

Chapter 15: Transparency, Anti-Corruption, and Responsible Business Conduct – Text of the 2023 Canada – Ukraine Free Trade Agreement

Section A – Definitions

Article 15.1: Definitions

For the purposes of this Chapter:

act or refrain from acting in relation to the performance or exercise of official duties includes any use of the public official's position, whether or not within the official's authorized competence;

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and factual 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;

foreign public official means an individual holding a legislative, executive, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that individual's seniority; or an individual exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

official of a public international organization means an international civil servant or an individual authorized by a public international organization to act on its behalf; and

public official means an individual:

(a) holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that person's seniority;

(b) who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service, as defined

under the Party's law and as applied in the pertinent area of that Party's law; or

(c) defined as a public official under a Party's law.

Section B – Transparency

Article 15.2: Publication

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

2. Each Party shall, to the extent possible:

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

3. 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 legal system, are made publicly available and the date when they enter into force.

4. With respect to a proposed regulation of general application of a Party's central level of government respecting any matter covered by this Agreement that is likely to affect trade or investment between the Parties and that is published in accordance with paragraph 2(a), each Party shall:

- (a) publish the proposed regulation in an official journal of national circulation, or on a free, publicly accessible official website, preferably online and consolidated into a single portal;*
- (b) endeavour to publish the proposed regulation:*
 - (i) no less than 60 days in advance of the date on which comments are due; or*
 - (ii) within another period in advance of the date on which comments are due that provides sufficient time for an interested person to evaluate the proposed regulation, and formulate and submit comments;*
- (c) to the extent possible, include in the publication under subparagraph (a) an explanation of the purpose of, and rationale for, the proposed regulation; and*

- (d) consider comments received during the comment period, and is encouraged to explain any significant modifications made to the proposed regulation, preferably on an official website or in an official online journal of national circulation.

5. With respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1, each Party shall:

- (a) promptly publish the regulation in an official journal of national circulation, or on a free, publicly accessible official website, preferably online and consolidated into a single portal; and
- (b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

Article 15.3: Notification and Provision of Information

1. A Party shall, to the extent possible, notify the other Party of any proposed or existing measure that the Party considers might materially affect the operation of this Agreement, or that substantially affects the interests of the other Party pursuant to this Agreement.

2. A Party shall, at the request of the other Party, promptly provide information and respond to questions related to any proposed or existing measure that the requesting Party considers might materially affect the operation of this Agreement, or substantially affect its interests pursuant to this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

3. Any notification, request, or information related to this Article shall be provided by the relevant contact points.

4. Any notification, answer, or information provided pursuant to this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 15.4: Administrative Proceedings

1. With a view to administering all measures of general application with respect to any matter covered by this Agreement in a consistent, impartial, and reasonable manner, each Party shall ensure in its administrative proceedings applying measures referred to in Article 15.2 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 issue 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 that person's position 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 law.*

Article 15.5: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative bodies, or procedures for the prompt review and, if warranted, correction of final administrative actions regarding matters covered by this Agreement. Each Party shall ensure that its bodies are impartial and independent of the office or authority entrusted with administrative enforcement, and that they do not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to the bodies or procedures referred to in paragraph 1, the parties to the proceedings are entitled 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, if required by its law, on the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that the decision referred to in paragraph 2(b) implemented by, and govern the practice of, the office or authority with respect to the administrative action at issue.

Article 15.6: Cooperation on Promoting Increased Transparency

The Parties shall endeavour to co-operate in bilateral, regional, and multilateral fora on ways to promote transparency in respect of international trade and investment.

Section C – Anti-Corruption

Article 15.7: Scope

1. The Parties affirm their resolve to prevent and combat corruption and bribery in international trade and investment with the understanding that this contributes to efforts to substantially reduce corruption and bribery in all their forms.

2. The Parties recognize the need to build integrity within the public and private sectors and that each sector has complementary responsibilities in this regard.

3. This Section applies to measures to prevent and combat bribery and corruption with respect to any matter covered by this Agreement.

4. The Parties recognize that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

5. Each Party affirms their adherence to the United Nations Convention against Corruption, done at New York on 31 October 2003 (UNCAC), and, to the extent that they are a party, the Inter-American Convention Against Corruption, done at Caracas on 29 March 1996 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris on 17 December 1997 (OECD Anti-Bribery Convention).

6. A Party shall accede to the OECD Anti-Bribery Convention, at the earliest opportunity, if it is not a party to the Convention.

Article 15.8: Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international trade or investment, if committed intentionally, by any person subject to its jurisdiction:

- (a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance or exercise of his or her official duties;
- (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance or exercise of his or her official duties;
- (c) the promise, offering, or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official or another

person or entity, in order that the official act or refrain from acting in relation to the performance or exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

- (d) the aiding or abetting, or conspiracy in the commission of any of the offences described in subparagraphs (a) through (c).*

2. Each Party shall make the commission of an offence described in paragraph 1 or 5 liable to sanctions that take into account the gravity of that offence.

3. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraphs 1 and 5. In particular, each Party shall adopt or maintain measures to ensure that legal persons held liable for offences described in paragraph 1 or 5 are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

4. Each Party shall disallow the tax deductibility of expenses that constitute bribes and other expenses incurred in furtherance of corrupt conduct.

5. To prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

- (a) the establishment of off-the-books accounts;
- (b) the making of off-the-books or inadequately identified transactions;
- (c) the recording of non-existent expenditure;
- (d) the entry of liabilities with incorrect identification of their objects;
- (e) the use of false documents; and
- (f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.

6. Each Party shall consider adopting or maintaining measures to protect, against any unjustified treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraph 1 or 5.

7. The Parties recognize the harmful effects of facilitation payments.

Each Party shall, in accordance with its laws and regulations:

- (a) encourage enterprises to prohibit or discourage the use of facilitation payments; and*
- (b) take steps to raise awareness among its public officials of its bribery laws, with a view to stopping the solicitation and the acceptance of facilitation payments.*

Article 15.9: Cooperation in International Fora

The Parties recognize the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in international trade and investment. The Parties recognize the importance of working together to advance efforts in regional and multilateral fora to prevent and combat bribery and corruption in international trade and investment, including by encouraging and supporting appropriate initiatives.

Article 15.10: Promoting Integrity among Public Officials

1. To fight corruption in matters that affect trade and investment, each Party should promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party

shall, in accordance with the fundamental principles of its legal system, adopt or maintain:

- (a) measures to provide adequate procedures for the selection and training of natural persons for public positions considered by the Party to be especially vulnerable to corruption, and the rotation, if appropriate, of those natural persons to other positions;*
- (b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;*
- (c) policies and procedures to identify and manage actual or potential conflicts of interest of public officials;*
- (d) measures that require senior public officials and other public officials as considered appropriate by the Party, to make declarations to the appropriate authorities regarding, among other things, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and*
- (e) measures to facilitate reporting by public officials of any facts concerning offences described in Article 15.8.1 or 15.8.5 to the*

appropriate authorities, if those facts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable, and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted against public officials who violate these codes or standards.

3. Each Party shall, to the extent consistent with the fundamental principles of its legal system, consider establishing procedures through which a public official accused of an offence described in Article 15.8.1 may, as considered appropriate by that Party, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 15.11: Participation of Private Sector and Society

1. Each Party shall take appropriate measures, within its means and in accordance with the fundamental principles of its legal system, to promote the active participation and safety of individuals, groups, and institutions outside the public sector, such as enterprises, media, civil society, non-governmental organizations, women's organizations, and community-based organizations, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes, and gravity of, and the threat posed by, corruption. To this end, a Party may, for example:

- (a) undertake inclusive public information activities and inclusive public education programs that contribute to non-tolerance of corruption;
- (b) adopt or maintain measures to encourage professional associations and other non-governmental organizations, if appropriate, in their efforts to encourage and assist enterprises, in particular small and medium-sized enterprises (SMEs), in developing internal controls, ethics, and compliance programs or measures for preventing and detecting bribery and corruption in international trade and investment;

- (c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics, and compliance programs or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; and
- (d) adopt or maintain measures that respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning corruption.

2. Each Party shall endeavour to encourage private enterprises, taking into account their structure and size, to:

- (a) adopt or maintain sufficient internal auditing controls to assist in preventing and detecting offences described in Article 15.8.1 or 15.8.5 in matters affecting international trade or investment; and
- (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

3. Each Party shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting,

including anonymously, of any incident that may be considered to constitute an offence described in Article 15.8.1.

4. The Parties recognize the benefits of internal compliance programs in enterprises to combat corruption. Each Party shall encourage enterprises, taking into account their size, legal structure, and the sectors in which they operate, to establish compliance programs for the purpose of preventing and detecting offences described in Article 15.8.1 or 15.8.5.

Article 15.12: Application and Enforcement of Anti-Corruption Laws

1. In accordance with the fundamental principles of its legal system, a Party shall not fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 15.8 through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement, as an encouragement for trade and investment. The Parties recognize that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own laws and legal procedures.

2. In accordance with the fundamental principles of its legal system, each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise their discretion with respect to the

enforcement of its anti-corruption laws. Each Party retains the right to take decisions with regard to the allocation of its resources.

3. The Parties affirm their commitments under applicable international agreements or arrangements to co-operate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in Article 15.8.

Article 15.13: Relation to Other Agreements

Nothing in this Agreement shall affect the rights and obligations of the Parties under the UNCAC, the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000, and if they are a party, the Inter-American Convention Against Corruption, done at Caracas on 29 March 1996, or the OECD Anti-Bribery Convention.

Section D – Responsible Business Conduct

Article 15.14: Responsible Business Conduct

1. Each Party recognizes the importance of responsible business conduct and commits to collaborate with relevant stakeholders to

develop, adopt, promote, strengthen, and implement policies that support a responsible business environment.

2. Each Party recognizes the importance of encouraging enterprises to publicly disclose timely and accurate information on the actual or potential adverse impacts of their activities on people and the environment, with particular consideration for proactive engagement with marginalized groups in order to mitigate or prevent any adverse impacts on them.

3. Each Party affirms that enterprises operating within its jurisdiction are required to comply with all applicable laws, particularly laws concerning human rights, the rights of Indigenous Peoples, gender equality, environmental protection, and labour.

4. Each Party shall encourage enterprises organized or constituted under its laws, or operating in its territory, including SMEs, to incorporate into their business practices and internal policies the internationally recognized standards, guidelines, and principles of responsible business conduct that have been endorsed or are supported by that Party, including the OECD Guidelines for Multinational Enterprises, as amended, and the UN Guiding Principles on Business and Human Rights, as amended. These standards, guidelines, and

principles may address issues such as labour, the environment, gender equality, human rights, and corruption.

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