of each Party affirms its intention to carry out, in accordance with its respective rules and procedures, an impact assessment of major regulatory measures it is preparing.
2. For carrying out an impact assessment, the regulatory authority of each Party shall promote the identification and consideration of:
 - (a) the need for a regulatory measure, including the nature and the significance of the problem a regulatory measure intends to address;
 - (b) any feasible and appropriate regulatory and non-regulatory options that would achieve the Party's public policy objectives, including the option of not regulating;
 - (c) to the extent possible and relevant, the potential social, economic and environmental impact of the options, such as any impacts on international trade and investment, or the impact on SMEs; and

- (d) how the options under consideration relate to relevant international standards, if any, including the reason for any divergence, where appropriate.

3. With respect to any impact assessment that a regulatory authority of a Party has carried out for a regulatory measure, that regulatory authority shall report on the factors it considered in its assessment and summarise the relevant findings. The information shall be made publicly available no later than when the regulatory measure to which it relates is made publicly available.

ARTICLE 22.9

Periodic review of regulatory measures in effect

1. Further to Article 22.4 (Transparency of processes and mechanisms), the regulatory authority of each Party shall maintain processes or mechanisms to promote periodic review of regulatory measures in effect.
2. The regulatory authority of each Party shall endeavour to ensure that periodic reviews consider, where appropriate:
 - (a) whether there are opportunities to achieve its public policy objectives more effectively and efficiently;¹ and

¹ For greater certainty, this may include whether unnecessary regulatory burdens, including on SMEs, can be reduced.

(b) whether the regulatory measures under review are likely to remain fit for purpose.

3. The regulatory authority of each Party shall, to the extent possible and appropriate, make publicly available any plans for, and the results of, periodic review of regulatory measures in effect.

ARTICLE 22.10

Access to regulatory measures

Each Party shall ensure that regulatory measures in effect are published in a designated register or via a single digital medium that is publicly available, searchable, free of charge and updated regularly.

ARTICLE 22.11

Regulatory cooperation

1. The Parties recognise the value in creating a simple mechanism to identify potential opportunities for undertaking regulatory cooperation between them.
2. A Party may propose a regulatory cooperation activity to the other Party. It shall transmit its proposal to the other Party's contact point designated in accordance with Article 22.12 (Contact points on regulatory cooperation).

3. The proposals may consist of:
 - (a) bilateral information exchanges on regulatory cooperation approaches; or
 - (b) informal cooperation between the regulatory authorities.
4. The other Party shall reply to the proposal within a reasonable period of time.
5. Where appropriate, and if the regulatory authorities so agree, the implementation of a regulatory cooperation activity may be carried out by the relevant divisions, departments or agencies in each Party.

ARTICLE 22.12

Contact points on regulatory cooperation

Promptly after the date of entry into force of this Agreement, each Party shall designate a contact point which shall be responsible for coordinating regulatory cooperation activities under Article 22.11 (Regulatory cooperation) and shall notify the other Party of the contact details for the contact point. Each Party shall promptly notify the other Party of any change to those contact details.

ARTICLE 22.13

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to this Chapter.

CHAPTER 23

TRANSPARENCY

ARTICLE 23.1

Objectives

1. Recognising the impact that their respective regulatory environments may have on trade and investment between them, the Parties aim to provide a predictable regulatory environment and efficient procedures for economic operators, especially SMEs.
2. The Parties affirm their commitments in relation to transparency under the WTO Agreement, and build on those commitments in this Chapter.