

CHAPTER TWELVE

TRANSPARENCY

ARTICLE 12.1: DEFINITIONS

For the purposes of this Chapter:

measure of general application means any general or abstract act, procedure, interpretation or other requirement, including non-binding measures. It does not include a ruling that applies to a particular person; and

interested person means any natural or legal person that may be subject to any rights or obligations under measures of general application, within the meaning of Article 12.2.

ARTICLE 12.2: OBJECTIVE AND SCOPE

Recognising the impact which their respective regulatory environment may have on trade between them, the Parties shall pursue an efficient and predictable regulatory environment for economic operators, especially small ones doing business in their territories. The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down clarifications and improved arrangements for transparency, consultation and better administration of measures of general application, in so far as these may have an impact on any matter covered by this Agreement.

ARTICLE 12.3: PUBLICATION

1. Each Party shall ensure that measures of general application that may have an impact on any matter covered by this Agreement:

- (a) are readily available to interested persons, in a non-discriminatory manner, via an officially designated medium, and where feasible and possible, electronic means, in such a manner as to enable interested persons and the other Party to become acquainted with them;
- (b) provide an explanation of the objective of, and rationale for, such measures; and
- (c) allow for sufficient time between publication and entry into force of such measures, taking due account of the requirements of legal certainty, legitimate expectations and proportionality.

2. Each Party shall:

- (a) endeavour to publish in advance any measure of general application that it proposes to adopt or to amend, including an explanation of the objective of, and rationale for the proposal;
- (b) provide reasonable opportunities for interested persons to comment on such proposed measure, 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 measure.

ARTICLE 12.4: ENQUIRIES AND CONTACT POINTS

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any interested person regarding any measures of general application which may have an impact on matters covered by this Agreement which are proposed or in force, and how they would be applied. Enquiries may be addressed through enquiry or contact points established under this Agreement or any other mechanism as appropriate.

2. The Parties recognise that such response provided for in paragraph 1 may not be definitive or legally binding but for information purposes only, unless otherwise provided for in their laws and regulations.

3. Upon 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 been previously notified of that measure.

4. Each Party shall endeavour to identify or create enquiry or contact points for interested persons of the other Party with the task of seeking to effectively resolve problems for them that may arise from the application of measures 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 Annex 14-A (Mediation Mechanism for Non-Tariff Measures).

ARTICLE 12.5: ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial and reasonable manner all measures of general application which may have an impact on matters covered by this Agreement, each Party in applying such measures to particular persons, goods or services of the other Party in specific cases, shall:

- (a) endeavour to provide interested persons of the other Party, who are directly affected by a proceeding, with reasonable notice, in accordance with its procedures, 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 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, in so far as time, the nature of the proceeding and the public interest permit; and
- (c) ensure that its procedures are based on, and in accordance with its law.

ARTICLE 12.6: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative action relating to 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 its law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, 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 12.7: REGULATORY QUALITY AND PERFORMANCE AND GOOD ADMINISTRATIVE BEHAVIOUR

1. The Parties agree to cooperate in promoting regulatory quality and performance, including through exchange of information and best practices on their respective regulatory reform processes and regulatory impact assessments.

2. The Parties subscribe to the principles of good administrative behaviour, and agree to cooperate in promoting it, including through exchange of information and best practices.

ARTICLE 12.8: NON-DISCRIMINATION

Each Party shall apply to interested persons of the other Party transparency standards no less favourable than those accorded to its own interested persons, to the interested persons of any third country, or to any third country, whichever are the best.