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CHAPTER 21

TRANSPARENCY

ARTICLE 21.1

Objectives

1. Recognising the impact that their respective regulatory environment may have on trade and investment between them, the Parties aim to provide efficient procedures and a predictable regulatory environment.
2. The Parties affirm their transparency commitments under the WTO Agreement and build on those commitments in this Chapter.

ARTICLE 21.2

Definitions

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

- (a) "administrative decision" means a decision or action of an administrative character with legal effect that applies to a specific person, good or service in an individual case and covers the failure to take an administrative decision when required by a Party's law;

- (b) "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:
- (i) a determination or ruling made in an administrative or arbitral proceeding that applies to a specific person, good or service of the other Party in an individual case; or
 - (ii) a ruling that adjudicates with respect to a particular act or practice.

ARTICLE 21.3

Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published via an official medium and, where feasible, by electronic means, or otherwise made available in such a manner as to enable any person to become acquainted with them.
2. To the extent possible, each Party shall make publicly available the objective of, and rationale for, its laws, regulations, procedures and administrative rulings of general application referred to in paragraph 1.
3. Each Party shall endeavour to provide for sufficient time between publication and entry into force of its laws and regulations with respect to any matter covered by this Agreement, except where that is not possible for reasons of urgency. This paragraph does not apply to administrative rulings of general application.

ARTICLE 21.4

Enquiries and provision of information

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries

from any person regarding its laws or regulations with respect to any matter covered by this Agreement.

2. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to its laws or regulations, whether in force or in preparation, with respect to any matter covered by this Agreement, unless a specific mechanism is established under another Chapter of this Agreement.

ARTICLE 21.5

Administrative proceedings

1. Each Party shall administer its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement in an objective, consistent, impartial and reasonable manner.

2. In its administrative proceedings that apply laws, regulations, procedures or administrative rulings of general application to a person, good or service of the other Party, each Party shall:

- (a) wherever possible, when an administrative proceeding is initiated, provide a person of the other Party that is directly affected by that proceeding with reasonable notice, in accordance with its law, 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 question;
- (b) provide a person that is directly affected by an administrative proceeding with a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision where permitted by time, the nature of the proceeding and the public interest; and
- (c) ensure that administrative proceedings are conducted in accordance with its law.

ARTICLE 21.6

Review and appeal¹

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative decision with respect to any matter covered by this Agreement. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner. Such tribunals shall be impartial and independent of the authority entrusted with administrative enforcement powers.
2. With respect to the tribunals or procedures referred to in paragraph 1, each Party shall ensure that the parties before those tribunals or to those procedures are provided with:
 - (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 its law, the record compiled by the relevant authority.
3. Each Party shall ensure that the decision referred to in point (b) of paragraph 2, subject to appeal or further review as provided for in its law, is implemented by the authority entrusted with administrative enforcement powers.

ARTICLE 21.7

Relation to other Chapters

The specific transparency rules in other Chapters supplement the provisions set out in this Chapter.

¹ For greater certainty, for Australia, "review" includes merits (*de novo*) review only if provided for under its law.