

CHAPTER 12

Transparency

Section A – Publication, Notification and Administration of Laws

Article 12-1: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any such measure that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 12-2: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.
2. On request of the other Party, a Party shall, to the maximum extent possible, promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall not be determinative as to whether the measure is consistent with this Agreement.

Article 12-3: Administrative Proceedings

With a view to administering all measures of general application affecting matters covered by this Agreement in a consistent, impartial and reasonable manner, each Party shall ensure that in its administrative proceedings applying the measures referred to in Article 12-1 to particular persons or goods of the other Party in specific cases:

- (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic 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 dispute;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and
- (c) its procedures are in accordance with domestic law.

Article 12-4: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding 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 domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 12-5: Cooperation on Promoting Increased Transparency

The Parties agree to cooperate, to the extent possible, in bilateral, regional and multilateral fora on ways to promote transparency in respect of international trade.

Article 12-6: Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit 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 or good of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Section B – Anti-Corruption

Article 12-7: Statement of Principles

The Parties affirm their resolve to prevent and combat bribery and corruption in international trade.

Article 12-8: Anti-Corruption Measures

1. The Parties affirm their obligations under the *United Nations Convention against Corruption*, done at New York, 31 October 2003.

2. Each Party shall adopt or maintain the necessary legislative or other measures to establish, in matters affecting international trade, as criminal offences when committed intentionally:

- (a) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the 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 himself or herself or another person or entity, in order that the official act or refrain from acting in relation to the performance 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) aiding, abetting or conspiring to commit any of the offences described in subparagraphs (a) through (c).

3. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over criminal offences referred to in paragraph 2 that have been committed in its territory.

4. Each Party shall make the commission of an offence covered by this Article liable to sanctions that take into account the gravity of that offence.

5. Each Party shall adopt such measures, as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences covered by this Article. In particular, each Party shall ensure that legal persons convicted for offences established in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

6. Each Party shall consider incorporating in its domestic legal system at the national level appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Article.

7. Subparagraph 2(c) applies without prejudice to any obligations of each of the Parties as to diplomatic immunity under international law.

Article 12-9: Cooperation in International Fora

1. The Parties recognize the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in international trade.

2. The Parties agree to work together to advance efforts in regional and multilateral fora to prevent and combat bribery and corruption in international trade, including by encouraging and supporting appropriate initiatives.

Article 12-10: Definitions

For purposes of this Section:

- (a) **foreign public official** means any person holding a legislative, executive, administrative, or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign country, including for a public agency or public enterprise;
- (b) **public official** means any person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected and whether permanent or temporary.