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CHAPTER 20

GOOD REGULATORY PRACTICES

ARTICLE 20.1

General principles

1. Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles underlying its regulatory system.
2. Nothing in this Chapter shall be construed as to require a Party to:
 - (a) deviate from its domestic procedures for preparing and adopting regulatory measures;
 - (b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or
 - (c) achieve any particular regulatory outcome.
3. Nothing in this Chapter shall be construed as to prevent a Party from implementing regulatory measures in urgent or unforeseen circumstances.

ARTICLE 20.2

Scope

1. This Chapter applies to regulatory measures made by regulatory authorities in respect of any matter covered by this Agreement.

2. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of:

(a) for the Union, the Member States; and

(b) for Australia, the States and Territories of Australia.

ARTICLE 20.3

Definitions

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

(a) "regulatory authority" means:

(i) for the Union, the European Commission; and

(ii) for Australia, departments and agencies of the Commonwealth government¹;

(b) "regulatory measures" means:

(i) for the Union:

(A) regulations and directives, as provided in Article 288 TFEU;

(B) implementing and delegated acts, as provided in Articles 290 and 291 TFEU, respectively; and

¹ For greater certainty, this does not include courts or tribunals.

- (ii) for Australia, Acts and legislative instruments made under an Act of the Commonwealth Parliament.

ARTICLE 20.4

Internal coordination of regulatory development

Each Party shall maintain internal coordination or review processes or mechanisms with respect to regulatory measures that its regulatory authorities are preparing. Such processes or mechanisms should seek, *inter alia*, to:

- (a) foster good regulatory practices, including those provided for in this Chapter;
- (b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;
- (c) ensure compliance with the Party's international trade and investment obligations; and
- (d) promote consideration of the impacts of the regulatory measures under preparation, including those on SMEs.

ARTICLE 20.5

Regulatory processes and mechanisms

Each Party shall establish, maintain and make publicly available the processes and mechanisms used by its regulatory authority to prepare, evaluate or review major² regulatory measures. Descriptions of these processes and mechanisms may refer to relevant guidelines, rules or procedures, including those regarding opportunities for the public to provide comments.

² The regulatory authority of each Party may determine what constitutes a "major" regulatory measure for that Party for the purposes of this Chapter.

ARTICLE 20.6

Early information on planned regulatory measures

1. Each Party shall endeavour to publish, where possible on an annual basis, information about proposed major regulatory measures.
2. With respect to the major regulatory measures referred to in paragraph 1, each Party should make publicly available, at an early appropriate stage:
 - (a) a brief description of its scope and objectives;
 - (b) any opportunities for public consultations; and
 - (c) if appropriate, the estimated timing for its adoption.

ARTICLE 20.7

Public consultations

1. When preparing an impact assessment for a major regulatory measure, the regulatory authority of a Party shall, in accordance with its respective rules and procedures:
 - (a) publish either the draft regulatory measure or consultation documents providing sufficient details about the regulatory measure under preparation;
 - (b) offer, on a non-discriminatory basis, reasonable opportunities for any person³ to provide comments⁴; and

³ For greater certainty, this point does not prevent a regulatory authority from undertaking targeted consultations with interested parties in accordance with its rules and procedures.

⁴ For greater certainty, this paragraph should be implemented consistently with each Party's obligations under other international agreements, such as the Framework Convention on Tobacco Control done at Geneva on 21 May 2003.

(c) consider any comments received.

2. The regulatory authority of each Party should make use of electronic means of communication and seek to maintain official websites for the purposes of providing information and receiving comments related to public consultations.

3. When preparing a major regulatory measure, each Party shall endeavour to make publicly available a summary of, or the results of, the consultations and any comments received, except to the extent necessary to protect confidential information or personal data or to withhold inappropriate content.

ARTICLE 20.8

Impact assessment

1. The regulatory authority of each Party affirms its intention to carry out, in accordance with its respective rules and procedures, an impact assessment of any major regulatory measures it is preparing.

2. When carrying out an impact assessment, the regulatory authority of each Party shall consider:

(a) the need for the major regulatory measure, including the nature and the significance of the problem the measure intends to address;

(b) feasible and appropriate regulatory and non-regulatory alternatives, including the option of not regulating, that would achieve the Party's public policy objective;

(c) to the extent possible and relevant, the potential social, economic and environmental impact of those regulatory and non-regulatory alternatives, including on international trade and investment, and on SMEs; and

(d) how those regulatory and non-regulatory alternatives under consideration relate to relevant international standards, if any, including the reason for any divergence, where appropriate.

3. With respect to any impact assessment that a regulatory authority has conducted for a major regulatory measure, the regulatory authority shall prepare a final report detailing the factors it considered in its assessment and the relevant findings. Such reports shall be made publicly available no later than when the measure is made publicly available.

ARTICLE 20.9

Retrospective evaluation

1. Each Party shall maintain processes or mechanisms to promote periodic retrospective evaluations of its major regulatory measures in effect.

2. When conducting a periodic retrospective evaluation, the regulatory authority of a Party shall consider whether there are opportunities to more effectively achieve public policy objectives and to reduce unnecessary regulatory burdens, including on SMEs.

3. Each Party shall make publicly available its plans for, and the results of, such retrospective evaluations.

ARTICLE 20.10

Regulatory register

Each Party shall ensure that its regulatory measures in effect are published in a designated register that is publicly available on a single freely accessible website. The website should allow searches for regulatory measures by citations or by word. Each Party shall periodically update its register.

ARTICLE 20.11

Exchange of information on good regulatory practices

The Parties shall endeavour to exchange information on the regulatory practices set out in this Chapter.

ARTICLE 20.12

Dispute settlement

Chapter 24 (Dispute settlement) does not apply to this Chapter.