

CHAPTER THIRTEEN

TRANSPARENCY

ARTICLE 13.1

Definitions

For the purposes of this Chapter:

- (a) 'measure of general application' means laws, regulations, judicial decisions, procedures and administrative rulings that may have an impact on any matter covered by this Agreement but does not include a ruling that applies to a particular person; and
- (b) 'interested person' means any natural or legal person that may be subject to any rights or obligations under measures of general application.

ARTICLE 13.2

Objectives and Scope

- 1. Recognising the impact which their respective regulatory environments may have on trade and investment between them, the Parties shall pursue a transparent and predictable regulatory environment for economic operators, including small and medium-sized enterprises, that do business in their territories.
- 2. The Parties, affirming their respective commitments under the WTO Agreement, hereby lay down clarifications and improved arrangements for transparency, consultation, and the better administration of measures of general application.

ARTICLE 13.3

Publication regarding Measures of General Application

- 1. Each Party shall ensure that in respect of measures of general application:
 - (a) such measures are readily available to interested persons, in a non-discriminatory manner, via an officially designated medium and, where feasible and possible, via electronic means, in such a manner as to enable interested persons and the other Party to become acquainted with them;
 - (b) an explanation of the objective of, and rationale for, such measures shall be provided to the extent possible; and
 - (c) there shall be sufficient time between the publication and entry into force of such measures, except where not possible for reasons of urgency.
- 2. Each Party shall:
 - (a) endeavour to publish in advance any proposal to adopt or to amend any measure of general application, including an explanation of the objective of and rationale for the proposal;
 - (b) provide reasonable opportunities for interested persons to comment on such proposed measures, allowing, in particular, for sufficient time for such opportunities; and
 - (c) endeavour to take into account the comments received from interested persons with respect to such proposed measures.

ARTICLE 13.4

Enquiries and Contact Points

- 1. In order to facilitate the effective implementation of this Agreement, and to facilitate communication between the Parties on any matter covered by this Agreement, each Party shall designate a contact point upon the entry into force of this Agreement.
- 2. Upon the request of a Party, the contact point of the other Party shall indicate the office or the official responsible for any particular matter that pertains to the implementation of this Agreement and assist, as necessary, in facilitating communication with the requesting Party.

3. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any interested person of the other Party regarding any measures of general application which are proposed or in force, and their application. Enquiries may be addressed through the contact points established under paragraph 1 or any other mechanism, as appropriate.
4. The Parties recognise that any response provided for in paragraph 3 may not be definitive or legally binding but for information purposes only, unless otherwise provided for in their laws and regulations.
5. Requests or information under this Article shall be conveyed to the other Party through the relevant contact points provided for in paragraph 1.
6. Upon the request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure of general application that the requesting Party considers might affect the operation of this Agreement, regardless of whether the requesting Party has previously been notified of that measure.
7. Each Party shall establish or maintain appropriate mechanism with the task of seeking to effectively resolve problems for interested persons of the other Party that may arise from the application of any measure of general application. Such processes should be easily accessible, time-bound, result-oriented and transparent. They shall be without prejudice to any appeal or review procedures which the Parties establish or maintain. They shall also be without prejudice to the Parties' rights and obligations under Chapter Fourteen (Dispute Settlement) and Chapter Fifteen (Mediation Mechanism).
8. Any information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 13.5

Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application, each Party, in applying such measures to particular persons, goods or services of the other Party in specific cases, shall:

- (a) when proceedings are initiated, endeavour to provide reasonable notice in accordance with its procedures to interested persons of the other Party who are directly affected by such proceedings, 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;
- (b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, insofar as permitted by time, the nature of the proceedings and the public interest; and
- (c) ensure that its procedures are based on and in accordance with its law.

ARTICLE 13.6

Review of Administrative Actions

1. Each Party shall, subject to its domestic law, establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, the correction of administrative actions⁽⁷⁸⁾ relating to matters covered by this Agreement. Such tribunals shall be impartial and shall be independent of the office or authority entrusted with administrative enforcement, and shall not have any substantial interest in the outcome of the matter.

⁽⁷⁸⁾ For greater certainty, the review of administrative actions can take the form of common law judicial review, and the correction of administrative actions may include a referral back to the body that took such action for corrective action.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings have the right to:
 - (a) a reasonable opportunity to support or defend their respective positions; and
 - (b) a decision that was based on the evidence and submissions of record or, where required by law of the Party, based on the record compiled by the administrative authority.
3. Each Party shall ensure, subject to appeal or further review as provided for under the law of that Party, that the decision referred to in paragraph 2 shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

ARTICLE 13.7

Regulatory Quality and Performance and Good Administrative Behaviour

1. The Parties agree to cooperate in promoting regulatory quality and performance in their respective regulatory policies through the exchange of information and best practices.
2. The Parties subscribe to the principles of good administrative behaviour, and agree to cooperate in promoting it in their respective administrations through the exchange of information and best practices.

ARTICLE 13.8

Specific Rules

Specific rules in other Chapters of this Agreement regarding the subject matter of this Chapter shall prevail to the extent that they differ from the provisions of this Chapter.

CHAPTER FOURTEEN

DISPUTE SETTLEMENT

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 14.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually acceptable solution.

ARTICLE 14.2

Scope

This Chapter applies to any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement, except as otherwise expressly provided.

SECTION B

CONSULTATIONS

ARTICLE 14.3

Consultations

1. The Parties shall endeavour to resolve any dispute concerning the interpretation and application of the provisions referred to in Article 14.2 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade Committee, which shall give the reasons for requesting consultations, including the identification of the measures at issue, the applicable provisions referred to in Article 14.2 (Scope), and the reasons for considering the measures as incompatible with such provisions.