

CHAPTER 25

REGULATORY COHERENCE

Article 25.1: Definitions

For the purposes of this Chapter:

covered regulatory measure means the regulatory measure determined by each Party to be subject to this Chapter in accordance with Article 25.3 (Scope of Covered Regulatory Measures); and

regulatory measure means a measure of general application related to any matter covered by this Agreement adopted by regulatory agencies with which compliance is mandatory.

Article 25.2: General Provisions

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

2. The Parties affirm the importance of:

- (a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;
- (b) each Party's sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels 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 regulatory cooperation and capacity building between the Parties.

Article 25.3: Scope of Covered Regulatory Measures

Each Party shall promptly, and no later than one year after the date of entry into force of this Agreement for that Party, determine and make publicly available the scope of its covered regulatory measures. In determining the scope of covered regulatory measures, each Party should aim to achieve significant coverage.

Article 25.4: Coordination and Review Processes or Mechanisms

1. The Parties recognise that regulatory coherence can be facilitated through domestic mechanisms that increase interagency consultation and coordination associated with processes for developing regulatory measures. Accordingly, each Party shall endeavour to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed covered regulatory measures. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.

2. The Parties recognise that while the processes or mechanisms 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), they should generally have as overarching characteristics the ability to:

- (a) review proposed covered regulatory measures to determine the extent to which the development of such measures adheres to good regulatory practices, which may include but are not limited to those set out in Article 25.5 (Implementation of Core Good Regulatory Practices), and make recommendations based on that review;
- (b) strengthen consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies;
- (c) make recommendations for systemic regulatory improvements; and
- (d) publicly report on regulatory measures reviewed, any proposals for systemic regulatory improvements, and any updates on changes to the processes and mechanisms referred to in paragraph 1.

Each Party should generally produce documents that include descriptions of those processes or mechanisms and that can be made available to the public.

Article 25.5: Implementation of Core Good Regulatory Practices

1. To assist in designing a measure to best achieve the Party's objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the 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, regulatory impact assessments conducted by a Party should, among other things:

- (a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem;
- (b) examine feasible alternatives, including, to the extent feasible and consistent with laws and regulations, their costs and benefits, such as risks involved as well as distributive impacts, recognising that some costs and benefits are difficult to quantify and monetise;
- (c) explain the grounds 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 and resources of the particular regulatory agency.

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

4. Each Party should ensure that new covered regulatory measures are plainly written and are clear, concise, well organised and easy to understand, recognising that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

5. Subject to its laws and regulations, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and, where practicable, make this information available online.

6. Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives.

7. Each Party should, in a manner it deems appropriate, and consistent with its laws and regulations, provide annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue within the following 12-month period.

8. To the extent appropriate and consistent with its law, each Party should encourage its relevant regulatory agencies to consider regulatory measures in other Parties, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

Article 25.6: Committee on Regulatory Coherence

1. The Parties hereby establish a Committee on Regulatory Coherence (Committee), composed of government representatives of the Parties.

2. The Committee shall consider issues associated with the implementation and operation of this Chapter. The Committee shall also consider identifying future priorities, including potential sectoral initiatives and cooperative activities, involving issues covered by this Chapter and issues related to regulatory coherence covered by other Chapters of this Agreement.

3. In identifying future priorities, the Committee shall take into account the activities of other committees, working groups and any other subsidiary body established under this Agreement and shall coordinate with them in order to avoid duplication of activities.

4. The Committee shall ensure that its work on regulatory cooperation offers value in addition to initiatives underway in other relevant fora and avoids undermining or duplicating such efforts.

5. Each Party shall designate and notify a contact point to provide information, on request by another Party, regarding the implementation of this Chapter in accordance with Article 27.5 (Contact Points).

6. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

7. At least once every five years after the date of entry into force of this Agreement, the Committee shall consider developments in the area of good regulatory practices and in best practices in maintaining processes or mechanisms

referred to in Article 25.4.1 (Coordination and Review Processes or Mechanisms), as well as the Parties' experiences in implementing this Chapter with a view towards considering whether to make recommendations to the Commission for improving the provisions of this Chapter so as to further enhance the benefits of this Agreement.

Article 25.7: Cooperation

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to 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 with other Parties;
- (b) information exchanges, dialogues or meetings with interested persons, including with SMEs, of other Parties;
- (c) training programmes, seminars and other relevant assistance;
- (d) strengthening cooperation and other relevant activities between regulatory agencies; and
- (e) other activities that Parties may agree.

2. The Parties further recognise that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's regulatory measures are centrally available.

Article 25.8: Engagement with Interested Persons

The Committee shall establish appropriate mechanisms to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing regulatory coherence.

Article 25.9: Notification of Implementation

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity building activities under this Chapter, each Party shall submit a notification of implementation to the Committee through the contact points designated pursuant to Article 27.5 (Contact Points) within two years of the date of entry into force of this Agreement for that Party and at least once every four years thereafter.

2. In its initial notification, each Party shall describe the steps that it has taken since the date of entry into force of this Agreement for that Party, and the steps that it plans to take to implement this Chapter, including those to:

- (a) establish processes or mechanisms to facilitate effective interagency coordination and review of proposed covered regulatory measures in accordance with Article 25.4 (Coordination and Review Processes or Mechanisms);
- (b) encourage relevant regulatory agencies to conduct regulatory impact assessments in accordance with Article 25.5.1 (Implementation of Core Good Regulatory Practices) and Article 25.5.2;
- (c) ensure that covered regulatory measures are written and made available in accordance with Article 25.5.4 (Implementation of Core Good Regulatory Practices) and Article 25.5.5;
- (d) review its covered regulatory measures in accordance with Article 25.5.6 (Implementation of Core Good Regulatory Practices); and
- (e) provide information to the public in its annual notice of prospective covered regulatory measures in accordance with Article 25.5.7 (Implementation of Core Regulatory Practices).

3. In subsequent notifications, each Party shall describe the steps, including those set out in paragraph 2, that it has taken since the previous notification, and those that it plans to take to implement this Chapter, and to improve its adherence to it.

4. In its consideration of issues associated with the implementation and operation of this Chapter, the Committee may review notifications made by a Party pursuant to paragraph 1. During that review, Parties may ask questions or discuss specific aspects of that Party's notification. The Committee may use its review and discussion of a notification as a basis for identifying opportunities for assistance and cooperative activities to provide assistance in accordance with Article 25.7 (Cooperation).

Article 25.10: 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 25.11: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.