

CHAPTER 19

TRANSPARENCY

ARTICLE 19.1

Definitions

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

- (a) "administrative decision" means a decision that affects the rights or obligations of a person in an individual case and covers an administrative action or the failure to take an administrative action or decision as provided for in a Party's laws and regulations;
- (b) "interested person" means any natural or juridical person that may be affected by a measure of general application; and
- (c) "measure of general application" means a law, regulation, judicial decision, procedure or administrative ruling of general application that may have an impact on any matter covered by this Agreement.

ARTICLE 19.2

Objectives

Recognising the impact which its regulatory environment may have on trade and investment between the Parties, each Party shall aim to promote a transparent and predictable regulatory environment and efficient procedures for economic operators, especially SMEs, in accordance with the provisions of this Chapter.

ARTICLE 19.3

Publication

1. Each Party shall ensure that a measure of general application with respect to any matter covered by this Agreement:
 - (a) is promptly published via an officially designated medium and, if feasible, by electronic means or is otherwise made available in such a manner as to enable any person to become acquainted with it;
 - (b) provides an explanation of its objective and rationale; and
 - (c) allows for sufficient time between its publication and entry into force, except when this is not possible for reasons of urgency.

2. To the extent possible, when adopting or amending major laws or regulations of general application with respect to any matter covered by this Agreement, each Party shall, in accordance with its respective rules and procedures:

- (a) publish in advance the draft law or regulation or consultation documents providing details of the objective of, and rationale for, such law or regulation;
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such draft law or regulation or consultation documents; and
- (c) endeavour to take into consideration the comments received on such draft law or regulation or consultation documents.

ARTICLE 19.4

Enquiries

1. No later than 3 (three) years after the date of entry into force of this Agreement, each Party shall establish or maintain appropriate mechanisms for receiving and responding to enquiries from any person regarding any measure of general application which is proposed or in force and how it would be applied with respect to any matter covered by this Agreement.

2. Upon request of a Party, the other Party shall promptly provide information and respond to enquiries pertaining to any measure of general application or any proposal to adopt or amend any measure of general application with respect to any matter covered by this Agreement that the requesting Party considers may affect the operation of this Agreement.

ARTICLE 19.5

Administration of measures of general application

1. Each Party shall administer in an objective, impartial and reasonable manner all measures of general application with respect to any matter covered by this Agreement.
2. Each Party, when applying measures of general application to persons, goods or services of the other Party in specific cases, shall:
 - (a) endeavour to provide persons that are directly affected by administrative proceedings¹ with reasonable notice, in accordance with its laws and regulations, when administrative proceedings are initiated, 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 question; and
 - (b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision, in so far as time, the nature of the proceedings and the public interest permit.

ARTICLE 19.6

Review and appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purposes of the prompt review or appeal and, if warranted, the correction of an administrative decision with respect to any matter covered by this Agreement. Each Party shall ensure that its procedures for review or appeal are carried out in a non-discriminatory and impartial manner by tribunals that are impartial and independent of the authority entrusted with administrative enforcement,

¹ For greater certainty, in the case of matters covered by Chapter 15 such persons are the addressees of a decision by a Party's competition authority.

and composed by individuals with no substantial interest in the outcome of the matter.

2. Each Party shall ensure that the parties to the procedures referred to in paragraph 1 are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on evidence and submissions of record or, if required by its law, the record compiled by the administrative authority.

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

ARTICLE 19.7

Regulatory quality and performance and good regulatory practices

1. The Parties recognise the principles of good regulatory practices and shall promote regulatory quality and performance. In particular, the Parties shall endeavour to:
 - (a) encourage the use of regulatory impact assessments when developing major initiatives; and
 - (b) establish or maintain procedures to promote the regular retrospective evaluation of measures of general interest.
2. The Parties shall endeavour to cooperate in regional and multilateral fora to promote good regulatory practices and transparency in respect of international trade and investment in areas covered by this Agreement.

ARTICLE 19.8

Relation to other Chapters

This Chapter applies without prejudice to any specific rules in other Chapters of this Agreement.