

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY AND CONSISTENCY
MARCH 1, 2004

CHAPTER TWENTY
TRANSPARENCY

ARTICLE 20.1 : CONTACT POINTS

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement.
2. On the request of the other Party, the contact points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

ARTICLE 20.2 : 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 laws, regulations, procedures, and administrative rulings that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

ARTICLE 20.3 : 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 promptly provide information and respond to questions pertaining to any actual or proposed measure that the first Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, whether or not the first Party has been previously notified of that measure.
3. Any notification, request or information under this Article shall be provided to the other Party through the relevant contact points.
4. Any notification or information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

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ARTICLE 20.4 : ADMINISTRATIVE AGENCY PROCESSES²⁰⁻¹

With a view to administering its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement in a consistent, impartial, and reasonable manner, each Party shall ensure that its administrative agencies, in applying such measures to particular persons, goods, or services of the other Party in specific cases through adjudication, rulemaking, licensing, determination and approval processes:

- (a) provide, wherever possible, persons of the other Party that are directly affected by an agency's processes reasonable notice, in accordance with domestic procedures, when a process is initiated, including a description of the nature of the relevant process, a statement of the legal authority under which the process is initiated, and a general description of any issues in controversy;
- (b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process, and the public interest permit; and
- (c) follow procedures that are in accordance with domestic law.

ARTICLE 20.5 : REVIEW AND APPEAL

1. Each Party shall maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review²⁰⁻² 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

20-1 For avoidance of doubt, nothing in Article 20.4 requires a Party to provide treatment in relation to persons, goods or services of the other Party that is more favourable than that provided to that Party's persons, goods or services.

20-2 For avoidance of doubt, 'review' includes merits (*de novo*) review only where provided for under the domestic law of the Party.

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- (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 decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

ARTICLE 20.6 : DEFINITIONS

For the purposes of this Chapter:

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, 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.