

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter IV Transparency

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Article 1. [Definitions]

[1.1. For the purposes of this Chapter, **an 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:]

- [a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case; or]
- [b) a ruling that adjudicates with respect to a particular act or practice.]

Article 2. Contact Points

2.1. Each Party shall [notify] [communicate] [to the FTAA Secretariat] a [general] [national] contact point to facilitate communication between the Parties on any matter covered by this Agreement. [At the request of a Party, the contact point of the other Party shall indicate the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.]

[2.2. Likewise, each Party shall [notify] [communicate] [the FTAA Secretariat] of specific contact points to facilitate communication between the Parties [in accordance with the provisions established in this Agreement] [as established in Annex XX].]

2.3. The [notification] [communication] of the contact points shall include the name of the institution, position of the responsible person, the office, address, telephone number, fax number, and electronic mail address. This information is to be updated as required.

Article 3. Publication

[3.1. Subject to the provisions of the Chapters of this Agreement,] each Party shall ensure that its laws, regulations, [procedures,] [judicial decisions] and [administrative rulings of general application] [that it puts into force] [that it has put into force] and pertaining to the matters covered under this Agreement, shall be published promptly [or otherwise made available in such a manner] as to enable Parties and interested [sectors or] [persons] to become acquainted with them. [Agreements relating to international trade policy that may affect the obligations arising from this Agreement which are in force between the Government or a governmental agency of any Party and the Government or governmental agency of any other Party shall also be published.]

[3.2. To the extent possible, [and as a general principle,] each Party shall:]

- [a) publish in advance any measure, as referred to in Article 3.1., that it proposes to adopt; and]
- [b) provide [interested persons and Parties] [the other Parties and any of their nationals] a reasonable opportunity to comment on such proposed measures.]

Article 4. Notifications and Provision of Information

[4.1. Unless otherwise agreed, all the notifications that are referred to in this Agreement should be made to the [general] [national] contact points of each Party,] [through the FTAA Secretariat].]

[4.2. [To the [maximum] extent possible,] each Party shall notify [the other Parties] [any other Party with an interest in the matter] [the Secretariat] of any [proposed] measure [as referred to in Article 3.1 (Publication) adopted after the entry into force of this Agreement] [that the Party considers] that may [materially] affect the operation of this Agreement or otherwise materially affect the interests of the other Party [under this Agreement].]

[4.3. At the request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual [or proposed] measure, whether or not the requesting Party has been previously notified of that measure.]

[4.4. The Parties shall, at the earliest opportunity, notify the [general] [national] contact points through [through the Secretariat] of the signing of international agreements that are subscribed to subsequent to the entry into force of this Agreement, provided that they refer to matters covered in this Agreement.]

Article 5. [Guaranteed Hearing, Legality and Due Process]

[5.1. Each Party confirms the guarantees of hearings, legality and due process provided for in their respective legislations.]

Article 6. [[Administration of Measures][Administrative Proceedings] [Application of Trade Regulations]]

[6.1. Each Party shall [administer] [apply] in a uniform, impartial, and reasonable manner all its laws, regulations, [judicial decisions], and administrative rulings of general application that each Party has put into force and that respecting any matter covered by this Agreement.]

[6.2. [With a view to [administering] [applying] in a [consistent,] impartial and reasonable manner all measures of general application affecting matters covered by this Agreement,] each Party shall ensure that in its administrative proceedings applying measures referred to in Article [3] (Publication) of this Chapter to particular persons, goods or services of another Party in specific cases that:]

- [a) wherever possible, persons of another 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;]
- [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 7. Review [and Appeal] [of Administrative Decisions]

7.1. Each Party shall maintain [or establish] judicial, [quasi-judicial,] [arbitral] or administrative tribunals or procedures for the purpose of, [*inter alia*,]

[the prompt review and correction of [administrative] measures relating to customs matters]

[the prompt review and correction of [administrative] measures of general application respecting actions covered by this Agreement]

[the prompt review and [where] [when] [justified] [warranted], the correction of [definitive] [final] administrative actions [regarding] [related to] matters covered by this Agreement.]

7.2. Such tribunals [or procedures] shall be [impartial and] independent of the office or authority entrusted with [administrative enforcement [of the law]] [to apply measures of general application respecting any matter covered by this Agreement,] [measures relating to customs matters] and shall not have any substantial interest in the outcome of the matter.

[7.3. The provisions of the above paragraph shall not require the elimination or substitution of procedures in force in the territory of a Party on the date of this Agreement's entry into force, which in fact provide for an objective and impartial review of administrative action.] [Any Party employing such procedures shall, upon request, furnish the other Parties with full information thereon in order that they may determine whether such procedures conform to the requirements of this Article.]

[7.4. Each Party shall ensure that, in any such tribunals or procedures, the Parties [to the proceeding] [in those procedures] 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 [arguments presented by the Parties][submissions of record], or where required by domestic law, the record compiled by the administrative authority.]

[7.5. 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 offices or authorities [with respect to the administrative action at issue].]