

CHAPTER 20

GOOD REGULATORY PRACTICES

Article 20.1: Definitions

For the purposes of this Chapter:

covered regulatory measures means the regulatory measures determined by each Party to be covered by this Chapter in accordance with Article 20.3; and

regulatory measures means those measures of general application related to any matter covered by this Agreement adopted by regulatory authorities with which compliance is mandatory.

Article 20.2: General Provisions

1. For the purposes of this Chapter, good regulatory practices refers to the use of best practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate the achievement of domestic policy objectives, and to the efforts by governments to enhance regulatory cooperation with the aim of achieving those objectives, as well as to promote international trade and investment, economic growth and employment.

2. The Parties affirm the importance of:

- (a) maintaining and enhancing the benefits of integration promoted by this Agreement through good regulatory practices, facilitating increased trade in goods and services, as well as investment between the Parties;
- (b) each Party's sovereign right to identify its regulatory priorities and to establish and implement regulatory measures to address these priorities, in the areas and levels of government that the Party considers appropriate;
- (c) the role that regulation plays in achieving public policy objectives;
- (d) taking into account input from interested persons in the development of regulatory measures; and
- (e) developing measures to foster regulatory cooperation and capacity building between the Parties.

3. The Parties acknowledge that:

- (a) regulatory cooperation, both formal and informal, can improve the alignment of domestic regulation between key trading partners to remove potential barriers caused by regulatory differences and to support trade; and
- (b) bodies who develop or implement regulations have a key role to play in regulatory cooperation and should consider the range of regulatory cooperation activities available to increase the alignment of domestic regulation internationally and between key trading partners.

Article 20.3: Scope of Application

Each Party shall, no later than two years after the date of entry into force of this Agreement, determine and make publicly available the scope of its covered regulatory measures, in accordance with its laws and regulations. In determining the scope of covered regulatory measures, each Party should aim to achieve significant coverage.

Article 20.4: Establishment of Coordination and Review Processes or Mechanisms

1. The Parties recognise that good regulatory practices can be encouraged through domestic mechanisms that facilitate interagency coordination associated with processes for the elaboration and review of covered regulatory measures. Accordingly, each Party shall endeavour to ensure the existence of mechanisms or processes that facilitate the effective interagency coordination and review of proposed covered regulatory measures. For this purpose, each Party should consider establishing and maintaining a national or central coordinating body or mechanism.

2. The Parties recognise that while the mechanisms or processes referred to in paragraph 1 may vary between Parties depending on their respective circumstances, including differences in levels of development and political and institutional structures, these should, in general, be contained in documents that include a description of them and that may be made available to the public. These mechanisms or processes should have, as overarching characteristics, the ability to:

- (a) review the proposed covered regulatory measures in order to determine whether good regulatory practices have been considered in their preparation, which may include, but are not limited to those set out in Article 20.5, and make recommendations based on that review;
- (b) strengthen consultation and coordination among domestic authorities so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across authorities;
- (c) make recommendations for systemic regulatory improvements; and

- (d) publicly report on covered regulatory measures that have been reviewed and any proposals for systemic regulatory improvement, as well as any updates on changes to the processes and mechanisms referred to in paragraph 1.

Article 20.5: Implementation of Core Good Regulatory Practices

1. Each Party should encourage its competent regulatory authorities, in accordance with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or when appropriate, other criteria as established by the Party, to assist them in designing regulatory measures that best achieve the objective pursued by that Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

2. Recognising that differences in the Parties' institutional, social, cultural, legal and developmental circumstances may result in specific regulatory approaches, the regulatory impact assessment procedure should, among other things:

- (a) assess the need for a proposed regulatory measure, including a description of the nature and significance of the problem;
- (b) examine feasible alternatives, including, to the extent possible and consistent with their laws and regulations, the corresponding costs and benefits, recognising that some costs and benefits are difficult to quantify and monetise;
- (c) explain the reasons for concluding that the selected alternative achieves the policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits and the potential for managing risks; and
- (d) rely on the best reasonably obtainable existing information, including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates, capacities and resources of the particular regulatory authority.

3. When conducting regulatory impact assessments, the regulatory authorities may take into consideration the potential impact of the proposed regulation on SMEs.

4. To the extent appropriate and consistent with its laws and regulations, each Party should encourage its relevant regulatory authorities to consider regulatory measures of the other Party, as well as relevant developments in international, regional and other fora when developing covered regulatory measures.

5. Each Party should ensure, that new covered regulatory measures are plainly written, concise, organised and easy to understand, recognising that some measures involve technical issues, for which specialised knowledge might be required to understand and apply them.

6. Subject to its laws and regulations, each Party should ensure that relevant regulatory authorities provide public access to information on new covered regulatory measures and, if possible, make this information available online.

7. Each Party should review its covered regulatory measures, at intervals it deems appropriate, to determine whether they should be modified, streamlined, expanded or repealed so as to make the regulatory regime of the Party more effective in achieving its policy objectives.

8. Each Party should, in a manner it deems appropriate and consistent with its laws and regulations, provide public notice, on an annual basis, of any covered regulatory measure that it reasonably expects its regulatory authorities to issue within the following twelve-month period.

Article 20.6: Contact Points

1. Each Party shall designate and notify the other Party its contact point in matters arising under this Chapter 60 days after the entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to its contact point.

2. Each contact point shall be responsible for:

- (a) providing information relating to the implementation of this Chapter, at the request of the other Party;
- (b) consulting and coordinating with its respective regulatory authorities, as appropriate, on matters arising under this Chapter;
- (c) circulating the report of implementation submitted by each Party in accordance with Article 20.8; and
- (d) facilitating the regulatory cooperation activities that may be undertaken in accordance with Article 20.7.

Article 20.7: Cooperation

1. The Parties shall cooperate in order to implement this Chapter and maximise the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include:

- (a) information exchanges, dialogues or meetings;
- (b) information exchanges, dialogues or meetings with interested persons, including SMEs, of the other Party, and international organisations;

- (c) training programmes, seminars and other assistance initiatives;
 - (d) strengthening cooperation and other relevant activities between regulatory authorities; and
 - (e) other activities that Parties may agree.
2. The Parties recognise that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's regulatory measures are available online.
 3. The Parties may undertake regulatory cooperation activities on a voluntary basis.

Article 20.8: Report of Implementation and Review

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity building activities, each Party shall submit a report of implementation of this Chapter within three years of the date of entry into force of this Agreement and at least once every three years thereafter. Each Party shall circulate its report through the contact points designated pursuant to Article 20.6.
2. In its initial report, each Party shall describe the actions it has taken since the date of entry into force of this Agreement and the actions it plans to take to implement this Chapter, including those to:
 - (a) establish a body or mechanism to facilitate effective interagency coordination and review of proposed covered regulatory measures, in accordance with Article 20.4;
 - (b) encourage its regulatory authorities to conduct regulatory impact assessments in accordance with Articles 20.5.1 and 20.5.2;
 - (c) ensure that new covered regulatory measures are accessible, in accordance with Articles 20.5.5 and 20.5.6;
 - (d) review existing covered regulatory measures, in accordance with Article 20.5.7; and
 - (e) make known to the public the annual notice of covered regulatory measures that are intended to be issued or amended during the next 12 months, in accordance with Article 20.5.8.
3. In subsequent reports, each Party shall describe the actions it has taken since the previous reports, and those that it plans to adopt for the implementation of this Chapter.
4. At least once every three years after the date of entry into force of this Agreement, the Parties shall review developments in good regulatory practices and the Parties' experiences in implementing this Chapter, including the implementation reports submitted under paragraph 1,

with a view towards considering whether to make recommendations to the Free Trade Commission for improving the provisions of this Chapter so as to further enhance the benefits of this Agreement. During this review, the Parties may discuss or raise questions on specific aspects of the report of a Party. Likewise, the Parties may identify opportunities for future assistance or cooperation activities.

Article 20.9: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

Article 20.10: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 23 (Dispute Settlement) for any matter arising under this Chapter.