

**Draft**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**June 18, 2004**

**CHAPTER SEVENTEEN**  
**TRANSPARENCY**

ARTICLE 17.1: 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 measures that it proposes to adopt; and
  - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

ARTICLE 17.2: NOTIFICATION AND PROVISION OF INFORMATION

1. To the maximum extent possible, each Party shall notify the other Party of any actual or proposed 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 proposed or actual measure, whether or not the other 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.

ARTICLE 17.3: ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 17.1 to particular persons, goods, or services of the other Party in specific cases, that:

- (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 controversy;

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- (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 time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

ARTICLE 17.4: 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 office or authority with respect to the administrative action at issue.

ARTICLE 17.5: ANTI-CORRUPTION

1. The Parties reaffirm their resolve to eliminate bribery and corruption in international trade and investment.
2. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:
  - (a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

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- (b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;
  - (c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and
  - (d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in this paragraph.
3. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 2.<sup>1</sup>
4. Each Party shall adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery described in paragraph 2.
5. The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

ARTICLE 17.6: DEFINITIONS

For purposes of this Chapter:

- (a) **act or refrain from acting in relation to the performance of official duties** includes any use of the official's position, whether or not within the official's authorized competence;
- (b) **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:

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<sup>1</sup> For greater certainty, the Parties confirm that the criminal measures described in paragraph 2 shall apply to natural persons and enterprises.

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- (i) 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
  - (ii) a ruling that adjudicates with respect to a particular act or practice.
- (c) **foreign official** means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;
- (d) **public function** means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as public procurement, at the central level of government; and
- (e) **public official** means any official or employee of a Party at the central level of government, whether appointed or elected.