

## **新聞稿附件一、二：首批協定中、英文文本**

### **駐美國台北經濟文化代表處與美國在台協會 關於臺灣與美國間貿易協定**

#### **前言**

駐美國台北經濟文化代表處與美國在台協會，以下分稱「一方」與合稱「雙方」，尋求：

**強化臺灣與美國間經濟與貿易關係；**

**達成一個具高標準承諾及經濟意義成果之 21 世紀貿易協定以支持互利的貿易，進而帶來更自由、更公平之市場及強健的經濟成長；**

**使勞工受益且確保自由且公平的貿易對促進有韌性、永續性和包容性的經濟成長及發展做出貢獻；**

**促進雙邊貿易及投資；**

**促進良好法制作業；**

**改善法制流程；**

**確保有效率且透明之關務程序，為進出口商降低成本及確保可預測性；**

**鼓勵**在貿易便捷化與關務執法方面之合作；

**減少**邊境不必要的手續；

**促進**反貪腐措施；

**加強**對於公眾及所有行業中各種規模的貿易商之透明化；

**強化**合作以促進中小企業（包含微型企業）之就業及成長；

**建立**基礎以因應更多貿易與投資之挑戰及機會，及逐步增進共同優先事項；

**認知**臺灣、澎湖、金門及馬祖個別關稅領域和美國於 1994 年 4 月 15 日在馬拉喀什簽署之《馬拉喀什設立世界貿易組織協定》下對於彼此之現行的權利義務；雙方於 1994 年 9 月 19 日在華盛頓特區簽署之《北美事務協調委員會與美國在台協會關於貿易暨投資之諮商原則與程序架構協定》下之權利義務；及涉及關於雙方代表領域間貿易的權利義務之其他協定；及

**認知**雙方指定代表在臺灣與美國貿易與投資事項上扮演之角色；

**爰**同意如下：

## 第一章

### 初始條款及一般定義

#### 第A節：初始條款

##### 第1.1條：有關貿易之協定

雙方茲就臺灣<sup>1</sup>與美國間貿易簽署本協定。

##### 第1.2條：指定代表

- (a) 駐美國台北經濟文化代表處之指定代表為行政院經貿談判辦公室。美國在台協會之指定代表為美國貿易代表署。
- (b) 雙方之責任及義務在有指明之處將透過其各自的指定代表履行。雙方認知其各自的指定代表得憑藉雙方代表領域之其他相關主管機關，以確保雙方責任和義務的履行或雙方權利的行使。雙方之意為，於除指定代表外之雙方代表領域主管機關保有與本協定所涉事項相關的執行、監管、行政或其他職權時，本協定內提及之指定代表對於該等事項應理解為包含該等其他主管機關。

##### 第1.3條：授予職權

各方透過其指定代表，應確保其代表領域內被授予與本協定所定義務相關的執行、監管、行政或其他職權之所有相關主管機關，在行使該職權時符合該等義務。

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<sup>1</sup> 臺灣係以「臺灣、澎湖、金門及馬祖個別關稅領域」之名稱作為世界貿易組織之成員。

## 第B節：一般定義

### 第 1.4 條：一般定義

為本協定之目的，除另有規定外：

美國在台協會係指美國在台協會；

中央層級係指：

- (a) 對美國在台協會而言，美國在台協會代表領域之聯邦主管機關；及
- (b) 對駐美國台北經濟文化代表處而言，管轄權及於駐美國台北經濟文化代表處代表領域全境之主管機關；

關務主管機關係指依一方代表領域之法律，負責掌理關務法律及法規之主管機關，且應指：

- (a) 對美國在台協會而言，為美國國土安全部海關及邊境保衛局，或其任何繼任機關；及
- (b) 對駐美國台北經濟文化代表處而言，為臺灣財政部關務署，或其任何繼任機關；

關稅包括對貨物進口徵收或與之有關之任何種類稅捐或規費，及任何對該進口徵收或與該進口有關之附加稅或附加費用，惟不含以下任何之一：

- (a) 與依據《1994年關稅及貿易總協定》第3條第2項規定課徵之內地稅相當之規費；
- (b) 與所提供服務成本相當之進口相關費用或其他規費；

- (c) 反傾銷稅或平衡稅；及
- (d) 因與進口數量限制、關稅配額或關稅優惠限額之管理有關之任何標售制度而生對進口貨物所提供或徵收之權利金；

日係指日曆日，包含周末與假日；

企業係指依照所適用措施設立或組織之實體，無論是否營利、私有，或由一方代表領域之當局擁有或控制，或由非一方代表領域之當局擁有或控制，包括公司、信託、合夥、獨資、合資、協會、或類似組織；

一方代表領域之企業係指依照一方代表領域當局採行或維持之措施所設立或組織之企業；

既存係指在本協定生效日時為有效者；

金融服務係指任何具金融性質之服務。金融服務包括所有保險及保險相關服務，及所有銀行與其他金融服務（保險除外），及金融性質服務附帶或具輔助性質之相關服務。金融服務包括以下活動：

**保險及保險相關服務**

- (a) 直接保險（包括共同保險）：
  - (i) 壽險；
  - (ii) 非壽險；
- (b) 再保險及轉再保險；
- (c) 保險中介，例如保險經紀人及代理人；及
- (d) 保險之輔助服務，例如顧問、精算、風險評估及理賠等服務；

## 銀行及其他金融服務（保險除外）

- (e) 接受公眾存款及其他可償付之資金；
- (f) 任何形式之貸款，包括消費性貸款、抵押貸款、應收帳款收買業務及商業交易之融資；
- (g) 融資性租賃；
- (h) 所有支付及貨幣之匯送服務，包括信用卡、簽帳及轉帳卡、旅行支票及銀行匯票；
- (i) 保證及承諾；
- (j) 透過集中交易市場或在其營業處所或以其他方式，為自己或客戶交易下列商品：
  - (i) 貨幣市場工具（包括支票、票券、存單）；
  - (ii) 外匯；
  - (iii) 衍生性金融產品，包括期貨及選擇權；
  - (iv) 匯率及利率工具，包括交換契約、遠期利率契約；
  - (v) 可轉讓證券；及
  - (vi) 其他可轉讓工具及金融資產，包括金銀條塊；
- (k) 參與任何種類證券之發行，包括承銷及募集之代理（不論公開或非公開），及提供此類發行之相關服務；
- (l) 貨幣經紀；
- (m) 資產管理，例如現金或資產組合管理、各種形式之集合投資管理、退休金管理、保管、存託及信託服務；

- (n) 金融資產之交割及結算服務，包括證券、衍生性金融產品及其他可轉讓工具；
- (o) 提供及移轉金融資訊、金融資料處理及其他金融服務提供者之相關軟體；及
- (p) 前述第(e)款至第(o)款所列活動之諮詢、中介及其他輔助性質之金融服務，包括信用徵詢及分析、投資及資產組合研究及諮詢、及收購與公司重組與策略之諮詢；

《服務貿易總協定》係指《服務貿易總協定》，載於《世界貿易組織協定》之附件 1B；

《1994 年關稅及貿易總協定》係指《1994 年關稅及貿易總協定》，載於《世界貿易組織協定》之附件 1A；

貨物係指商品、產品、物品或材料；

個人係指自然人；

措施包括一方代表領域當局所採行或維持之任何法律、法規、程序、要求或實務作法；

國民係指：

- (a) 對美國在台協會而言，「移民與國籍法」所定義之「美國國民」；及
- (b) 對駐美國台北經濟文化代表處而言，「國籍法」所定義之「國民」；

人係指自然人或企業；

一方代表領域之人係指一方代表領域之國民或擁有其永久居留身分之自然人，或任何一方代表領域之企業；

公開係指透過紙本或電子方式廣泛傳遞資訊，且讓一般公眾

已可以獲取；

**一方代表領域之服務提供者**係指一方代表領域尋求提供服務之人；

**中小企業**係指小型及中型企業，包括微型企業；

**駐美國台北經濟文化代表處**係指駐美國台北經濟文化代表處；

**領域**係指：

- (a) 對美國在台協會而言，
  - (i) 美國之關稅領域，包含五十州、哥倫比亞特區及波多黎各；
  - (ii) 位於美國及波多黎各之外國貿易區；及
  - (iii) 美國之領海與領空，及任何美國依據《聯合國海洋法公約》所反映之習慣國際法得主張主權權利或管轄權之領海外區域；
- (b) 對駐美國台北經濟文化代表處而言，臺灣、澎湖、金門及馬祖個別關稅領域；

**服務貿易或提供服務**係指：

- (a) 自一方代表領域境內向另一方代表領域提供服務；
- (b) 一方代表領域之人在該方代表領域內對另一方代表領域之人提供服務；
- (c) 由一方代表領域之服務提供者以在另一方代表領域設立商業據點之方式提供服務；



- (d) 由一方代表領域之國民在另一方代表領域提供服務；

**加值稅**係指中央層級所課徵，具有對最終消費廣泛課徵且無論採何評定稅負方式按階段向企業徵收，但原則上稅負非由企業負擔等基本加值稅特徵之任何稅目，其包含相關之貨物及勞務稅；

**世界貿易組織**係指世界貿易組織；及

**《世界貿易組織協定》**係指於 1994 年 4 月 15 日在馬拉喀什簽署之《馬拉喀什設立世界貿易組織協定》。

## 第二章

### 關務行政及貿易便捷化<sup>1</sup>

#### 第2.1條：定義

為本章之目的：

**關務違規行為**係指為規避一方代表領域有關本章規範雙方代表領域間貨物進出口，或過境雙方代表領域之法律或法規所為之任何行為，特別指違反與進出口貨物限制或禁止、逃稅、偽造進出口相關文件、詐欺，或走私貨物相關之關務法律或法規；

**電子形式**包含適用於無須人工干預之自動化解讀及電子處理格式，與數位化圖像及表格；及

**輔助文件**係指須用以輔助說明提交予一方代表領域關務主管機關或其他主管機關之貨物進出口或過境該領域之文件，該文件得包含發票、提單、裝箱單及匯款單等。

#### 第2.2條：資訊上網公開

1. 各方透過其指定代表，應於免費、可公開查閱之網站提供下列資訊，並於必要時更新：

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<sup>1</sup> 本章內容均不應影響關於依據《1994年關稅及貿易總協定》第6條、《1994年關稅及貿易總協定第六條執行協定》（載於《世界貿易組織協定》之附件1A），或《補貼及平衡措施協定》（載於《世界貿易組織協定》之附件1A）所採行之反傾銷或平衡稅程序或措施之任何權利或義務，或被解釋為賦予任何新權利或施加任何義務；亦不應影響關於依據《1994年關稅及貿易總協定》第19條及《防衛協定》（載於《世界貿易組織協定》之附件1A）所採取行動之任何權利或義務，或被解釋為賦予任何新權利或施加任何義務。

- (a) 說明利害關係人於該方代表領域內辦理進出口或過境該方代表領域所需遵循程序及實務步驟之資訊資源；
- (b) 該方代表領域當局要求之有關進出口或過境該方代表領域之表格、文件及資料；
- (c) 該方代表領域有關進出口或過境該方代表領域之法律、法規及程序；
- (d) 該方代表領域當局對進出口或過境收取或與之相關之所有現行關稅、內地稅、費用及規費，包含費用或規費收取時間，及其金額或費率；
- (e) 該方代表領域當局依據第2.4條設置或維持之查詢點之聯絡資訊；
- (f) 該方代表領域有關依據第2.5條請求預先審核與依據第2.15條被拒貨物退回及復運進口之法律、法規及程序；
- (g) 向該方代表領域關務主管機關請求對行政決定或處分進行行政或司法復查（審查）或訴願（訴訟）之該方代表領域法律、法規及程序；
- (h) 協助利害關係人瞭解其貨物於該方代表領域進出口或過境之義務、義務遵循方式，及依遵循紀錄為基礎可取得之任何額外便捷措施（如透過優良貿易商計畫）之資訊資源；
- (i) 有關優良貿易商計畫之資訊，如優質企業計畫，包含資格要求及申請流程；
- (j) 更正關務申報資料錯誤之程序，包含進行更正之必要資料，及不予處罰之情況（倘適用）；

- (k) 有關現行有效之稅則分類資訊，與更新及採行新稅則分類之程序；
  - (l) 向該方代表領域關務主管機關或其他主管機關提交有關進出口或過境該方代表領域之電子資料、電子文件、電子證明書及電子簽章所必要之標準；及
  - (m) 有關自貿易商蒐集或由其提供之資料：
    - (i) 如何使用該等資料、何人可取得該等資料、如何儲存該等資料，及如何檢查該等資料是否有誤；
    - (ii) 該方代表領域有關該等資料之蒐集、保護、使用、揭露、保留、更正與處置之法律、法規及程序；
    - (iii) 任何規範蒐集該等資料或與第三方交換或共享該等資料之協定或協議；及
    - (iv) 與該方代表領域當局交換或共享該等資料之第三方之名單。
2. 各方透過其指定代表，應以普遍接受之電子形式，如應用程式介面，免費提供該方代表領域之增值稅稅率，並持續更新稅率清單。

## **第2.3條：與貿易商溝通**

1. 各方透過其指定代表，應在可行範圍內，依據該方代表領域之法律，事先公開該領域主管機關擬採行之規範貿易及關務事務之一般性適用法規，並於採行該等法規前，提供利害關係人表達意見之機會。

2. 各方透過其指定代表，應採行或維持機制，定期與貿易商就該方代表領域當局現行與即將實施之貨物進出口及過境相關程序進行溝通。此等溝通應提供貿易商對該等程序及新興議題表達關切之機會，並向該領域之關務主管機關及其他主管機關提供其對於該等程序及新興議題之意見。

## **第2.4條：查詢點**

1. 各方透過其指定代表，應設置或維持1個或以上之查詢點，以答復利害關係人有關進出口或過境程序之詢問。
2. 任一方，自行或透過其指定代表，對於透過依據第1項設置之查詢點詢問所為之答復，均不得要求支付費用或規費。
3. 縱有第2項規定，一方透過其指定代表，就須文件搜尋、複製、檢視或處理與請求相關之大量文件或資料之其他查詢，得依據該方代表領域有關公眾查閱官方紀錄之法律、法規及程序，要求支付費用或規費。
4. 各方透過其指定代表，應確保其查詢點於 20 日內答復詢問。
5. 縱有第4項規定，一方透過其指定代表，就須文件搜尋、複製、檢視或處理大量文件或資料之查詢，得允許查詢點逾20日提供答復。

## **第2.5條：預先審核**

1. 各方透過其指定代表，應規定該方代表領域關務主管機關應依請求於貨物進口至其領域內前以書面核發預先審核結果，該審核結果應載明貨物進口時該關務主管機關應提供之

待遇，或載明於符合退稅或稅款延期繳納資格時，貨物出口應提供之待遇。

2. 各方透過其指定代表，應允許一方代表領域內之進出口商、製造商，或具正當理由之人或其代表，請求書面之預先審核結果。

3. 任一方，自行或透過其指定代表，均不得以另一方代表領域之人須與位於該方代表領域之人建立或維持契約或其他關係，作為請求預先審核之條件。

4. 各方透過其指定代表，應確保該方代表領域關務主管機關應就下列事項核發預先審核結果：

(a) 稅則分類；

(b) 依據《世界貿易組織協定》附件1A所載《關稅及貿易總協定第七條執行協定》（關稅估價協定），特定案件適用之關稅估價標準；

(c) 貨物原產地；

(d) 貨物是否適用配額或關稅配額；及

(e) 退稅或稅款延期繳納計畫之適用資格。

5. 各方透過其指定代表，應於該方代表領域全境，就預先審核結果之核發採行或維持一致程序，包含處理預先審核所必要資訊之詳細說明。

6. 本條不禁止一方，自行或透過其指定代表，於評估預先審核請求過程之任何時間點，要求預先審核請求人補充資料或提供請求預先審核之貨物樣品。

7. 各方透過其指定代表，應：

- (a) 考量預先審核請求人提供之事實及情況核發預先審核結果；
  - (b) 儘速核發預先審核結果，於任何情況下均不得逾接獲預先審核請求人提供所有必要資料後150日；及
  - (c) 提供預先審核請求人核發該審核結果之理由，包含依據之事實及法律。
8. 各方透過其指定代表，應規定預先審核結果自其核發日起或審核結果指定之較晚日期生效，且除非預先審核結果經修改或撤銷，否則持續有效。
9. 於事實及情況於所有實質面向均相同時，各方透過其指定代表提供一預先審核請求人之待遇，應與提供予任何其他其核發預先審核結果之人之待遇相同。
10. 各方透過其指定代表，應規定預先審核結果應於該方代表領域全境內，就該預先審核結果核發對象之人皆適用。
11. 倘構成預先審核基礎之事實及情況為事後稽核或行政或司法復查（審查）或訴願（訴訟）之事由，本條不要求一方透過其指定代表核發預先審核結果。
12. 各方透過其指定代表，應依據該方代表領域之法律、法規及程序，於免費、可公開查閱之網站提供經編輯之預先審核結果，以保護機密資訊。

## **第2.6條：供貿易商使用之電子文件及系統**

1. 為創造貨物貿易之無紙化通關環境，各方透過其指定代表認知取消貨物進出口或過境所必要紙本表格及文件之重要性。為此，鼓勵雙方透過其指定代表，在適當時取消紙本表格及文件之要求，並過渡至使用電子形式之表格及文件。

2. 各方透過其指定代表，應使公眾可以電子形式取得由該方代表領域關務主管機關核發或管理之有關貨物進出口或過境該方代表領域之任何表格。
3. 各方透過其指定代表，應努力使公眾可以電子形式取得由該方代表領域關務主管機關以外之其他主管機關核發或管理之有關貨物進出口或過境該方代表領域之任何表格。
4. 各方透過其指定代表，應於免費、可公開查閱之網站提供以電子形式提交第2項表格及該等表格輔助文件之指引。
5. 第2項、第3項及第4項不應解釋為禁止一方或其指定代表遵循任何適用但規定卻完全不同之國際法律要求。
6. 倘一人以電子形式提交由一方代表領域關務主管機關或其他主管機關核發或管理之與貨物進出口或過境該方代表領域相關之表格，在適當時包含輔助文件，該方透過其指定代表，應確保該電子文件被視為與其紙本形式具相同法律效力。
7. 倘有下列情形，不應將第6項內容解釋為要求將電子文件視為與紙本文件具相同法律效力：
  - (a) 不符合國內法律、法規或程序要求，或適用於一方代表領域當局之國際法律要求；或
  - (b) 降低關務或其他貿易程序於貨物進出口或過境一方代表領域相關稽核、查證或執法行動之有效性。
8. 各方透過其指定代表，應依據第2.2條，於符合第5項及第7項情形下，至遲於本協定生效日後12個月內，公開該方代表領域當局要求以紙本形式提交表格之清單。各方透過其指定代表，應在適當時更新清單。



9. 雙方或在適當時透過其指定代表，應努力在適當之國際場域合作，以促進電子表格之使用、接受電子輔助文件，及交換貨物進出口或過境所必要之電子證明書。

10. 各方透過其指定代表，應確保：

(a) 該方代表領域關務主管機關要求之任何簽章得以電子形式提交；及

(b) 提交予該方代表領域關務主管機關之電子簽章得於無須簽署雙邊承認協議情形下，以電子方式驗證。

11. 雙方或在適當時透過其指定代表，應商議是否核發、收受及交換符合相關國際標準之證明書，如符合國際植物保護公約下之國際植物防疫檢疫措施標準第12號之植物電子檢疫證明書（e-Phyto）。

## **第2.7條：電子發票**

1. 為本條之目的，**加值稅發票**係指私部門為繳納加值稅或申報加值稅而向一方代表領域稅務主管機關提交之發票。

2. 各方透過其指定代表，應確保一私部門向另一私部門開具用於銷售貨物或勞務之發票，不會僅因該發票為電子形式而否定其法律效力。

3. 各方透過其指定代表，應確保一私部門簽發予另一私部門用於運輸貨物之提單，不會僅因該提單為電子形式而否定其法律效力。

4. 各方透過其指定代表，應確保銷售貨物或勞務之加值稅發票，不會僅因該加值稅發票為電子形式而否定其法律效力。

5. 為臻明確，一方透過其指定代表，得要求提交予該方代表領域主管機關之加值稅發票為：

- (a) 以特定格式；
  - (b) 透過特定網絡或連結傳輸至該等主管機關；或
  - (c) 按照特定標準加密或驗證。
6. 倘一方代表領域主管機關設有第5項所述要求，為降低成本及開放競爭，該方透過其指定代表應確保該等主管機關：
- (a) 使該要求可於網路取得；
  - (b) 使用或接受開放標準以符合該要求；及
  - (c) 考慮受該要求規範之中小企業之需求。
7. 倘一方代表領域主管機關要求透過特定網絡或連結將增值稅發票傳輸至該等主管機關，該方透過其指定代表應確保該等主管機關不得：
- (a) 對使用特定網絡或連結收取費用；或
  - (b) 將特定網絡或連結之使用限制於該方代表領域內之私部門。

## **第 2.8 條：電子發票網絡**

### **1. 為本條之目的：**

**存取點**係指促進買賣雙方交換發票或相關文件之服務；

**資料元件**係指存取點之間的通用資料語言及語法；

**交付元件**係指規範存取點如何以安全方式向另一個存取點交付資料的通訊協定組；

**發現元件**係指規範存取點如何識別另一個存取點及另一個存取點可接收何種資料的通訊協定組；及

**電子發票網絡**係指以結構化的數位格式建置、交換及處理發票或相關文件而無人工干預的開放網絡。

2. 雙方認知到，使用電子發票網絡可提高國際貿易的有效性、效率及可預測性，並降低成本。為此，各方透過其指定代表應以下列方式，努力促進採用有助跨境互通性的電子發票網絡：

(a) 允許使用不同存取點服務提供者的買賣雙方交換發票或相關文件；及

(b) 以使用開放標準的發現元件、交付元件及資料元件為建立網絡之基礎，如結構化資訊標準促進組織商業文件交換及通用商業語言。

3. 倘一方代表領域主管機關允許使用電子發票網絡向該等主管機關繳納增值稅，則該方透過其指定代表應確保該網絡符合第2項所列原則。

## **第2.9條：郵包貨物電子先期資訊之交換**

1. 各方透過其指定代表，應確保在該方代表領域提供普及服務之任何郵政業者（下稱郵政業者），於派送的郵件含有源自其服務區域之貨物且目的地為另一方代表領域之郵政業者的服務區域時，遵守與萬國郵政聯盟（下稱UPU）標準及公約規定一致之封發前且為郵件層級之海關申報資料，其電子資料互換（下稱EDI）相關的電子先期資訊（下稱EAD）要求。

2. 各方透過其指定代表，於實行封發前且為郵件層級之海關申報資料EDI相關之EAD要求前，有與UPU標準及公約規定不一致情事者，應透過另一方指定代表與另一方協商。

3. 各方透過其指定代表，應努力對郵包貨物實行資訊提交及處理之要求，以便能夠有效使用自動鎖定機制攔截潛在的高風險貨物，優化邊境查緝專業人力之運用，並阻止透過郵件之非法交易。

4. 本條之內容均不得解釋為禁止一方，自行或透過其指定代表，遵循限制該方代表領域內郵政業者責任之國內法或國際法。

### **第2.10條：電子支付**

各方透過其指定代表，就該方代表領域關務主管機關或其他主管機關對進出口所收取或因與進出口相關所徵收之關稅、內地稅、費用或規費，應採行或維持程序，允許以電子方式繳納。

### **第2.11條：優質企業**

1. 各方透過其指定代表，應依據世界關務組織《全球貿易安全及便捷化標準架構》，就符合特定安全標準之業者，維持貿易便捷夥伴計畫，即優質企業計畫。

2. 雙方透過其指定代表，應努力進行下列合作：

(a) 就各自優質企業計畫之運作及改善交流經驗，以在適當時尋求採取最佳範例，尤指提升供應鏈韌性相關者；

(b) 依據雙方代表領域當局之法律及既定程序，相互交換各自優質企業計畫核准之優質企業資訊；及

(c) 合作選定及實施對另一方代表領域當局之優質企業之貿易便捷化優惠措施。

## 第2.12條：單一窗口

1. 各方透過其指定代表，應建置或維持單一窗口系統，就該方代表領域當局要求進口商提交之進口相關表格、文件及資料，允許於貨物抵達該方代表領域前透過單一窗口以電子方式提交。

2. 各方透過其指定代表，應規定於貨物抵達該方代表領域前處理第1項所述之電子化提交，以：

(a) 進行風險評估；及

(b) 加速低風險貨物放行。

3. 各方透過其指定代表，於可行情況下，應善用嵌入於車輛、貨櫃、包裝材料或其他隨貨物運送之資訊技術系統或感應器所提供之可用資料，以：

(a) 進行風險評估；及

(b) 加速低風險貨物放行。

4. 各方透過其指定代表，應經由單一窗口系統，及時告知進口資訊提交者進口貨物放行進度。

5. 倘一方代表領域當局未即時放行進口貨物，該方透過其指定代表應通知進口商，並於該方代表領域法律允許範圍內，該通知應包含貨物未放行原因，及係該領域之何主管機關（倘非關務主管機關）不予放行貨物。

6. 於建置及維持第1項所述單一窗口系統時，各方透過其指定代表，應努力持續提升該系統效能，包含增加功能以最終涵蓋出口及過境作業、便捷貿易、改善透明度，及減少於該方代表領域進出口與過境相關之放行時間及成本。

7. 各方透過其指定代表，應規定提交者於下列情況下得不受處罰：

- (a) 於合理期間內更正提交至第1項所述單一窗口系統資料之非詐欺性錯誤<sup>2</sup>；
- (b) 於進口程序完成前之任何時間點，更新提交至第1項所述單一窗口系統之資料，以反映相關變化情事；及
- (c) 於可行且符合該方代表領域法律、法規及程序情況下，1次更正先前提交至第1項所述單一窗口系統之多份進口報單或其他表格、文件或資料。

## **第2.13條：貨物放行**

1. 各方透過其指定代表，應採行或維持符合下列貨物進口相關之關務程序：

- (a) 規定收到所有必要表格及輔助文件並符合所有適用要件及程序後，立即放行貨物；及
- (b) 允許該等貨物運抵即由該方代表領域關務主管機關放行，除非該領域其他對該等貨物具管轄權之主管機關要求，否則無須暫移至倉庫、場所或其他設施。倘該等其他主管機關要求額外查驗，貨物將於符合該等主管機關要求時放行。

2. 倘對貨物進口收取或與貨物進口相關之關稅、內地稅、費用或規費無法於運抵前核定，各方透過其指定代表，應採行或維持程序，於該貨物符合其他方面放行條件，並已提供貨

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<sup>2</sup> 為臻明確，錯誤是否為非詐欺性錯誤，得依據該方代表領域已公開之法律、法規或程序予以判定。

物進口領域當局所要求擔保之情況下，得於前揭關稅、內地稅、費用及規費最終核定及繳納前放行。

3. 倘一方代表領域當局允許以擔保作為放行貨物之條件，該方透過其指定代表，應採行或維持下列程序：

(a) 確保擔保金額不得逾履行因貨物進口而生義務所必要之金額；

(b) 於下列情形確保擔保義務應儘速解除：該方代表領域關務主管機關確認因貨物進口而生之義務已履行，或不再須就可涵蓋多筆貨物進口之金融工具要求提供擔保後；及

(c) 除少數情況外，允許進口商以非現金金融工具提供擔保。

4. 本條不要求一方，自行或透過其指定代表，於貨物不符合所適用放行條件時放行貨物，亦未禁止該方代表領域當局依據其法律、法規及程序處分保證金。

5. 任一方，自行或透過其指定代表，均不得為評估貨物完稅價格、稅額或設定保證金而使用參考或最低價格，包含為進行風險管理者。

6. 任一方，自行或透過其指定代表，均不得要求採用世界貿易組織《貿易便捷化協定》（載於《世界貿易組織協定》之附件1A）第10.5.1條規定範圍內之裝運前檢驗<sup>3</sup>。

7. 各方透過其指定代表，於符合所適用之該方代表領域監管規定之條件下，應在可行範圍內允許進口貨物於海關監管下，由抵達口岸移至該方代表領域內辦理貨物放行之另一海關通關點。

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<sup>3</sup> 為臻明確，本項所稱者為世界貿易組織《裝運前檢驗協定》（載於《世界貿易組織協定》之附件1A）涵蓋之裝運前檢驗，並不禁止基於食品安全檢驗與動植物防疫檢疫目的之裝運前檢驗。

8. 各方透過其指定代表，應在適當時定期更新該方代表領域當局風險管理系統之風險概況，並將新興趨勢、貿易動態及以往海關監管活動結果納入考量。

9. 各方透過其指定代表，應採行或維持程序，確保於該方代表領域內，貨物進口或過境該領域之海關做法一致。

10. 各方透過其指定代表，應採行或維持該方代表領域當局海關關員培訓計畫，以促進關務程序於該領域全境於適用上之效率、一致性及可預測性，包含：

- (a) 該領域全境適用之法律、法規、程序及指引文件；
- (b) 就個別關務申報案件，尋求適用特定關務程序之一致性指引之機制；
- (c) 關務程序之技術發展，如非侵入式查驗技術、人工智慧及追查技術；
- (d) 該領域關務主管機關使用之資訊技術系統；
- (e) 可能使該領域關務主管機關風險評估複雜化之商業或貿易流程；及
- (f) 影響該領域關務程序之適用之國際決定及協定。

## **第2.14條：快遞貨物**

1. 各方透過其指定代表，於維持適當海關監管及篩選下，應對快遞貨物採行或維持快速通關程序，該等程序應包含第2.13條規定之程序。依據本條對快遞貨物採行或維持之各項關務程序應：



- (a) 無論貨物之重量、屬個人或商業用途，收貨人為自然人或法人，均適用之<sup>4</sup>；
- (b) 不限制單一收貨人得收到之快遞貨物總數或特定期間內得收到之快遞貨物數量；
- (c) 在可行範圍內，使用非侵入式查驗技術，以加速任何必要之實體貨物檢驗或查驗；及
- (d) 僅要求提交貨物處理、放行及通關所必要之最少資訊，並於可能情況下，允許透過第2.12條所述之單一窗口系統一次性提交。

2. 於快遞貨物非屬合理認定係進口商為規避貨物輸入方代表領域之法律、法規或程序所進行或安排一系列進口之一部分前提下，對價值低於2,500美元之快遞貨物，各方透過其指定代表，應採行或維持較一般進口程序簡化之程序。

3. 第2項規定之程序應：

- (a) 允許無論透過飛機或貨車裝載之個別貨物，以提單識別合併申報進口；
- (b) 允許快遞貨物得放行及通關，無須要求進口商取得海關擔保；及
- (c) 允許下列其中之一：
  - (i) 符合資格之收貨人請求為其指定期間內所有進口貨物之關稅、內地稅、費用及規費，定期開立稅費繳納證及匯款；或

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<sup>4</sup> 雙方透過其指定代表，認可一方代表領域當局得因貨物重量而要求以一般進口程序作為放行條件。

- (ii) 對所有貨物以固定稅率徵稅，繳納之稅款足以滿足該快遞貨物應繳之任何關稅、內地稅、費用或規費<sup>5</sup>。

4. 快遞貨物屬限制輸入者，本條內容均不得解釋為禁止一方透過其指定代表：

- (a) 適用額外進口程序；
- (b) 核估關稅、內地稅、費用或規費；或
- (c) 要求提交額外之進口文件及資料。

5. 本條內容均不得解釋為禁止一方透過其指定代表，要求快遞貨物檢附空運提單或提單。

## **第2.15條：退回貨物**

1. 各方透過其指定代表，應建立或維持非易腐貨物<sup>6</sup>遭退貨運回之程序，允許貨物在未提高價值或未提升品質之情況下，於出口後3年內退回及復運進口時免徵關稅，並僅要求識別該等貨物與先前出口貨物相同所需之最少必要資訊，如發票或提單。

2. 各方透過其指定代表，應建立或維持貨物遭拒收之出境程序，就貨物於該方代表領域進口後遭進口商或買受人拒收而出口時，提供退還關稅及增值稅之機制；退稅前，一方透過其指定代表得要求提出自該方代表領域出口之證明。任一方，自行或透過其指定代表，均不得要求透過報關業者或要求請求人於該方代表領域內設立，始得請求退稅。

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<sup>5</sup> 為臻明確，一方透過其指定代表，得選擇最多5種符合本項之固定稅率。

<sup>6</sup> 為臻明確，本項內容均不得解釋為限制一方透過其指定代表禁止依據該方代表領域法律、法規或程序不得退回或復運進口之非易腐貨物退運回其境內。

## **第2.16條：貨櫃及其他大型容器**

1. 為本條之目的，貨櫃或其他大型容器包含任何容器、槽、立方體、木桶、桶、盒、纏繞芯、棧板、條板箱或圓筒容器，無論可折疊與否，由可重複使用之堅固材料製成(如塑料、木材或鋼材)，用於作為國際貨物運輸之工具。

2. 各方透過其指定代表，應採行或維持程序，允許貨櫃或其他大型容器，無論抵達時為實櫃或空櫃、任何大小、容量或尺寸，及內部容積為1立方公尺以上之貨櫃或大型容器所隨附之附件或設備：

(a) 無須向海關申報或支付關稅、內地稅、費用或規費，海關即可放行；及

(b) 於該方代表領域內連續停留至少364日。

## **第2.17條：易腐農產品及其他貨物（下稱易腐物品）**

1. 為避免腐壞，就易腐物品之進口，各方透過其指定代表應規定該方代表領域關務主管機關應：

(a) 允許以電子方式提交進口流程相關文件，包含必要之執照、許可證、上市許可及註冊；

(b) 自動化關稅配額管理程序；

(c) 於網路免費提供最新之可用關稅配額資訊，包含資格符合要件及已分配配額數量；

(d) 規範港口查驗作業合理時數；及

(e) 於安排可能必要查驗以決定是否將貨物放行至市面時，給予易腐物品適當優先順序。

2. 為加速易腐物品放行，各方透過其指定代表，應識別於該方代表領域邊境外提供查驗服務之機會。該等機會得包含易腐物品之預先授權，及提供港口外作業服務，其中得包含允許進口商安排待放行之易腐物品適當儲存於氣候合宜之儲放設施。
3. 倘一方代表領域主管機關限制於港口或港口附近氣候合宜儲放設施之數量，該方透過其指定代表應確保該等主管機關於管理查驗作業及決定設施數量時，在適當時考量易腐物品對充足儲放設施之需求。
4. 考量易腐物品貿易相關之特定成本，各方透過其指定代表，應確保該方代表領域當局檢視進口流程要求，包含使用印章、簽名、證明及書面要求，以減少相關要求，且將其自動化，以電子方式接收更多進口流程文件，並減少其時間及負擔。

## **第2.18條：人道救災物資**

各方透過其指定代表，認知訂定因應及復甦計畫之需求，以建立韌性並為人道危機及災難做好準備。各方透過其指定代表，應努力允許快速放行該方透過其指定代表指定為人道或救災之物資，並於可行情況下，應免除該等貨物之關稅、內地稅、費用及規費。

## **第2.19條：領事驗證**

1. 為本條之目的，**領事驗證**係指要求一方代表領域預計出口至另一方代表領域之貨物，須先向位於貨物出口領域內之貨物進口領域之領事提請核認，為其商業發票、原產地證明、

艙單、發貨人出口報單，或其他任何與貨物進口相關之表格或文件，取得驗證簽章、領事發票或領事簽證。

2. 任一方，自行或透過其指定代表，均不應要求與進口任何貨物相關之領事驗證或領事稅款、費用或規費。

## **第2.20條：海關處分之復查及訴願**

1. 為就海關行政處分提供有效、公正及易於運用之復查及訴願程序，各方透過其指定代表，應確保任何受該方代表領域關務主管機關處分之人皆得：

(a) 向核發處分人員或單位之上級或獨立於其之行政機關，就該處分提出行政訴願或復查；及

(b) 對行政復查之最終決定，請求司法審查或上訴。

2. 各方透過其指定代表，應向受該方代表領域關務主管機關處分之人，提供核發該行政處分之理由，及如何請求復查或訴願之資訊。

3. 各方透過其指定代表，應規定依據第1項執行復查或訴願之該方代表領域主管機關，以書面通知申請人復查或訴願之處分或決定及其理由。

4. 各方透過其指定代表，應確保倘申請人接獲依據第1項之行政或司法復查（審查）或訴願（訴訟）之處分或決定後，該處分或決定應於該方代表領域全境以相同方式適用於該申請人。

5. 為期為貿易商確保可預測性，及該方代表領域關務法律、法規及程序適用之一致性，各方透過其指定代表，應確保該方代表領域之最高行政訴願機關所做處分或決定，適用於其領域全境之關務主管機關實務作業。

6. 各方透過其指定代表，應確保該方代表領域關務主管機關允許貿易商以電子方式申請行政復查或訴願。

## **第2.21條：行政指引**

1. 各方透過其指定代表，應採行或維持行政程序，使該方代表領域內之海關辦公室得就特定關務申報案件（無論案件是否可能發生、即將發生或已經完成），請求該方代表領域關務主管機關指定之中央辦公室提供指引，以正確適用該方代表領域有關進出口或過境該領域之法律、法規及程序。該行政程序應規定，海關辦公室應主動或應該方代表領域內進出口商或其代表之書面要求，依此行政程序請求指引。

2. 倘海關辦公室就關務申報案件所適用或擬適用之處置，與實質條件均相同之案件處置做法（包含同一方代表領域內另一海關辦公室所為之處置）不一致時，各方透過其指定代表，應規定該方代表領域關務主管機關指定之中央辦公室應提供指引，回應第1項所述海關辦公室之請求。

3. 各方透過其指定代表，應於免費、可公開查閱之網站，提供進出口商請求第1項所述指引之程序，包含各種表格。

4. 各方透過其指定代表，應規定與第1項所述請求相關之進出口商，於該方代表領域關務主管機關指定之中央辦公室發布指引前，有向其提交書面意見及資訊之機會。

5. 各方透過其指定代表，應規定任一關務申報案件於尚未核發相關審核結果或處分，且事實及情況維持不變之前提下，海關辦公室就該請求主體之案件，應將第1項所述回應請求之指引納入考量。

6. 本條不要求一方自行或透過其指定代表，規範該方代表領域關務主管機關就下列關務申報案件提供指引：已做出處分

之案件；已於該方代表領域全境適用一致處分案件；處分待決案件；進出口商已申請審核或已收到於該方代表領域全境適用一致審核結果之案件；復查中之處分或審核案件。

## **第2.22條：罰則**

1. 各方透過其指定代表，應採行或維持措施，允許該方代表領域關務主管機關就違反該領域關務法律、法規或程序之行為，包含稅則分類、關稅估價、過境程序、原產地或主張優惠待遇等事項，進行裁罰。各方透過其指定代表，應確保於該方代表領域全境以一致做法實施該等措施。
2. 各方透過其指定代表，應確保該方代表領域關務主管機關就違反該領域關務法律、法規或程序之行為進行裁罰時，僅限於依法應對違規行為負責之人。
3. 各方透過其指定代表，應確保該方代表領域關務主管機關就違反該領域關務法律、法規或程序之行為所處之任何裁罰，係基於該案件事實及情況（包含受罰之人過去任何違規紀錄），且與違反行為之程度及嚴重性相當。
4. 各方透過其指定代表，應規定就關務申報案件筆誤或微小錯誤，按依據第2.2條公開之該方代表領域法律、法規或程序所規範，得予更正且不予處罰，除非該錯誤屬該當事人一貫錯誤模式。
5. 各方透過其指定代表，應採行或維持措施，避免於裁定與課徵罰鍰及關稅時產生利益衝突。該等措施應規定該方代表領域當局官員之報酬，皆不得依任何裁定或課徵之罰鍰或關稅或依任何扣押貨物價值之固定比例或百分比計算。
6. 各方透過其指定代表，應確保該方代表領域關務主管機關就違反該領域關務法律、法規或程序之行為進行裁罰時，以

書面向受處分人說明違規事實，包含具體法律、法規或相關程序，及倘法律、法規或程序未具體規範之罰鍰金額裁定依據。

7. 各方透過其指定代表，應規定除詐欺外，申報人得於該領域主管機關發現錯誤前，以符合該領域法律、法規或程序之做法，揭露關務申報案件可能違反該方代表領域關務法律、法規或程序之錯誤，並支付任何欠繳之關稅、內地稅、費用、規費及利息。各方透過其指定代表，應規定該揭露應指明申報案件及錯誤情事。任一方，自行或透過其指定代表，均不得以該揭露就違反一方代表領域關務法律、法規或程序之行為進行裁罰。

8. 各方透過其指定代表，應明定一固定期限，該方代表領域當局僅得於該期限內，就違反關務法律、法規或程序之行為啟動裁罰程序。

## **第2.23條：行為準則**

1. 鑒於第2.22條規定，各方透過其指定代表，應採行或維持措施，防止該方代表領域海關關員從事任何將導致其利用公職身分謀取私利（包含任何金錢利益），或合理造成該表象之行為。

2. 各方透過其指定代表，應為進出口商、運輸業者、報關業者、貿易相關公會聯盟及其他利害關係人提供機制，投訴於該方代表領域內（包含輸入口岸及其他海關辦公室）所察覺關務主管機關人員不當或貪腐行為。各方透過其指定代表，應依據該方代表領域法律、法規或程序，及時對投訴採取適當作為。



## **第2.24條：貿易商資料保護**

1. 各方透過其指定代表，應確保該方代表領域關務主管機關及其他主管機關，對自貿易商取得資料之蒐集、保護、使用、揭露、保留、更正及處置採取措施。
2. 各方透過其指定代表，應確保該方代表領域關務主管機關及其他主管機關，依據該領域法律，保護機密資訊免遭未經授權之使用或揭露，與免遭實體及網路安全威脅。
3. 一方自行或透過其指定代表，得使用或揭露機密資訊，惟僅限於為管理或執行該方代表領域關務法律之目的，或依據該領域法律之其他規定為之，包含於行政或司法程序中為之。
4. 倘自貿易商取得之資料，以本條規定外之方式使用或揭露，該方透過其指定代表，應依據該方代表領域法律、法規或程序處理該事件，於可能情況下對未經授權之使用或揭露進行裁罰，並實施預防再犯計畫。

## **第2.25條：合作**

1. 雙方或在適當時透過其指定代表，同意依據本條及第2.26條至第2.28條規定，強化及擴展雙方代表領域當局於關務及貿易執法之工作及合作。為此，雙方自行或透過其指定代表，得採行任何適用之機制，包含合作機制。
2. 各方透過其指定代表，就關務違規行為方面，應採取適當措施，以加強該方代表領域關務主管機關及其他主管機關間之協調，及與另一方代表領域當局之合作。
3. 第2項所指措施得包含：
  - (a) 特定行動，如查核、預防或處理關務違規行為之執法行動，尤其於選定之關務優先事項上，並考量貿易資

料，包含進出口或過境貨物模式以識別此等違規行為之潛在或實際來源；

- (b) 就有關稅則分類、關稅估價或其他進出口或過境必要資訊申報不實之查核提供建議；
- (c) 採行或維持旨在阻止或裁罰關務違規行為之罰則；及
- (d) 授予該方代表領域當局官員執行本協定所述措施之法定職權。

4. 各方透過其指定代表，應於可行且符合該方代表領域法律、法規及程序之情況下，向另一方代表領域當局提供引起其注意，且其相信有助另一方代表領域當局查核、預防或處理潛在或實際關務違規行為之非機密資訊，尤指逃稅、走私及類似違規行為之非法活動相關資訊。該等資訊得包含任何涉嫌參與非法活動行為人之特定資訊、運輸方式、其他相關資訊、執法行動成果、適用之罰則或異常貿易模式，且由提供方代表領域當局直接蒐集及自其他來源收到者皆屬之。

5. 雙方透過其指定代表，於符合雙方代表領域法律、法規及程序之情況下，應努力透過開展海關執法行動進行合作，得包含成立專案小組、協調資料分析、確定特別監控措施及其他行動，以預防、阻止及處理關務違規行為，尤其有關共同關切而選定之關務優先事項者。

## **第2.26條：特定機密資訊交換**

1. 為本條之目的，**顯示關務違規行為正在或可能發生之相關事實**，係指未遵循法律或法規之過往事證，或雙方代表領域當局於特定請求背景下相互認為充分之其他特定資訊。

2. 基於執行或協助執行一方代表領域當局就關務違規行為所採措施之目的，倘該方代表領域當局掌握顯示關務違規行為正在或可能發生之相關事實，該方或在適當時透過其指定代表，得請求另一方或在適當時透過其指定代表，提供另一方代表領域當局持有之正常蒐集而來有關貨物進出口或過境之特定機密資訊。
3. 依據第2項提出之請求應以書面或其他可確認收到之方式提出，並應包含涉案事項簡要說明、請求之資訊、顯示關務違規行為正在或可能發生之相關事實，及足使收到請求之一方或在適當時透過其指定代表，依據該方代表領域法律、法規及程序作出回應之充分資訊。
4. 依據第2項收到請求之一方或在適當時透過其指定代表，應於符合該方代表領域法律、法規、程序或其他法律義務之前提下，儘速以書面答復方式，向另一方或在適當時透過另一方指定代表，提供該方代表領域當局持有之所請求資料。
5. 一方或在適當時透過其指定代表，得以紙本或電子形式提供本條規範之資料。
6. 為促進機密資訊快速且安全之交換，各方經諮詢其指定代表後，應依據第7.7條（聯絡點）規定，指定或維持本條合作之聯絡點。

## **第2.27條：關務法遵查訪請求**

1. 一方或在適當時透過其指定代表，得請求另一方代表領域當局於其領域內進行查訪，以協助該方代表領域當局透過向貨物出口商或製造商等相關實體取得文件等之資訊，確認關務違規行為是否正在或已經發生。該方或在適當時透過其指

定代表，應以書面向另一方或在適當時透過另一方指定代表提出請求。

2. 倘一方或在適當時透過其指定代表，收到依據第1項提出之請求，該方或在適當時透過其指定代表，應即時回應該請求，至遲不得晚於收到請求日後之30日。於回應請求時，該方或在適當時透過其指定代表，應表明該方代表領域當局是否將進行該查訪；倘是，應表明預定時間及其他相關細節。

3. 倘一方或在適當時透過其指定代表，收到依據第1項提出之請求，且該方代表領域當局無意進行該查訪，該方或在適當時透過其指定代表，應表明拒絕之依據，並授權另一方代表領域當局自行進行查訪。另一方或在適當時透過其指定代表，應合理提前通知該方代表領域當局，另一方代表領域當局規劃自行進行查訪之提議日期。

4. 倘一方或在適當時透過其指定代表，收到依據第1項提出之請求，且該方代表領域當局會進行被請求之查訪，另一方或在適當時透過其指定代表，得請求隨同該方代表領域當局並參與查訪。倘該方代表領域當局不允許另一方代表領域當局參與查訪，另一方透過其指定代表，得允另一方代表領域當局於做其決定時將此事實納入考量。

5. 倘一方或在適當時透過其指定代表，收到依據第1項提出之請求，且該方代表領域當局會進行被請求之查訪，該方或在適當時透過其指定代表，應於查訪完成後迅速提供含括查訪所取得資料及文件等相關資訊之報告予另一方代表領域當局。

6. 無論是否依據第1項提出進行查訪之請求，倘無特殊情況，一方透過其指定代表，應准許另一方代表領域當局符合資格之官員進入該方代表領域進行本條之查訪<sup>7</sup>。

## **第2.28條：雙方間之保密**

1. 倘一方，自行或透過其指定代表，依據第2.26條或第2.27條提供資料予另一方、其指定代表或另一方代表領域當局並指定其為機密資訊，或該資料依據提供方代表領域之法律屬機密者，則另一方自行及透過其指定代表，均應依據另一方代表領域之法律、法規及程序，保護該資料免遭未經授權之使用或揭露，與免遭實體及網路威脅。
2. 倘另一方或其指定代表未能遵守第1項規定，一方自行或透過其指定代表，得拒絕提供被請求之資訊。
3. 一方自行或透過其指定代表，得使用或揭露依據第2.26條或第2.27條規定，自另一方、其指定代表，或另一方代表領域當局所收受之機密資訊，惟僅限於為管理或執行關務法律之目的，或依據該方代表領域法律之其他規定為之，包含於行政、準司法或司法程序中為之。

## **第2.29條：貿易便捷化委員會**

1. 雙方或在適當時透過其指定代表，據此成立貿易便捷化委員會，由雙方代表及雙方代表領域當局（包含關務主管機關）之相關代表組成。
2. 為促進本章之有效執行，貿易便捷化委員會之職能應包含：

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<sup>7</sup> 為臻明確，本項不影響一方代表領域當局對人員進入該方代表領域之要求，包含簽證要求。

- (a) 鼓勵雙方代表領域當局就影響雙方代表領域間貨物貿易之關務議題進行合作；
  - (b) 鼓勵雙方代表領域當局就本章之運作及執行進行合作；及
  - (c) 鼓勵雙方代表領域當局進行合作，以提前通知可能對本協定運作造成重大影響，或可能影響一方代表領域關務及貿易法律及法規有效實施與執行之任何重要行政或程序變更、新提案法律或法規，或一方代表領域有關進出口或過境程序法律或法規之修改。
3. 各方透過其指定代表，應給予該方代表領域之人就本章之執行，向貿易便捷化委員會提出意見之機會。
4. 除非雙方經諮詢其指定代表後另有決定，貿易便捷化委員會每年應至少召開1次會議。貿易便捷化委員會亦得邀請可能有興趣之人參與其工作。

### **第2.30條：過渡期間**

駐美國台北經濟文化代表處透過其指定代表，應於本協定生效日起3年內履行第2.14條第2項及第3項第(c)款之義務，不受本協定第8.4條（生效）規定之限制。該期間結束前，雙方經諮詢其指定代表後，應決定再延長該期間至多1年是否適宜。

## 第三章

### 良好法制作業

#### 第3.1 條：定義

為本章之目的：

**法規**係指一方代表領域之一種一般性適用措施，排除附錄 3-A，經法規主管機關採行、發布或維持，且其遵循係具有強制性者；

**法規主管機關**係指一方代表領域內研擬、提案或採行法規之中央層級行政機關或當局機關，不包括立法機關或法院；及

**法規合作**係指一方代表領域當局與另一方代表領域當局為防止、減少或消除不必要的法規差異，以促進國際貿易及投資與促進經濟成長之努力，同時維持或提升公共衛生、安全與環境保護之標準。

#### 第3.2 條：主旨與一般條款

1. 雙方透過其指定代表，認知所有法規主管機關透過更加透明化、客觀分析、歸責與可預測性以促進法規品質之實踐作法，可促進國際貿易及投資與促進經濟成長，同時有助於各方代表領域當局依其認為適當之程度達成其公共政策目標（包括健康、安全、勞動、環境與永續目標）之能力。良好法制作業之適用可支持法規主管機關間之法規更加相容，在適當時可減少或消除不必要之繁瑣或重複的法規要求，並鼓勵合作應對共同的跨界與全球挑戰。

2. 雙方透過其指定代表，亦認知法規研擬過程中透明化之重要性，以及使有利害關係之人參與的必要性，包括小型企

業、勞工組織、鄉村社區，與歷史上可能處於不利地位、弱勢或邊緣化的個人，例如婦女、少數族群與原住民。

3. 因此，本章規定與良好法制作業有關之義務與其他條款，包括規劃、設計、發布、執行與檢視法規有關之作法。

4. 為臻明確，本章不禁止雙方本身或透過其指定代表：

(a) 依其認為適當之程度追求公共政策目標（包括健康、安全、勞動、環境與永續目標）；

(b) 在雙方代表領域之法律制度與機構的框架內，決定履行本章義務之適當方法；及

(c) 採行除本章規定以外之良好法制作業。

### **第3.3 條：中央法規協調機關或機制**

認知到體制安排對於一方代表領域當局之體系的特殊性，雙方透過其指定代表，注意到中央法規協調機關和機制在促進良好法制作業；履行主要諮詢、協調與檢視功能以改善法規品質；以及改善其法制體系之重要角色。各方透過其指定代表，在其授權範圍內並符合該方代表領域之法律之下，有意建立或維持中央法規協調機關或機制。

### **第3.4 條：內部諮商、協調與檢視**

1. 各方透過其指定代表，應採行或維持追求下列目標之流程或機制，包括但不限於：

(a) 促進所有法規主管機關遵循包括本章規定之良好法制作業；

(b) 提出並改善所有法規主管機關之法規訂定流程；



- (c) 提出法規草案與現行法規間潛在的重疊或重複，並避免所有法規主管機關產生不一致之要求；
  - (d) 在研擬法規之早期流程中進行檢視，以將遵守國際貿易與投資義務納入考量，包括在適當時檢視相關國際標準、準則與建議之運用；
  - (e) 促進將法規對蒐集資訊與執行之影響納入考量，包括對小型企業之負擔；及
  - (f) 鼓勵促進創造就業機會、創新與市場競爭的法規訂定方式。
2. 各方透過其指定代表，應於網路公開第 1 項所指流程或機制之說明。各方透過其指定代表應致力在第 3.7 條所述之網站或透過該網站之連結提供該資訊。

### **第3.5 條：資訊品質**

1. 各方透過其指定代表，應採行或維持公開之準則或機制，鼓勵法規主管機關在研擬法規時：
- (a) 尋求與研擬法規相關可合理取得之最佳資訊，包括科學、技術、經濟或其他資訊；
  - (b) 奠基於適合其使用情形之資訊；及
  - (c) 以透明的方式提出資訊來源，以及任何重要的假設與限制。
2. 若一法規主管機關在研擬法規時系統性地蒐集該方成員之資訊，該方透過其指定代表應規定法規主管機關宜：
- (a) 在就法規對大眾造成之影響得出一般性結論前，使用完善的統計方法；及

- (b) 避免對受調者造成不必要的重複或儘量減少不必要的負擔。

### **第3.6 條：早期規劃**

1. 各方透過其指定代表，應每年於網路公開其合理預期未來 12 個月內將採行或提案之法規清單。清單中提出之每項法規應包括：

- (a) 規劃法規之簡要敘述；
- (b) 法規主管機關中就法規具充分知識之個人聯絡窗口；  
及
- (c) 倘已知，說明將被影響之業別，及是否預期對國際貿易或投資造成任何重大影響。

2. 在可行範圍內，清單中之項目宜包括後續作為之期間，包括依據第 3.9 條提供公眾評論機會之期間。

3. 各方透過其指定代表，應致力在第 3.7.3 條所述之網站提供第 1 項與第 2 項之資訊。

### **第3.7 條：法規透明化工具**

1. 雙方透過其指定代表，認知到使用資訊科技可提升研擬及執行法規之流程，改善法規主管機關的運作績效，提供更多容易獲取資訊之管道，並增加對法規訂定流程之參與。因此，各方透過其指定代表，應於適當時使用能增加透明度與效率的資訊科技工具。

2. 各方透過其指定代表，應確保最終法規公開並維持於單一、免費的公開網站。於此網站上，各方透過其指定代表，

應努力以法規主管機關或法規領域分類法規，以方便使用，包括查詢功能。

3. 各方透過其指定代表應維持單一、免費的公開網站，該網站於可行範圍內包含依據第 3.9 條需要公開之所有資訊。

4. 倘有一個連結至其他網站的單一入口網頁可獲取資訊並提交意見，一方透過其指定代表得透過多個網站公開資訊並提供提交評論以遵守第 3 項。

5. 各方透過其指定代表，於適當時，應允許接受電子簽章及電子紀錄申請用於法規核准及合規文件。

### **第3.8 條：使用易懂的文字**

各方透過其指定代表，宜規定法規草案以及最終法規使用易懂的文字，以確保法規以清晰、簡潔且有組織的方式撰擬，同時認知到部分法規涉及技術問題，可能需要相關專業知識以理解或適用上開法規。

### **第3.9 條：法規訂定過程透明**

1. 在第 2 項所述期間，當法規主管機關研擬法規時，該方透過其指定代表應在通常情況下<sup>1</sup>公開：

(a) 法規草案及，倘有，其法規影響評估；

(b) 法規之說明，包括其目的、法規如何達成該目的、法規重大特點之理由，及被考量過的任何主要替代方案；

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<sup>1</sup> 為第 1、4 及 5 項之目的，「通常情況」不包括以下情況，例如：依據該些項次公開將使法規無法有效解決對公共利益的特定損害；該方代表領域當局認為該方代表領域發生或恐發生緊急問題（例如安全、健康或環境保護）；或該方代表領域當局認為法規對公眾無實質性影響，包括另一方代表領域之人。

(c) 法規主管機關用以支持法規的資料、其他資訊與分析之解釋；及

(d) 就法規有疑問時得聯繫負責研擬法規的法規主管機關官員之姓名和聯絡資訊。

在該方透過其指定代表公開第(a)款至第(d)款所列資訊的同時，該方透過其指定代表亦應公開法規主管機關用以支持法規的資料、其他資訊、科學與技術分析，包括任何風險評估。

2. 各方透過其指定代表，應在法規主管機關完成訂定法規<sup>2</sup>前，依據第 1 項公開所要求的項目，該公開時間應使法規主管機關有足夠時間能將所收到的評論納入考量，並在適當時對依據第 1(a)項公開之法規草案予以修正。

3. 在第 1 項所列項目公開後，該方透過其指定代表，應確保任何利害關係人，不論其居住地，皆有獲得不低於提供給該方代表領域之人的條件，就第 1 項所列項目提交書面評論，獲相關法規主管機關考量之機會。各方透過其指定代表，應允許利害關係人以電子方式提交任何評論或其他意見，也得允許以郵寄至公開地址或透過其他科技方式提交書面意見。

4. 若一方透過其指定代表，預期法規草案對國際貿易或投資產生重大影響者，該方透過其指定代表通常宜提供一段期間，以就依據第 1 項公開之項目提交書面評論或其他意見：

(a) 自第 1 項所列項目公開日起算至少 60 日；或

(b) 因法規之性質與複雜性，在適當時提供更長期間，以提供利害關係人適當機會瞭解法規可能如何影響其利益並於瞭解的情況下研擬回應。

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<sup>2</sup> 對駐美國台北經濟文化代表處而言，法規主管機關「完成訂定」法規係指主管機關發布法規時。對美國在台協會而言，法規主管機關「完成訂定」法規係指最終法規簽署並在聯邦公報公開時。

5. 對於第 4 項未涵蓋之法規草案，各方透過其指定代表，應努力在通常情況下提供一段期間，以就依據第 1 項公開之資訊提交書面評論或其他意見，該期間自第 1 項所列項目公開日起算至少 4 週。
6. 各方透過其指定代表，應考量為提交對法規草案之書面評論或其他意見，延長第 4 項或第 5 項評論期間之合理要求。
7. 各方透過其指定代表，應於網路公開所收到關於法規草案之書面評論，不無故拖延，惟為保護機密資訊或為不公開個人資料或不當內容所必要者，不在此限。若無法於第 3.7.3 條規定之網站上公開所有評論，該方透過其指定代表應努力在相關法規主管機關之網站公開評論。各方透過其指定代表，通常亦應透過於網路上以清單、摘要或其他形式之彙編的方式，依提交評論者所表明之個人資料公開曾提交評論人之名單。
8. 在法規主管機關完成訂定法規前，各方透過其指定代表，應致力於評估在評論期間收到的書面評論中之任何相關資訊。
9. 當法規主管機關完成訂定法規時，該方透過其指定代表，應公開法規文本、任何最終法規影響評估，及其他第 3.12 條規定項目，不無故拖延。
10. 法規主管機關依本條所列產生之項目，各方透過其指定代表，應致力以可閱讀並可數位化透過電腦或其他科技進行文字搜尋或資料探勘之格式公開。

### **第 3.10 條：專家諮詢小組與機構**

1. 雙方透過其指定代表，認知到法規主管機關得就法規研議及執行尋求來自小組或機構的專家意見及建議，包括非為

雙方或雙方代表領域當局的代表。雙方透過其指定代表，亦認知到取得該意見及該等建議宜是一個補充而非取代依據第 3.9.3 條尋求公眾評論的程序。

2. 為本條之目的，專家小組或機構意指小組或機構：

- (a) 由中央層級的該方代表領域當局所建立；
- (b) 其組成成員包括非一方或該方代表領域當局之僱用者或承包商；
- (c) 其功能包括提供法規主管機關有關研議或執行法規的意見或建議，包括具科學或技術性質者。

本條不適用於為促進一方代表領域當局間的協調或為提供有關該方代表領域當局的國際事務或重要安全利益所建立之小組或機構。

3. 各方透過其指定代表視個別法規內容，應確保法規主管機關所建立之任何專家小組或機構的組成包括相當範圍及多元的意見及利益。

4. 認知到讓公眾瞭解專家小組和機構的目的、成員和活動的重要性，且該等專家小組或機構可就影響一方代表領域當局運作的事項提供重要的額外觀點或專業知識，各方透過其指定代表應鼓勵法規主管機關公開以下：

- (a) 所設立或運用的任何專家小組或機構的名稱，以及該小組或機構成員的姓名及其隸屬機構；
- (b) 專家小組或機構的職權範圍及功能；
- (c) 有關即將舉行的專家小組或機構會議的資訊；
- (d) 專家小組或機構任何會議的結果摘要；及

(e) 經專家小組或機構考量的任何實質性事項的最終結果摘要。

5. 各方透過其指定代表應公開，最好在相關法規主管機關的網站上，向專家小組或機構提供或為專家小組或機構準備或由其準備的任何最終文件；惟為保護機密資訊或不公開個人資料所必要者，不在此限。

6. 各方透過其指定代表，宜為利害關係人提供向專家小組或機構提供意見的管道，包括允許利害關係人：

(a) 參與或出席專家小組或機構的會議；或

(b) 向專家小組或機構提交書面評論。

### 第 3.11 條：法規分析

1. 雙方透過其指定代表，認知到法規主管機關得分析法規草案，以預測和評估其可能產生之後果。

2. 各方透過其指定代表應考量一套流程，用以鼓勵法規主管機關於研擬預期成本或影響超過各方透過其指定代表建立之特定門檻的法規時，檢視以下項目：

(a) 法規草案之必要性，包括對該法規所欲解決之問題的性質及重要性之描述；

(b) 可用以處理第(a)款所列必要性之可行和適當的法規及非法規替代方案，包括直接以法規規定的替代方案；

(c) 選定的和其他可行的替代方案的預期影響（例如經濟成本及效益、社會、公平、環境、公共衛生和安全影響），以及隨著時間進程的風險和分配效果；惟認知到某些成本和效益由於資訊不足，難以量化或以貨幣換算其價值。法規主管機關對此等影響的分析可能會

因問題複雜度以及可使用的資料和資訊而有所不同；  
及

(d) 所選定之替代方案較合適之理由。

3. 各方透過其指定代表，宜考量法規草案是否可能對大量的小型企業造成重大負面的經濟衝擊。若是，該方透過其指定代表宜考量使不利經濟影響最小化的可能措施，同時得以實現目標。

### **第 3.12 條：法規最終公開**

當一法規主管機關完成訂定法規時，該方透過其指定代表，應不無故拖延地在法規文本、最終法規影響評估或其他文件中公開：

- (a) 法規施行日期；
- (b) 對法規如何實現既定目標的說明、法規重要特點的理由（與依據第 3.9 條所提供之說明不同的部分），以及自該法規公開徵求公眾評論以來進行之任何重大修訂的性質及原因；
- (c) 法規主管機關對及時提交的評論中所提任何實質性問題的看法；
- (d) 法規主管機關在研擬法規時考量的主要替代方案，倘有，以及支持其所擇方案的理由；
- (e) 法規主管機關在完成訂定法規時所考量之法規與關鍵證據、資料和其他資訊之間的關係；
- (f) 在可行範圍內，宜在網路上公開提供任何遵守法規所必要之表格或文件並說明其預期可用性；及



- (g) 以法規主管機關中負責執行且熟悉該法規之人為聯絡點，得就有關該法規的問題與其聯繫。

### **第 3.13 條：檢視現行有效法規**

1. 雙方透過其指定代表，認知到採行或維持法規檢視的程序或機制，可確保法規仍具相關性並達成其預期的政策目標。
2. 若檢視一現行有效的法規時，該方宜透過其指定代表在適當時考量：
  - (a) 該法規對達成其最初既定目標的有效性；
  - (b) 自法規研擬以來發生變化的任何情況，包括可用的新資訊；
  - (c) 對小型企業的影響；
  - (d) 處理雙方代表領域當局間之法規差異的方法，以避免對國際貿易和投資造成不必要的干擾；及
  - (e) 任何利害關係人依據第 3.14 條提交的相關建議。
3. 各方透過其指定代表，宜在可行和適當的範圍內，於網路公開任何有關法規檢視的官方計畫或結果。
4. 各方透過其指定代表，宜考量如何使法規檢視程序和機制更加靈活，尤其是在面臨共同的跨界和全球挑戰時。

### **第 3.14 條：改善建議**

各方透過其指定代表，應使任何利害關係人有向法規主管機關就發布、修正或廢止法規提供書面建議以供考量的機會。

該等建議的依據得包括，例如，以利害關係人角度而言，現行法規無助於保護健康、安全、福利或環境，較實現其目標所必要之負擔更大（例如就其對於國際貿易和投資的影響），未考量到已變化的情況（例如技術的根本變化，或相關的科學及技術發展，或相關的國際標準），或依賴不正確或過時的資訊。

### **第 3.15 條：法規訂定流程與當局相關資訊**

1. 各方透過其指定代表，應在網路公開法規主管機關準備、評估或檢視法規所採用的流程和機制的說明。該等描述應指出適用的指引、規則或程序，包括與公眾提供意見相關者。
2. 各方透過其指定代表亦應在網路公開：
  - (a) 各法規主管機關的職能和組織之描述，包括一般人可取得資訊、提交意見或請求、或取得決定的適當部門；
  - (b) 任何法規主管機關發布或使用的任何程序規定或表格；
  - (c) 法規主管機關進行驗證、檢查和法遵行動的法定職權；
  - (d) 有關得用以挑戰法規的司法或行政程序的資訊；及
  - (e) 一法規主管機關向一方代表領域之人收取的任何費用，以提供與執行法規有關的服務，包括核照、檢查、審計和其他該方代表領域之法律下所必要之行政作為，以在適當時進口、出口、銷售、購買、營銷或使用一商品或服務。

各方透過其指定代表，應在網路公開對此資訊的任何實質變更，以及對其所代表領域當局的法制體系之任何變更或任何變更提議，不無故拖延。

### **第 3.16 條：鼓勵法規相容與合作**

1. 雙方透過其指定代表，認知到法規相容與合作可有助於達成共同的監管目標，並協助雙方代表領域當局應對共同的跨界和全球挑戰。因此，在適當時，各方透過其指定代表，宜鼓勵法規主管機關在適當情況下與另一方代表領域當局的相關對口部門展開互利的法規合作行動，以達成此等目標。
2. 雙方透過其指定代表，認知到有效的法規合作需要具有研擬、採行和執行法規職權和技術專長之法規主管機關的參與。各方透過其指定代表宜鼓勵公眾提供意見，以辨識對於合作事項有前景之推動途徑。
3. 雙方透過其指定代表，認知到廣泛存在著各種機制，包括《世界貿易組織協定》所規定者，以協助將不必要的法規差異最小化，並避免對國際貿易和投資造成不必要的干擾，同時有助於達成雙方代表領域當局的公共政策目標。

### **第 3.17 條：良好法制作業委員會**

1. 雙方或在適當時透過其指定代表，特此成立良好法制作業委員會，由雙方代表和雙方代表領域當局之相關代表組成，包括相關法規主管機關和任何協調機構。
2. 透過良好法制作業委員會，雙方透過其指定代表應加強與本章相關事項的溝通與合作。
3. 良好法制作業委員會的職能包括：

- (a) 監督本章之履行及運作，包括透過更新雙方代表領域當局的制作方法業和流程；
  - (b) 交流關於履行本章的有效作法之資訊，包括關於國際場域相關工作之資訊；
  - (c) 在與本章工作相關的國際場域召開會議之前就相關事項和立場進行磋商，包括舉辦工作坊、研討會和其他相關活動的機會以支持良好法制作業之深化；
  - (d) 考量來自多元利害關係人有關加強良好法制作業適用的機會之建議；
  - (e) 考量良好法制作業的發展，以提出良好法制作業委員會未來的工作並改善本章之運作及履行；
  - (f) 探索合作機會以推動良好法制作業之適用；及
  - (g) 採取雙方透過其指定代表認為將有助於履行本章的任何其他步驟。
4. 各方透過其指定代表，應為該方代表領域內之人提供機會，就本章之履行發表意見。
5. 在進行工作時，良好法制作業委員會應考量依據本協定設立之其他委員會、工作小組和其他附屬機構的活動，以避免重複活動。
6. 除非雙方經諮詢其指定代表後另有決定，否則良好法制作業委員會應至少每年舉行一次會議。雙方經諮詢其指定代表後，應努力安排會議，以允許參與本協定其他相關章節工作之代表參加。良好法制作業委員會亦得邀請可能有興趣者為其工作做出貢獻。

### 第 3.18 條：聯絡點

各方經諮詢其指定代表後，應依據第 7.7 條（聯絡點），為本章所生事項指定並通知一個聯絡點，且就其聯絡點之任何實質變更不無故拖延地通知另一方。

### 附錄 3-A

#### 有關「法規」及「法規主管機關」範圍之附加條款

1. 為本章之目的，下列措施不屬於法規：

- (a) 未含有法律強制要求的一般性政策或指引聲明；
- (b) 對於**駐美國台北經濟文化代表處**：有關以下方面之措施：
  - (i) 駐美國台北經濟文化代表處代表領域當局之軍事或外交事務職能；
  - (ii) 駐美國台北經濟文化代表處代表領域當局之機關的管理、人員、公共財產、貸款、補助、利益或合約；
  - iii) 駐美國台北經濟文化代表處代表領域當局之機關的組織、程序或作法；或
  - (iv) 金融服務或反洗錢措施。
- (c) 對於**美國在台協會**：有關以下方面的措施：
  - (i) 美國在台協會代表領域當局之軍事或外交事務職能；
  - (ii) 美國在台協會代表領域當局之機關的管理、人員、公共財產、貸款、補助、利益或合約；
  - (iii) 美國在台協會代表領域當局之機關的組織、程序或作法；或
  - (iv) 金融服務或反洗錢措施。

2. 為本章之目的，下列實體不屬於法規主管機關：

- (a) 對於駐美國台北經濟文化代表處：駐美國台北經濟文化代表處所代表領域之總統，及
- (b) 對於美國在台協會：美國在台協會所代表領域之總統。

## 第四章

### 服務業許可措施之研擬及管理（服務業國內規章）

#### 第 4.1 條 定義

為本章之目的：

許可係指對提供服務之核准，該核准係由一人須遵守以證明其符合核照要件或資格要件之程序所產生；及

公營企業係指由一方代表領域當局擁有或透過所有權權益控制之企業。

#### 第 4.2 條 適用範圍

1. 本章適用於一方代表領域主管機關所採行或維持影響另一方代表領域之服務提供者提供服務貿易之許可及技術標準相關措施。

2. 本章不適用於：

- (a) 雙方代表領域當局所為之採購；
- (b) 於一方代表領域內，且非基於商業基礎亦非為與一或多個服務提供者競爭所提供之任何服務<sup>1</sup>；
- (c) 一方代表領域當局或該方代表領域當局所支持之公營企業所提供之補貼或補助，包括貸款、保證、或保險；
- (d) 航空服務，包括國內及國際空運服務，含定期或不定期，或輔助航空服務之相關服務，航空器停用期間之

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<sup>1</sup> 雙方透過其指定代表瞭解本項限制與《服務貿易總協定》第 I:3(c)條所規範對於雙方代表領域當局之範圍相同。



維修或保養服務不在此限，排除停機線維修作業；或

- (e) 有關自然人進入一方代表領域之措施，包括暫准進入之條件。

#### 第 4.3 條 提供非金融服務措施之研擬及管理

1. 除第三章（良好法制作業）適用之外，本條規定亦適用。本條不適用於影響金融服務之提供的措施。
2. 各方透過其指定代表應確保該方代表領域當局以合理、客觀、公正之方式管理其一般性適用措施。
3. 倘一方代表領域當局採行或維持一般性適用措施，該方透過其指定代表應確保關於該等措施：
  - (a) 該等措施係基於客觀及透明之標準；<sup>2</sup>
  - (b) 該方代表領域主管機關以獨立於任何須經許可之服務提供者的方式達成並管理任何決定；
  - (c) 該等措施之程序係公正，足以讓申請人證明其是否符合許可要件，且程序本身不會妨礙要件之達成；
  - (d) 在可行範圍內，該等措施不要求申請人就單一許可申請聯繫該方代表領域一個以上之主管機關<sup>3</sup>；及
  - (e) 該等措施不基於性別而有所歧視<sup>4</sup>。
4. 倘一方代表領域當局要求服務之提供須取得許可，該方透

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<sup>2</sup> 為臻明確，該等標準得包括提供服務之資格及能力，包括符合該方代表領域當局的法規要求，例如：健康、勞動、環境要求。該方代表領域主管機關得評估每一標準之比重。

<sup>3</sup> 為臻明確，一方透過其指定代表得要求提出多個許可申請，若該服務涉及該方代表領域多個主管機關之管轄權。

<sup>4</sup> 本款不應禁止為達合法目的所採取之合理與客觀的差別待遇，或為加速事實上平等所採取之暫時性措施。

過其指定代表應確保該方代表領域之各主管機關：

- (a) 在可行範圍內，允許在任何時間提出申請；
- (b) 若訂有特定申請期間，允許合理之提交申請期間；
- (c) 若對於個人是否適於取得許可，須經考試，舉行考試之頻率應合理，並提供合理期間供申請人要求應試；
- (d) 在可行範圍內，提供處理申請案之可參考時程；
- (e) 依據該方代表領域之法律，確認申請案為完整可處理，不無故拖延；
- (f) 經申請人請求，提供有關該申請案狀態之資訊，不無故拖延；
- (g) 若依據該方代表領域之法律認定申請案為完整者，於提出申請後之合理期間內，確保該申請案處理完成，並通知申請人關於申請案之決定，在可行範圍內以書面為之<sup>5</sup>。
- (h) 若依據該方代表領域之法律認定申請案為不完整者，在合理期間內及可行範圍內：
  - (i) 通知申請人其申請案不完整；
  - (ii) 若申請人要求，指出完成申請案所需之額外資訊，或以其他方式提供該申請案被認定為不完整之說明；
  - (iii) 提供申請人提交額外資訊以使申請案被認定為完整之機會<sup>6</sup>。

然而，若第(i)目至第(iii)目之行為都不可行，且申請案因

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<sup>5</sup> 該方代表領域主管機關得透過書面提前通知申請人，包括透過公布措施，指出自提出申請之日起於一特定期間後未回復，視為接受或拒絕申請。為臻明確，「書面」包括電子形式。

<sup>6</sup> 為臻明確，提供機會不要求展延期限。

不完整而被駁回時，確保於合理期間內通知申請人。

- (i) 若申請案被駁回，在可行範圍內主動或經申請人請求，告知申請人拒絕原因，並於可行時告知訴願或復查該拒絕決定之時程及再次提出申請之程序。不宜僅基於舊案被拒而禁止申請人提出另案申請<sup>7</sup>；及
- (j) 確保許可一經核發，在符合相關條款及條件之前提下立即生效，不無故拖延。

5. 各方透過其指定代表，應確保該方代表領域之各主管機關所收取之許可費用係合理、透明、基於措施中明訂之職權，且本身不限制相關服務之提供<sup>8</sup>。

6. 各方透過其指定代表，應鼓勵該方代表領域主管機關採行以公開及透明之程序研擬之技術標準，並應鼓勵任何被指定研擬技術標準之機構使用公開及透明之程序。

7. 若一方代表領域當局要求服務之提供須經許可，該方透過其指定代表應提供服務提供者使其遵守取得、維持、修正及展延其許可之要件或程序的必要資訊。該等資訊應包括：

- (a) 費用；
- (b) 該方代表領域相關主管機關的聯繫資訊；
- (c) 有關申請案決定之訴願或復查的任何程序；
- (d) 監督或執行遵守許可條款及條件之任何程序；
- (e) 公眾參與之任何機會，例如透過聽證或評論；
- (f) 處理申請案之任何可參考時程；

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<sup>7</sup> 該方代表領域之主管機關得要求該等申請案之內容已進行修改。

<sup>8</sup> 為本項之目的，許可費用不包括使用自然資源之費用、拍賣、招標或其他以非歧視性方式授予特許權之費用，或提供普及服務之強制性分攤費用。

(g) 任何要件或程序；及

(h) 任何技術標準。

8. 若一方代表領域當局要求服務之提供須經許可，該方透過其指定代表應確保該方代表領域之各主管機關：

(a) 努力接受電子形式之申請；

(b) 努力接受以電子形式進行任何所要求對於個人是否適於取得許可的考試之請求，並在可行範圍內，考量以電子方式進行其他考試程序；

(c) 在符合該方代表領域之法律關於驗證要求之前提下，接受文件影本，包括電子影本，除非該方代表領域主管機關要求正本文件以確保許可程序之可信度。

9. 各方透過其指定代表應努力確保與許可相關之措施不對中小企業造成過度負擔。

#### **第 4.4 條 提供金融服務措施之研擬及管理**

1. 本條適用於一方代表領域當局所採行或維持影響另一方代表領域之服務提供者提供金融服務貿易之許可相關措施。第三章（良好法制作業）不適用本條之任何措施。

2. 各方透過其指定代表，應確保以合理、客觀、公正之方式管理一般性適用措施。

3. 各方透過其指定代表，在可行範圍內且符合該方代表領域採行措施之法律體系時，應：

(a) 提前公布擬採行之任何一般性適用法規及該法規之目的；

(b) 提供利害關係人、另一方代表領域當局、及另一方就

擬採行之該一般性適用法規提出評論之合理機會。

4. 一方代表領域當局採行一般性適用之最終法規時，該方透過其指定代表在可行範圍內且符合該方代表領域採行措施之法律體系時，應以書面方式回應自利害關係人、另一方代表領域當局、及另一方收到關於法規草案之實質評論。為臻明確，一方透過其指定代表得於該方代表領域當局所經營之官方網站統一回應該等評論。
5. 在可行範圍內，各方透過其指定代表，應允許一般性適用最終法規之公布與生效日之合理間隔期間。
6. 各方透過其指定代表應建立或維持適當機制，回應利害關係人、另一方代表領域當局、或另一方關於本條所涵蓋之一般性適用措施之詢問。
7. 倘一方代表領域當局採行或維持適用本條之一般性適用措施，該方透過其指定代表應確保關於該等措施：
  - (a) 該措施係基於客觀及透明之標準<sup>9</sup>；
  - (b) 該方代表領域之各相關主管機關以獨立於須經許可之任何服務提供者之方式達成並管理任何決定；
  - (c) 該等措施之程序係公正，足以讓申請人證明其是否符合許可要件，且程序本身不會妨礙要件之達成；
  - (d) 該等措施不基於性別而有所歧視<sup>10</sup>。
8. 倘一方代表領域當局要求金融服務之提供須取得許可，該方透過其指定代表應確保該方代表領域之各主管機關：

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<sup>9</sup> 為臻明確，此等標準得包括提供金融服務之資格及能力，該方代表領域之金融監理機關得評估該等標準之權重。

<sup>10</sup> 本款不應禁止為達合法目的所採取之合理與客觀的差別待遇，或為加速事實上平等所採取之暫時性措施。

- (a) 在可行範圍內，允許在任何時間提出申請案；
- (b) 若訂有特定申請期間，允許合理之提交申請期間；
- (c) 若對於個人是否適於取得許可，須經考試，舉行考試之頻率應合理，並提供合理期間供申請人要求應試；
- (d) 提供服務提供者使其遵守取得、維持、修正及展延其許可之要件或程序的必要資訊。該等資訊應包括：
  - (i) 任何要件或程序；
  - (ii) 該方代表領域相關主管機關的聯繫資訊；
  - (iii) 有關申請案決定之訴願或復查的任何程序；
  - (iv) 監督或執行遵守許可條款及條件之任何程序；
  - (v) 公眾參與之任何機會，例如透過聽證或評論；
- (e) 在可行範圍內，提供處理申請案之預估時程；
- (f) 經申請人請求，提供有關該申請案狀態之資訊，不無故拖延；
- (g) 在可行範圍內，依據該方代表領域之法律，確認申請案為完整可處理，不無故拖延；
- (h) 若依據該方代表領域之法律認定申請案為完整者，於提出申請後之合理期間內，確保該申請案處理完成，並通知申請人關於申請案之決定，在可行範圍內以書面為之<sup>11</sup>；
- (i) 若依據該方代表領域之法律認定申請案為不完整者，在合理期間內及可行範圍內：

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<sup>11</sup> 該方代表領域主管機關得透過書面提前通知申請人，包括透過公布措施，指出自提出申請之日起於一特定期間後未回復，視為接受或拒絕申請。為臻明確，「書面」包括電子形式。

- (i) 通知申請人其申請案不完整；
- (ii) 經申請人請求，指出完成申請所需之額外資訊，或以其他方式提供該申請案被認定為不完整之說明；及
- (iii) 提供申請人提交額外資訊以使申請案完整之機會<sup>12</sup>。

然而，若第(i)目至第(iii)目之行為都不可行，且申請案因不完整而被駁回時，確保於合理期間內通知申請人。

- (j) 若申請案被駁回，在可行範圍內主動或經申請人請求告知申請人拒絕原因，且若適用，告知再次提出申請之程序。不宜僅基於舊案被拒而禁止申請人提出另案申請<sup>13</sup>。

- (k) 關於任何許可費用<sup>14</sup>：

- (i) 提供申請人收費表或如何計算費用之資訊；及
  - (ii) 不利用該費用做為使該方規避本條承諾或義務之方式。
- (l) 確保許可一經核發，在符合相關條款及條件之前提下立即生效，不無故拖延。

9. 倘一方代表領域當局要求金融服務之提供須取得許可，該方透過其指定代表應確保該方代表領域之各主管機關：

- (a) 努力接受電子形式之申請；

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<sup>12</sup> 為臻明確，提供機會不要求展延期限。

<sup>13</sup> 該方代表領域主管機關得要求該等申請案之內容已進行修改。

<sup>14</sup> 為本項之目的，許可費用不包括使用自然資源之費用、拍賣、招標或其他以非歧視性方式授予特許權之費用，或提供普及服務之強制性分攤費用。

- (b) 努力接受以電子形式進行任何所要求對於個人是否適於取得許可的考試之請求，並在可行範圍內，考量以電子方式進行其他考試程序；及
- (c) 在符合該方代表領域之法律關於驗證要求之前提下，接受文件影本，包括電子影本，除非該方代表領域主管機關要求正本文件以確保許可程序之可信度。



## 第五章

### 反貪腐

#### 第5.1 條：定義

為本章之目的，

**與執行職務有關之作為或不作為**，包含任何對公職人員身分或外國公職人員身分之利用，不論是否屬於公職人員職權範圍；

**外國公職人員**係指任何於一方代表領域以外之領域當局擔任立法、執行、行政或司法公職之個人，不論其所屬層級，不論係經指派或選任、永久或暫時性、支薪或不支薪，且不論該人之年資；以及為一方代表領域以外之領域當局，包括公家機關或公營事業，執行公務之個人，不論其所屬層級；

**發行人**係指：

(a) 對於美國在台協會，依據 15 U.S.C. 78l 規定註冊之證券之發行人，或其他依據 15 U.S.C. 78o (d)規定應提出報告之發行人；及

(b) 對於駐美國台北經濟文化代表處，依據「證券交易法」第 5 條規定，謂募集及發行有價證券之公司，或募集有價證券之發起人。

**公共國際組織人員**係指國際公職人員或經公共國際組織授權代表其行為之個人；

**公營事業**係指一方代表領域當局得直接或間接對其施加支

配性影響的事業<sup>1</sup>；

公職人員係指：

(a) 於一方代表領域當局擔任立法、執行、行政或司法公職之個人，不論係經指派或選任、永久或暫時性、支薪或不支薪、且不論該人之年資；

(b) 為一方代表領域內當局，包含公家機關或公營事業，從事公共事務之個人，或依據一方領域之法律定義，及依該領域之法律於相關領域之適用，提供公共服務之個人；或

(c) 依據一方代表領域之法律定義之公職人員。

## 第 5.2 條：適用範圍與一般條款

1. 本章處理雙方代表領域當局之立法與其他措施，以預防及打擊任何影響國際貿易及投資之賄賂與貪腐。<sup>2</sup>
2. 各方透過其指定代表，認知到預防及打擊影響國際貿易及投資事務之賄賂與貪腐之重要性。
3. 各方透過其指定代表，認知到公部門及私部門內，均建立廉正之必要性，且各部門就此均有責任。
4. 各方透過其指定代表，認知到區域性和多邊倡議對於預防及打擊影響國際貿易及投資事務之賄賂與貪腐之重要性，並承諾透過其指定代表，與另一方透過其指定代表，共同鼓勵與支持預防及打擊該等賄賂與貪腐的適當倡議。

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<sup>1</sup> 就定義之目的而言，支配性影響應被視為存在，其中包括倘一方代表領域之當局持有事業的大部分認繳資本，控制企業發行的股份所附多數表決權，或能夠任命事業行政或理事會或監事會的大多數成員。

<sup>2</sup> 對於美國在台協會，本章不適用於美國在台協會代表領域之聯邦刑事法管轄範圍以外之行為，且於其涉及包含預防措施義務之範圍內，應僅適用於管轄美國在台協會代表領域當局聯邦、州及地方官員之聯邦法律所涵蓋之措施。

5. 雙方透過其指定代表，咸認雙方代表領域之反貪腐主管機關已在許多雙邊及多邊場域建立工作合作關係，且本章之合作可以加強雙方在該等場域的共同努力，並有助於產生預防及打擊影響國際貿易及投資事務之賄賂與貪腐之結果。
6. 駐美國台北經濟文化代表處透過其指定代表，認知到其代表領域當局依據 2015 年 5 月 20 日之「聯合國反貪腐公約施行法」之義務。美國在台協會透過其指定代表，認知到其代表領域當局依據 2003 年 10 月 31 日於紐約完成之《聯合國反貪腐公約》之義務。
7. 各方透過其指定代表，認知到其代表領域當局依據 1994 年 4 月 15 日完成、2012 年 3 月 30 日修正之世界貿易組織《政府採購協定》，以透明及公正方式進行公共採購之義務。
8. 各方透過其指定代表，認知到在勞動法規條文之執行和實施中預防及打擊賄賂與貪腐之重要性，且就勞工保護和國際認可的勞動權利而言，貪腐增加特定移工之脆弱性。為此，各方透過其指定代表，應對移工採行或維持免除移工招募相關費用之措施。
9. 各方透過其指定代表，認知到藉由促進透明化及強化環境治理和執行，以預防及打擊賄賂與貪腐之重要性，期能提升打擊環境退化之努力。

### **第5.3 條：預防及打擊賄賂與貪腐之措施**

1. 各方透過其指定代表，應採行或維持必要之立法及其他措施，將該方代表領域當局之管轄權所及之任何人所故意實施且影響國際貿易及投資事務之下列行為，於該方

代表領域之法律中規定為犯罪：

- (a) 向公職人員直接或間接行求、期約或交付不當利益於其本人或其他人員，以使該公職人員於執行公務時作為或不作為；
  - (b) 公職人員為其本人或其他人員直接或間接行求或收受不當利益，以作為該公職人員於執行公務時作為或不作為之條件；
  - (c) 向外國公職人員或公共國際組織人員直接或間接行求、期約或交付該人員或其他人不當利益，以使該人員與執行職務時作為或不作為，進而獲得或保留與國際商業活動有關之商業或其他不當利益；及
  - (d) 幫助、教唆或共謀<sup>3</sup>犯下任何第(a)款至第(c)款之罪行。
2. 各方透過其指定代表，對有關帳冊及紀錄之保存、內部控制、財務報表揭露，及會計及審計標準，應採行或維持必要之立法及其他措施，以禁止或預防發行人從事下列觸犯本條所述罪行之行為：
- (a) 設立帳冊外之帳戶；
  - (b) 進行帳冊外之交易或與帳冊不符之交易；
  - (c) 浮報支出；
  - (d) 登錄負債科目時謊報用途；
  - (e) 使用不實憑證；及
  - (f) 故意於該方代表領域之法律規定之期限前銷毀

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<sup>3</sup> 雙方得經由雙方所代表領域之法律體系內的適用概念履行關於共謀的承諾，對於駐美國台北經濟文化代表處而言，包括共謀共同正犯。

帳冊。

3. 各方透過其指定代表，應採行或維持必要之立法及其他措施，將一方代表領域當局之管轄權所及之任何人所故意實施且影響國際貿易及投資事務之下列行為，於該方代表領域之法律中規定為犯罪：
  - (a) 公職人員為其本人或其他人之利益，侵占、竊取或挪用其因職務而受託之任何財物、政府或私有資金、有價證券或其他任何有價物品；
  - (b) 明知財產為犯罪所得，為了隱匿或掩飾該財產之非法來源，或幫助任何參與犯前置犯罪之人逃避其行為之法律後果，轉換或轉移該財產；
  - (c) 明知財產為犯罪所得，隱匿或掩飾財產之真實性質、來源、所在地、處分、轉移、所有權或有關權利；
  - (d) 在取得財產時，明知該財產為犯罪所得，仍獲取、占有或使用之；
  - (e) 對犯第(a)款至第(d)款所定之任何犯罪，有參與、結夥或共謀、未遂，與幫助、教唆、促使及建議行為。
4. 各方透過其指定代表，應採行或維持有效、符合比例的、具嚇阻性之制裁及程序，以執行依據第 1 項、第 2 項及第 3 項所採行或維持之措施。
5. 各方透過其指定代表，對賄賂、其他依據該方代表領域之法律規定屬非法及促成犯第 1 項及第 3 項犯罪行為之費用，應否准列為可減除之費用項目。
6. 各方透過其指定代表，應採行或維持措施，於刑事、民事

或行政程序中識別、追蹤、凍結、扣押及沒收：

(a) 犯罪所得，包括任何因犯第 1 項及第 3 項之罪行所產生之財產；及

(b) 利用於或擬利用於此類犯罪之財產、設備或其他工具。

7. 各方透過其指定代表，應以符合該方代表領域法規之方式採行或維持措施，拒絕犯第 1 項或第 3 項罪行之外國公職人員，或任何幫助此類犯罪之人入境。

#### **第 5.4 條：舉報賄賂或貪腐犯罪之人**

1. 各方透過其指定代表，應指定該方代表領域主管機關負責依據第 5.3 條所採行或維持之措施之執行，並將此訊息向民眾公開。
2. 各方透過其指定代表，應採行或維持向民眾公開之程序，使一般人得以向該方代表領域內主管機關通報任何可能被認為構成第 5.3.1 條及第 5.3.3 條所述罪行或第 5.3.2 條所述行為之事件，包含以匿名的方式。
3. 各方透過其指定代表，應採行或維持措施以保護任何對個人之歧視性或不適當之處分，若該人員基於合理信賴情形下，向該方代表領域之主管機關通報任何可能被認為構成第 5.3.1 條及第 5.3.3 條所述罪行或第 5.3.2 條所述行為之可疑事件。
4. 各方透過其指定代表，應力求發行人財務報表的外部審查者將任何被認為可能係第 5.3.1 條及第 5.3.3 條所述罪行或第 5.3.2 條所述行為之可疑事件之跡象，通報至管理階層，並在適當時，通報予公司監督單位。各方透過其指定代表，

應尋求鼓勵收到此外部審查報告的發行人積極且有效率地對該報告作回應。

5. 各方透過其指定代表，應考量要求發行人財務報表的外部審查者向該方代表領域主管機關通報任何可能被認為係第 5.3.1 條及第 5.3.3 條所述罪行或第 5.3.2 條所述行為之可疑事件。各方透過其指定代表，應採行或維持措施，保護任何外部審查者基於合理信賴，向該方代表領域主管機關通報此可疑事件，免受與此通報相關之不當法律行為。

#### 第 5.5 條：促進公職人員廉政<sup>4</sup>

1. 為預防及打擊影響國際貿易與投資事務之賄賂與貪腐，各方透過其指定代表，除其他事項外，應促進公職人員之廉正、誠實及盡責。為此，各方透過其指定代表，應採行或維持立法及其他措施以達成以下目的：
  - (a) 提供足夠之公職人員篩選及訓練之程序，尤其在該方代表領域當局認為特別易受賄賂與貪腐之公務職位；
  - (b) 促進公職人員執行公務時之透明化及問責性；
  - (c) 要求資深官員及其他被該方透過其指定代表認為適當之公職人員，向該方代表領域之適當主管機關申報可能與其職權有利益衝突之資訊，如職務外活動、任職、投資、資產及貴重之餽贈或重大利益；及
  - (d) 促進及要求公職人員在執行公職過程發現賄賂與貪腐行為時，向該方代表領域主管機關通報。

各方透過其指定代表，亦應採行或維持適當政策及程序，以辨識及管理公職人員實際或潛在的利益衝突。

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<sup>4</sup> 對於美國在台協會，此條文僅適用於中央層級。

2. 各方透過其指定代表，應採行或維持正確、誠實及妥善執行公務以及避免公職人員利益衝突之行為守則或標準。各方透過其指定代表亦應採行或維持措施，在必要時對違反依據本項建立之守則或標準之公職人員採取紀律或其他行動。
3. 各方透過其指定代表，應建立程序，讓被起訴或判決確定本章所述罪行之公職人員，得被該方代表領域之適當主管機關撤職、停職或調職，但應考量無罪推定原則。
4. 在不影響司法獨立之情形下，各方透過其指定代表，應採行或維持措施，強化處理影響國際貿易或投資事務之司法人員之廉正並杜絕貪腐之機會。該等措施得包含有關司法人員行為規則。

#### **第 5.6 條：私部門、勞工組織及公民社會之參與**

1. 各方透過其指定代表，應採取適當措施，以促進公部門以外之個人及團體，例如企業、公民社會、非政府組織、勞工組織及社區組織等，積極參與預防及打擊影響國際貿易及投資事務之賄賂與貪腐，並提高公眾對於此類賄賂與貪腐之存在、原因、嚴重性以及所造成之威脅之意識。為此，各方透過其指定代表得採取如下措施，例如：
  - (a) 參與有助於不容忍賄賂與貪腐之公眾宣傳活動及公共教育方案；
  - (b) 鼓勵專業協會及其他非政府組織，在適當情形下，鼓勵及協助企業，特別是中小企業，發展守則、行為標準及法遵計畫，以預防並監控賄賂與貪腐；
  - (c) 促進貪腐對環境造成有害影響之公共意識，建構應對將導致環境惡化之貪腐的能力，並確保面臨環境惡化



風險之社區及區域可獲得反貪腐措施相關資訊；

(d) 鼓勵企業管理階層於其年度報告中，發表聲明或以其他方式公開揭露其內部控制計畫，包括有助於預防及發現賄賂與貪腐者；及

(e) 尊重、促進及保護有關影響國際貿易及投資事務之賄賂與貪腐資訊之查詢、接收、公布及傳播自由。

2. 各方透過其指定代表，在考量企業之規模、法定架構及營運業別之情形下，應鼓勵其：

(a) 採行或維持充分獨立於管理階層之內部會計控制、法遵計畫或監督單位，如董事會或監察人之審計委員會，以協助預防及發現第 5.3.1 條及第 5.3.3 條所述罪行或第 5.3.2 條所述行為；及

(b) 確保其帳戶及必備之財務報表均符合適當審計及認證程序。

## **第 5.7 條：為預防及打擊賄賂與貪腐所採行或維持措施之適用及執行**

1. 各方透過其指定代表，確認其對預防及打擊第 5.3.1 條及第 5.3.3 條所述罪行或第 5.3.2 條所述行為，提升執法行動有效性之承諾。

2. 依據雙方代表領域法律體系之基本原則，各方透過其指定代表，應確保該方代表領域當局不會透過持續或重複發生的作為或不作為，未能有效地執行依據第 5.3 條、第 5.4 條及第 5.5 條文所採行或維持之措施。

3. 依據雙方代表領域法律體系之基本原則，各方透過其指定代表，認知到雙方代表領域之執法、檢察及司法機關保留

關於預防及打擊影響國際投資及貿易事務之賄賂與貪腐之裁量權。各方透過其指定代表，亦認知到雙方代表領域當局保留善意決定關於分配此類執行相關資源之權利。

## 第六章

### 中小企業

#### 第 6.1 條：中小企業總則

1. 認知中小企業在維持各自經濟動能及提升競爭力所扮演的根本性角色，雙方透過其指定代表應尋求促進位於雙方代表領域之中小企業合作，及促進中小企業的就業與成長。
2. 雙方透過其指定代表認知到私部門在中小企業合作中扮演不可或缺的角色。

#### 第 6.2 條：合作以增加中小企業貿易及投資機會

為提升位於雙方代表領域中小企業之商業機會，各方透過其指定代表，在本條所述活動資源可取得之條件下，應考量增加及改善貿易及投資機會之品質，尤其得：

- (a) 促進位於雙方代表領域之支持小企業基礎建設間合作，例如中小企業中心、育成中心及加速器、出口協助中心，及其他適當的中心，以分享最佳作法、交換市場研究、促進中小企業參與國際貿易，以及本地市場之商業成長；
- (b) 透過其指定代表強化與另一方就促進未獲充分服務與代表性不足團體之中小企業間活動進行合作，包含婦女、原住民族、青年及少數族群，以及新創、農業及鄉村中小企業，促進此等中小企業間之夥伴關係及參與國際貿易；
- (c) 透過其指定代表加強與另一方合作，在改善中小

企業取得資本與信用管道、訓練計畫、貿易教育、貿易金融、貿易訪團、貿易便捷化、數位貿易等方面交換資訊及最佳作法，以及協助中小企業適應變動的市場條件；及

- (d) 促進中小企業參與數位貿易以利用機會增加及改善貿易及投資品質。

### 第 6.3 條：資訊分享

1. 各方透過其指定代表應設置免費且公開之網站，其中包含該方代表領域主管機關及其他適當實體之網站連結或資訊，提供該等主管機關認為有助於任何有興趣在該方代表之領域內從事貿易、投資或經商之人的資訊。

2. 第 1 項所述資訊得包含：

- (a) 關務法規、程序或查詢點；
- (b) 智慧財產權相關法規或程序；
- (c) 技術法規、標準或符合性評鑑程序；
- (d) 進口或出口相關之動植物防疫或檢疫措施；
- (e) 外人投資法規；
- (f) 商業登記程序；
- (g) 貿易促進計畫；
- (h) 競爭力計畫；
- (i) 中小企業融資計畫；
- (j) 就業法規；
- (k) 稅務資訊；及
- (l) 對有興趣從雙方代表領域間的貿易中獲益的中小企業有用的其他資訊。

3. 各方透過其指定代表應定期檢視第 1 項及第 2 項所指網站中之資訊與連結，以確保資訊及連結為最新且正確。
4. 在可行範圍內，各方透過其指定代表應將依據本條規定所提供之訊息以英文呈現。

#### **第 6.4 條：中小企業對話**

當雙方經諮詢其指定代表後決定中小企業對話有助益時，雙方經諮詢其指定代表後得定期舉行中小企業對話。中小企業對話得包含雙方、其指定代表、私部門、員工、非政府組織、學術專家、由多元且未獲充分服務及代表性不足群體所擁有的中小企業，及其他來自雙方代表領域之利害關係人。

## 第七章

### 例外與一般條款

#### 第 A 節：例外

##### 第 7.1 條：一般例外

1. 為第二章（關務行政及貿易便捷化）之目的，《1994 年關稅及貿易總協定》第 20 條及其註解均納入成為本協定之一部分，並準用之<sup>1</sup>。
2. 為第四章（服務業國內規章）之目的，《服務貿易總協定》第 14 條第(a)款、第(b)款及第(c)款均納入成為本協定之一部分，並準用之。
3. 雙方透過其指定代表瞭解，《1994 年關稅及貿易總協定》第 20 條第(b)款及《服務貿易總協定》第 14 條第(b)款之措施，包括為保護人類、動物或植物之生命或健康所必要之環境措施，及《1994 年關稅及貿易總協定》第 20 條第(g)款適用於有生命及無生命的可能枯竭之自然資源之保育相關措施。

##### 第 7.2 條：重要安全

本協定之任何內容不應被解釋為：

- (a) 要求一方自行或透過其指定代表，提供或允許取得該方代表領域當局認為一旦揭露將違反其重要安全利益之資訊；或

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<sup>1</sup> 為臻明確，臺灣、澎湖、金門及馬祖個別關稅領域與美國就納入本協定之《世界貿易組織協定》下既有權利與義務，應由雙方自行及透過其指定代表行使或履行。

- (b) 排除一方代表領域當局採行其認為屬履行維護或恢復國際和平或安全之義務、或保護其重要安全利益之必要措施。

### 第 7.3 條：租稅措施

1. 為本條之目的，租稅與租稅措施包括貨物稅，但不包括：
  - (a) 第 1.4 條（一般定義）所定義之「關稅」；或
  - (b) 該定義之第(b)款、第(c)款與第(d)款所列之措施。
2. 除本條有規定外，本協定不適用於租稅措施。
3. 第二章（關務行政及貿易便捷化）適用於加值稅。

### 第 7.4 條：金融服務例外

1. 本協定不禁止一方代表領域當局基於審慎理由<sup>2</sup>，包括對投資人、存款人、保單持有人、或金融服務提供者對之負有受託義務之人之保護，或為確保金融體系的健全及穩定性，採行或維持措施，不受除第二章（關務行政及貿易便捷化）外之本協定其他規定之限制。如該措施因適用本例外而不符合本協定規定，該措施不應作為規避該等規定之承諾或義務的手段。
2. 本協定不適用於一方代表領域之中央銀行或貨幣政策主管機關、或一方代表領域主管機關所擁有或控制之金融服務提供者，為貨幣及相關信用政策或匯率政策所採行之任何一般性適用之非歧視性措施。

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<sup>2</sup> 「審慎理由」包括為維護金融服務提供者之安全、健全、可信度、財務責任，及為維護支付及清算系統之安全、財務及經營之誠信。

3. 本協定不限制一方代表領域當局透過平等、非歧視及善意適用措施，為維持金融服務提供者之安全、健全、可信度或財務責任，禁止或限制金融服務提供者對其分支機構或相關人員或為其分支機構或相關人員之利益進行移轉。本項內容不影響其他本協定中允許限制該等移轉之規定。

4. 為臻明確，本協定不禁止一方代表領域當局採行或維持必要措施，以確保遵守不牴觸本協定的法律或法規，包括與防止欺騙及詐欺行為，或處理金融服務契約之違約效果相關的措施。

### **第 7.5 條：原住民族權利**

倘該等措施不做為對另一方代表領域之人專斷或無理歧視之手段，或做為對貨品貿易、服務貿易及投資之隱藏性限制，本協定不排除一方自行或透過其指定代表，採行或維持該方代表領域當局認為必要的措施，以履行其對原住民族的法律義務。

## **第 B 節：一般條款**

### **第 7.6 條：資訊揭露**

本協定不要求一方自行或透過其指定代表，提供或允許取得若揭露將違反法律，或有損法律執行，或違反公共利益，或有損特定國營或私人企業之合法商業利益之資訊。

### **第 7.7 條：聯絡點**



1. 各方經諮詢其指定代表後，應指定一總聯絡點，以促進雙方、其指定代表、及雙方代表領域主管機關就任何本協定涵蓋事項進行溝通。
2. 各方經諮詢其指定代表後，應指定本協定所要求之聯絡點。
3. 除本協定另有規定外，各方應於本協定生效日起 60 日內，以書面通知另一方本協定規定之聯絡點。
4. 各方應立即以書面通知另一方任何聯絡點之任何異動。

## **第八章**

### **最終條款**

#### **第 8.1 條：附件及註釋**

本協定之附件及註釋構成本協定整體之一部分。

#### **第 8.2 條：修正**

1. 雙方得以書面方式同意修正本協定。
2. 本協定之修正，應在較後一方依其適用之法律程序核可該修正，並以書面通知另一方之日後 60 日生效，或於雙方同意之其他日期生效。

#### **第 8.3 條：《世界貿易組織協定》之修正**

如雙方併入本協定之《世界貿易組織協定》條文有所修正，雙方經諮詢其指定代表後，除本協定另有規定，應諮商是否修正本協定。

#### **第 8.4 條：生效**

當本協定生效所須之內部程序完成後，各方應以書面通知另一方。本協定應於最後通知日之次日生效。

#### **第 8.5 條：檢討**

1. 雙方透過其指定代表，應在不晚於本協定生效後 90 日內

檢討本協定之執行及運作，並於此後在適當時進行檢討，至少每年一次。

2. 進行檢討之前，各方透過其指定代表，應在適當時透過諮詢委員會等方式，向公眾徵求關於本協定執行之意見。

#### **第 8.6 條：諮商**

1. 如一方在任何時間對於另一方執行本協定條文有疑慮，有疑慮之一方經諮詢其指定代表後，得以書面方式要求另一方進行諮商。雙方經諮詢其指定代表後，應盡一切努力達成雙方滿意之解決方案。

2. 雙方透過其指定代表咸認執行本協定各章之重要性，以及促進雙邊貿易及投資之共同目標。

#### **第 8.7 條：終止**

任一方得以書面方式通知另一方終止本協定。終止應於通知日後六個月生效。

#### **第 8.8 條：正式文本**

本協定之中文及英文文本具同等效力。

**AGREEMENT BETWEEN THE AMERICAN INSTITUTE IN TAIWAN  
AND THE TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE  
IN THE UNITED STATES  
REGARDING TRADE BETWEEN  
THE UNITED STATES OF AMERICA AND TAIWAN**

**PREAMBLE**

The American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, hereinafter individually referred to as a “Party” and collectively the “Parties,” seeking to:

STRENGTHEN the economic and trade relationship between the United States of America (United States) and Taiwan;

ACHIEVE a 21<sup>st</sup>-century trade agreement with high-standard commitments and economically meaningful outcomes to support mutually beneficial trade leading to freer, fairer markets and to robust economic growth;

BENEFIT workers and ensure that free and fair trade contributes to promoting resilient, sustainable, and inclusive economic growth and development;

FACILITATE bilateral trade and investment flows;

PROMOTE good regulatory practices;

IMPROVE regulatory processes;

ENSURE efficient and transparent customs procedures that reduce costs and ensure predictability for importers and exporters;

ENCOURAGE cooperation in the area of trade facilitation and customs enforcement;

MINIMIZE unnecessary formalities at the border;

PROMOTE anticorruption measures;

ENHANCE transparency for the public and traders of all sizes and in all sectors;

FOSTER cooperation in promoting jobs and growth in small and medium-sized enterprises, including micro-sized enterprises;

ESTABLISH a foundation for addressing additional trade and investment challenges and opportunities and for advancing mutual priorities over time;

RECOGNIZING the existing rights and obligations of the United States and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu with respect to each other under the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh, April 15, 1994; the Parties' rights and obligations under the *Agreement Between the American Institute in Taiwan and the Coordination Council for North American Affairs Concerning a Framework of Principles and Procedures for Consultations Regarding Trade and Investment*, done at Washington, D.C., September 19, 1994; and other agreements addressing rights and obligations with respect to trade between the territories represented by the Parties; and

RECOGNIZING the role that the Parties' Designated Representatives play in matters involving trade and investment between the United States and Taiwan,

HAVE AGREED as follows:

# **CHAPTER 1**

## **INITIAL PROVISIONS AND GENERAL DEFINITIONS**

### **Section A: Initial Provisions**

#### **Article 1.1: Agreement Regarding Trade**

The Parties hereby enter into this Agreement regarding trade between the United States and Taiwan.<sup>1</sup>

#### **Article 1.2: Designated Representatives**

- (a) AIT's Designated Representative is the Office of the United States Trade Representative. TECRO's Designated Representative is the Office of Trade Negotiations, Executive Yuan.
- (b) Responsibilities and obligations of the Parties are to be carried out through their respective Designated Representatives where so indicated. The Parties recognize that their respective Designated Representatives may rely on other authorities of the territories represented by the Parties as relevant to ensure the implementation of the Parties' responsibilities and obligations or to exercise the Parties' rights. The Parties intend that, where authorities of the territories represented by the Parties other than their Designated Representatives maintain executive, regulatory, administrative, or other authority relevant to matters addressed by this Agreement, references in this Agreement to Designated Representatives shall be understood to include those other authorities with respect to such matters.

#### **Article 1.3: Delegated Authority**

Each Party, through its Designated Representative, shall ensure that all relevant authorities of the territory that it represents that have been delegated executive, regulatory, administrative, or other authority relevant to the obligations set out under this Agreement act consistent with such obligations in the exercise of that authority.

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<sup>1</sup> Taiwan is a member of the WTO under the name of the "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu."

## **Section B: General Definitions**

### **Article 1.4: General Definitions**

For the purposes of this Agreement, unless otherwise provided:

**AIT** means the American Institute in Taiwan;

**central level** means:

- (a) for AIT, the federal authorities of the territory represented by AIT; and
- (b) for TECRO, the authorities with jurisdiction that extends throughout the territory represented by TECRO;

**customs administration** means the competent authority that is responsible under the law of the territory represented by a Party for the administration of customs laws and regulations, and shall refer to:

- (a) for AIT, United States Customs and Border Protection, Department of Homeland Security, or any successor thereof; and
- (b) for TECRO, Taiwan Customs Administration, Ministry of Finance, or any successor thereof;

**customs duty** includes a duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed on or in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994;
- (b) fee or other charge in connection with the importation commensurate with the cost of services rendered;
- (c) antidumping or countervailing duty; and
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas, or tariff preference levels;

**days** means calendar days, including weekends and holidays;

**enterprise** means an entity constituted or organized under applicable measures, whether or not for profit, and whether privately owned or owned or controlled by the authorities of the territory represented by a Party or by the authorities of a territory not represented by a Party, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

**enterprise of the territory represented by a Party** means an enterprise constituted or organized under the measures adopted or maintained by the authorities of the territory represented by the Party;

**existing** means in effect on the date of entry into force of this Agreement;

**financial service** means a service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (a) direct insurance (including co-insurance):
  - (i) life;
  - (ii) non-life;
- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency; and
- (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) acceptance of deposits and other repayable funds from the public;
- (f) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) financial leasing;
- (h) all payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;



- (i) guarantees and commitments;
- (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (i) money market instruments (including checks, bills, certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products, including futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
  - (v) transferable securities; and
  - (vi) other negotiable instruments and financial assets, including bullion;
- (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and supply of services related to these issues;
- (l) money broking;
- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) provision and transfer of financial information and financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

**GATS** means the *General Agreement on Trade in Services*, set out in Annex 1B to the WTO Agreement;

**GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

**goods** means a merchandise, product, article, or material;

**individual** means a natural person;

**measure** includes any law, regulation, procedure, requirement, or practice adopted or maintained by the authorities of the territory represented by a Party;

**national** means:

- (a) for AIT, “a national of the United States,” as defined in the *Immigration and Nationality Act*; and
- (b) for TECRO, a “national” as defined in the *Nationality Act*;

**person** means a natural person or an enterprise;

**person of the territory represented by a Party** means a natural person who is a national or has permanent residency of the territory represented by the Party, or any enterprise of the territory represented by the Party;

**publish** means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

**service supplier of the territory represented by a Party** means a person of the territory represented by the Party that seeks to supply or supplies a service;

**SME** means a small and medium-sized enterprise, including a micro-sized enterprise;

**TECRO** means the Taipei Economic and Cultural Representative Office;

**territory** means:

- (a) for AIT,
  - (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;
  - (ii) the foreign trade zones located in the United States and Puerto Rico; and
  - (iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law

as reflected in the *United Nations Convention on the Law of the Sea*, the United States may exercise sovereign rights or jurisdiction;

- (b) for TECRO, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu;

**trade in services or supply of services** means the supply of a service:

- (a) from the territory represented by a Party into the territory represented by the other Party;
- (b) in the territory represented by a Party by a person of the territory represented by the Party to a person of the territory represented by the other Party;
- (c) by a service supplier of the territory represented by a Party, through commercial presence in the territory represented by the other Party; or
- (d) by a national of the territory represented by a Party in the territory represented by the other Party;

**value added tax** means any tax at the central level, including relevant goods and services tax, that embodies the basic features of a value added tax: a broad-based tax on final consumption collected from, but in principle not borne by, businesses through a staged collection process, without regard to the method used for determining the tax liability;

**WTO** means the World Trade Organization; and

**WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh, April 15, 1994.

## CHAPTER 2

### CUSTOMS ADMINISTRATION AND TRADE FACILITATION<sup>1</sup>

#### Article 2.1: Definitions

For the purposes of this Chapter:

**customs offense** means any act committed for the purpose of avoiding the laws or regulations of the territory represented by a Party pertaining to the provisions of this Chapter governing importations or exportations of goods between, or transit of goods through, the territories represented by the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods;

**electronic format** includes formats suitable for automated interpretation and electronic processing without human intervention, as well as digitized images and forms; and

**supporting documentation** means documentation that is required to support the information presented to the customs administration or other authority of the territory represented by a Party for import, export, or transit of goods through that territory, and may include documents such as invoices, bills of lading, packing lists, and money transfers.

#### Article 2.2: Online Publication

1. Each Party, through its Designated Representative, shall make available on a free, publicly accessible website the following information and update such information as necessary:

- (a) an informational resource that describes the procedures and practical steps an interested person needs to follow for importation into, exportation from, or transit through the territory represented by the Party;
- (b) the forms, documentation, and data that the authorities of the territory represented by the Party require for importation into, exportation from, or transit through the territory represented by the Party;

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<sup>1</sup> Nothing in this Chapter shall affect any rights or obligations or be construed to confer any new rights or impose any obligations with respect to antidumping or countervailing duty proceedings or measures taken pursuant to Article VI of the GATT 1994, the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement, or the *Agreement on Subsidies and Countervailing Measures*, set out in Annex 1A to the WTO Agreement, or with regard to actions taken pursuant to Article XIX of the GATT 1994 and the *Agreement on Safeguards*, set out in Annex 1A to the WTO Agreement.

- (c) the laws, regulations, and procedures of the territory represented by the Party for importation into, exportation from, or transit through the territory represented by the Party;
- (d) all current customs duties, taxes, fees, and charges that the authorities of the territory represented by the Party impose on or in connection with importation, exportation, or transit, including when the fee or charge applies, and the amount or rate;
- (e) contact information for the enquiry point or points of the authorities of the territory represented by the Party established or maintained pursuant to Article 2.4;
- (f) the laws, regulations, and procedures of the territory represented by the Party for requesting an advance ruling under Article 2.5 and for returning and reimporting rejected goods under Article 2.15;
- (g) the laws, regulations, and procedures of the territory represented by the Party for seeking an administrative or judicial review or appeal of an administrative decision or determination from the customs administration of the territory represented by the Party;
- (h) informational resources that help an interested person understand the person's obligations when importing into, exporting from, or transiting goods through the territory represented by the Party, how to comply with those obligations, and any additional facilitations available based on a record of compliance, such as through a trusted trader program;
- (i) information about trusted trader programs, such as authorized economic operator programs, including eligibility requirements and the application process;
- (j) procedures to correct an error in a customs transaction, including the information necessary to make the corrections and, if applicable, the circumstances when penalties will not be imposed;
- (k) information about the current tariff classification nomenclature in effect and the procedures for updating and adopting new nomenclature;
- (l) the standards required for the submission of electronic data, electronic documentation, electronic certifications, and electronic signatures to the customs administration or other authority of the territory represented by the Party for importation into, exportation from, or transit through the territory represented by the Party; and

- (m) with respect to information that is collected from, or provided by, traders:
  - (i) how such information can be used, the persons who will be able to access such information, how such information will be stored, and how such information can be checked for errors;
  - (ii) the laws, regulations, and procedures of the territory represented by the Party regarding the collection, protection, use, disclosure, retention, correction, and disposal of such information;
  - (iii) any agreements or arrangements governing the collection of such information or the exchange or sharing of such information with third parties; and
  - (iv) a list of third parties with which the authorities of the territory represented by the Party exchange or share such information.

2. Each Party, through its Designated Representative, shall make the value added tax rates of the territory represented by the Party available without charge in a commonly accepted electronic format, such as Application Programming Interface, and keep the list of rates updated.

### **Article 2.3: Communication with Traders**

1. Each Party, through its Designated Representative, shall, to the extent possible and in accordance with the law of the territory represented by the Party, publish, in advance, regulations of general application governing trade and customs matters that the authorities of that territory propose to adopt and provide interested persons the opportunity to comment before such regulations are adopted.

2. Each Party, through its Designated Representative, shall adopt or maintain a mechanism to regularly communicate with traders about the current and upcoming procedures of the authorities of the territory represented by the Party related to the importation, exportation, and transit of goods. These communications shall provide traders with an opportunity to raise concerns about those procedures and emerging issues and to provide their views to the customs administration and other authorities of that territory on those procedures and emerging issues.

### **Article 2.4: Enquiry Points**

1. Each Party, through its Designated Representative, shall establish or maintain one or more enquiry points to respond to enquiries by interested persons concerning importation, exportation, or transit procedures.

2. Neither Party, either on its own or through its Designated Representative, shall require the payment of a fee or charge for answering enquiries through the enquiry point established under paragraph 1.

3. Notwithstanding paragraph 2, a Party, through its Designated Representative, may require payment of a fee or charge with respect to other enquiries requiring document search, duplication, review, or processing of large volumes of documents or data in connection with requests in accordance with the laws, regulations, and procedures of the territory represented by the Party regarding public access to official records.

4. Each Party, through its Designated Representative, shall ensure that its enquiry point responds to enquiries within 20 days.

5. Notwithstanding paragraph 4, a Party, through its Designated Representative, may allow its enquiry point to take more than 20 days to respond to enquiries that require a document search, duplication, review, or the processing of large volumes of documents or data.

#### **Article 2.5: Advance Rulings**

1. Each Party, through its Designated Representative, shall provide that the customs administration of the territory represented by the Party shall issue, upon request, a written advance ruling prior to the importation of a good into that territory setting forth the treatment that the customs administration shall provide to the good at the time of importation, or exportation in the case of eligibility for drawback or duty deferral.

2. Each Party, through its Designated Representative, shall allow a person of the territory represented by a Party who is an exporter, importer, producer, or that has a justifiable cause, or a representative thereof, to request a written advance ruling.

3. Neither Party, either on its own or through its Designated Representative, shall require, as a condition for requesting an advance ruling, a person of the territory represented by the other Party to establish or maintain a contractual or other relation with a person located in the territory represented by the Party.

4. Each Party, through its Designated Representative, shall provide that the customs administration of the territory represented by the Party shall issue advance rulings with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case in accordance with the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade*, set out in Annex 1A to the WTO Agreement (Customs

Valuation Agreement);

- (c) the origin of the good;
- (d) whether a good is subject to a quota or a tariff-rate quota; and
- (e) eligibility for a drawback or duty deferral program.

5. Each Party, through its Designated Representative, shall adopt or maintain uniform procedures throughout the territory represented by the Party for the issuance of advance rulings, including a detailed description of the information required to process an application for a ruling.

6. Nothing in this Article prohibits a Party, either on its own or through its Designated Representative, from seeking supplemental information from the person requesting the ruling or a sample of the good for which the advance ruling is being requested at any time while evaluating a request for an advance ruling.

7. Each Party, through its Designated Representative, shall:

- (a) in issuing an advance ruling, take into account the facts and circumstances provided by the person requesting that ruling;
- (b) issue the ruling as expeditiously as possible and in no case later than 150 days after it has obtained all necessary information from the person requesting an advance ruling; and
- (c) provide to the person requesting an advance ruling the reasons for that ruling, including the factual and legal basis.

8. Each Party, through its Designated Representative, shall provide that an advance ruling takes effect on the date that it is issued or on a later date specified in the ruling, and remains in effect unless the advance ruling is modified or revoked.

9. Each Party, through its Designated Representative, shall provide to a person requesting an advance ruling the same treatment provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

10. Each Party, through its Designated Representative, shall provide that an advance ruling shall apply throughout the territory represented by the Party for the person to whom the ruling is issued.

11. Nothing in this Article requires a Party, through its Designated Representative, to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of a post clearance audit or an administrative or judicial review or appeal.



12. Each Party, through its Designated Representative, shall, in accordance with the laws, regulations, and procedures of the territory represented by the Party, make its advance rulings available on a free, publicly accessible website with redactions to protect confidential information.

## **Article 2.6: Electronic Documentation and Systems for Traders**

1. With a view to creating a paperless border environment for trade in goods, each Party, through its Designated Representative, recognizes the importance of eliminating paper forms and documents required for import, export, or transit of goods. To this end, the Parties, through their Designated Representatives, are encouraged to eliminate requirements for paper forms and documents, as appropriate, and transition toward using forms and documents in electronic formats.

2. Each Party, through its Designated Representative, shall make any form issued or controlled by the customs administration of the territory represented by the Party for import, export, or transit of goods through the territory represented by the Party available to the public in an electronic format.

3. Each Party, through its Designated Representative, shall endeavor to make any form issued or controlled by an authority of the territory represented by the Party other than the customs administration, for import, export, or transit of goods through the territory represented by the Party, available to the public in an electronic format.

4. Each Party, through its Designated Representative, shall make available on a free, publicly accessible website the instructions for how to submit in electronic format the forms referred to in paragraph 2, and supporting documentation for those forms.

5. Nothing in paragraphs 2, 3, and 4 shall be construed to prevent a Party or its Designated Representative from complying with any applicable international legal requirement to the contrary.

6. If a person submits in electronic format a form issued or controlled by the customs administration or other authority of the territory represented by a Party, or, as appropriate, supporting documentation, related to the import, export, or transit of goods through the territory represented by the Party, the Party, through its Designated Representative, shall ensure that electronic document is treated as the legal equivalent of the paper version of the document.

7. Nothing in paragraph 6 shall be construed to require the treatment of an electronic document as the legal equivalent of a paper document if doing so:

- (a) would be inconsistent with a domestic legal, regulatory, or procedural requirement or an international legal requirement that is applicable to the authorities of the territory represented by a Party; or
  - (b) would reduce the effectiveness of customs or other trade procedures in the context of an audit, verification, or enforcement action related to import, export, or transit of goods through the territory represented by a Party.
- 8. Each Party, through its Designated Representative, shall no later than 12 months after the date of entry into force of this Agreement publish, in accordance with Article 2.2, a list of paper forms that, consistent with paragraphs 5 and 7, are required by the authorities of the territory represented by the Party to be submitted in paper form. Each Party, through its Designated Representative, shall update the list, as appropriate.
- 9. The Parties, through their Designated Representatives as appropriate, shall endeavor to cooperate in international forums, where appropriate, to promote the use of electronic forms, the acceptance of electronic supporting documentation, and the exchange of electronic certifications required for import, export, or transit of goods.
- 10. Each Party, through its Designated Representative, shall ensure that:
  - (a) any signature required by the customs administration of the territory represented by the Party may be submitted in electronic format; and
  - (b) electronic signatures submitted to the customs administration of the territory represented by the Party may be validated electronically without the need for a mutual recognition arrangement.
- 11. The Parties, through their Designated Representatives as appropriate, shall consult on whether to issue, accept, and exchange certifications consistent with relevant international standards, for example electronic phytosanitary certificates (e-Phyto) consistent with International Standard for Phytosanitary Measures 12 adopted under the International Plant Protection Convention.

#### **Article 2.7: E-Invoicing**

- 1. For the purposes of this Article, **value added tax invoice** means an invoice submitted by a private party to the tax authorities of the territory represented by a Party for purposes of making value added tax payments or filing value added tax returns.
- 2. Each Party, through its Designated Representative, shall ensure that an invoice issued by a private party to another private party for the sale of goods or services is not denied legal effect solely on the basis that the invoice is in electronic format.

3. Each Party, through its Designated Representative, shall ensure that a bill of lading issued by a private party to another private party for the carriage of goods is not denied legal effect solely on the basis that the bill of lading is in electronic format.

4. Each Party, through its Designated Representative, shall ensure that a value added tax invoice for the sale of goods or services is not denied legal effect solely on the basis that the value added tax invoice is in electronic format.

5. For greater certainty, a Party, through its Designated Representative, may require that a value added tax invoice submitted to the authorities of the territory represented by the Party be:

- (a) in a specified format;
- (b) transmitted to those authorities through a specific network or connection; or
- (c) encrypted or validated to a specific standard.

6. If the authorities of the territory represented by a Party maintain a requirement described in paragraph 5, the Party, through its Designated Representative, shall, with a view to lowering costs and opening competition, ensure that those authorities:

- (a) make that requirement available online;
- (b) use or accept open standards for compliance with that requirement; and
- (c) take into account the needs of SMEs subject to the requirement.

7. If the authorities of the territory represented by a Party require that a value added tax invoice be transmitted to those authorities through a specific network or connection, the Party, through its Designated Representative, shall ensure that those authorities do not:

- (a) charge a fee for using the specific network or connection; or
- (b) restrict the use of a specific network or connection to private parties in the territory represented by the Party.

## **Article 2.8: E-Invoicing Networks**

1. For the purposes of this Article:

**access point** means a service that facilitates the exchange of an invoice or a related document between a buyer and a seller;

**data component** means common data language and syntax between access points;

**delivery component** means protocols that govern how an access point delivers data in a secure manner to another access point;

**discovery component** means protocols that govern how an access point identifies another access point and what data the other access point can receive; and

**electronic invoicing network** means an open network that creates, exchanges, and processes an invoice or a related document using a structured digital format and without human intervention.

2. The Parties recognize that the use of electronic invoicing networks can increase the effectiveness, efficiency, and predictability of international trade and lower costs. To these ends, each Party, through its Designated Representative, shall endeavor to promote the adoption of electronic invoicing networks that support cross-border interoperability by:

- (a) allowing a seller and a buyer, each using a different access point service provider, to exchange an invoice or a related document; and
- (b) basing the networks upon discovery components, delivery components, and data components that utilize open standards, such as the OASIS business document exchange and universal business language.

3. Each Party, through its Designated Representative, shall ensure that if the authorities of the territory represented by the Party allow the use of an electronic invoicing network for making value added tax payments to those authorities, the network complies with the principles set out in paragraph 2.

## **Article 2.9: Exchange of Advance Electronic Data for Postal Shipments of Goods**

1. Each Party, through its Designated Representative, shall ensure that any postal operator offering universal service (Postal Operator) of the territory represented by the Party fulfills Electronic Advance Data (EAD) requirements pertaining to Electronic Data Interchange (EDI) of pre-dispatch and item-level customs declaration information consistent with Universal Postal Union (UPU) Standards and Convention Regulations, when such Postal Operator dispatches postal items containing goods that originate in its service territory and are destined for the service territory of a Postal Operator of the territory represented by the other Party.

2. Each Party, through its Designated Representative, shall consult the other Party, through its Designated Representative, prior to imposing EAD requirements pertaining to EDI of pre-dispatch and item-level customs declaration information that are not consistent with UPU Standards and Convention Regulations.

3. Each Party, through its Designated Representative, shall endeavor to impose information submission and processing requirements on postal shipments containing goods to enable effective use of automated targeting methods to intercept potentially higher risk shipments, optimize use of border search resource personnel, and deter illicit trafficking through the mail.

4. Nothing in this Article shall be construed to prevent a Party, either on its own or through its Designated Representative, from complying with domestic or international law that limits liability for Postal Operators of the territory represented by the Party.

#### **Article 2.10: Electronic Payments**

Each Party, through its Designated Representative, shall adopt or maintain procedures allowing for the electronic payment of customs duties, taxes, fees, or charges imposed on or in connection with importation or exportation and collected by the customs administration or other authority of the territory represented by the Party.

#### **Article 2.11: Authorized Economic Operator (AEO)**

1. Each Party, through its Designated Representative, shall maintain a trade facilitation partnership program for operators who meet specified security criteria, known as AEO programs, consistent with the *Framework of Standards to Secure and Facilitate Global Trade* of the World Customs Organization.

2. The Parties, through their Designated Representatives, shall endeavor to cooperate by:
- (a) exchanging experiences on the operation of and improvements to their respective AEO programs, seeking to adopt, if appropriate, best practices, in particular with respect to bolstering supply chain resiliency;
  - (b) exchanging information with each other on the operators authorized by their respective AEO programs, in accordance with the law and established processes of the authorities of the territories represented by the Parties; and
  - (c) collaborating in the identification and implementation of trade facilitation benefits for operators authorized by the authorities of the territory represented by the other Party.

#### **Article 2.12: Single Window**

1. Each Party, through its Designated Representative, shall establish or maintain a single window system that enables the electronic submission through a single entry point of the forms,

documentation, and data the authorities of the territory represented by the Party require of importers for importation prior to the arrival of goods to the territory represented by the Party.

2. Each Party, through its Designated Representative, shall provide for the processing of the electronic submissions described in paragraph 1 prior to the arrival of goods to the territory represented by the Party to:

- (a) perform an assessment of risk; and
- (b) expedite the release of low-risk goods.

3. Each Party, through its Designated Representative, shall, whenever practicable, utilize available data provided by information technology systems or sensors embedded on vehicles, shipping containers, or packing materials or otherwise with the shipment to:

- (a) perform an assessment of risk; and
- (b) expedite the release of low-risk goods.

4. Each Party, through its Designated Representative, shall, in a timely manner, inform the submitter of import information through its single window system of the status of the release of the imported goods.

5. If the authorities of the territory represented by a Party do not promptly release an import, the Party, through its Designated Representative, shall inform the importer and shall include in the notification, to the extent permitted by the law of the territory represented by the Party, the reasons why the goods are not released and which authority of that territory, if not the customs administration, has withheld release of the goods.

6. In building and maintaining the single window system described in paragraph 1, each Party, through its Designated Representative, shall endeavor to streamline the system on an ongoing basis, including by adding functionality to eventually cover export and transit transactions, facilitate trade, improve transparency, and reduce release times and costs associated with import, export, and transit through the territory represented by the Party.

7. Each Party, through its Designated Representative, shall provide that a submitter may, without penalty:

- (a) correct a non-fraudulent error<sup>2</sup> in a submission to the single window system described in paragraph 1 within a reasonable amount of time;
- (b) update a submission to the single window system described in paragraph 1 to reflect changed circumstances at any time before the importation is complete;

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<sup>2</sup> For greater certainty, whether an error is non-fraudulent may be determined based on the published laws, regulations, or procedures of the territory represented by the Party.

and

- (c) whenever practicable and consistent with the laws, regulations, and procedures of the territory represented by the Party, correct multiple import declarations, or other forms, documents, or data previously submitted to the single window system described in paragraph 1, in a single submission.

### **Article 2.13: Release of Goods**

1. Each Party, through its Designated Representative, shall adopt or maintain customs procedures related to the importation of goods that:

- (a) provide for the immediate release of goods upon receipt of all required forms and supporting documentation and the fulfillment of all applicable requirements and procedures; and
- (b) allow such goods to be released by the customs administration of the territory represented by the Party at the point of arrival without requiring temporary transfer to warehouses, premises, or other facilities unless required by other authorities of that territory with jurisdiction over such goods. If additional inspections are required by such other authorities, those authorities will release the goods when the goods comply with the applicable requirements of those authorities.

2. Each Party, through its Designated Representative, shall adopt or maintain procedures that provide for the release of goods prior to a final determination and payment of customs duties, taxes, fees, and charges imposed on or in connection with importation of the goods, when these customs duties, taxes, fees, or charges are not determined by the time of arrival, provided that the goods are otherwise eligible for release and any security required by the authorities of the territory into which the good is to be imported has been provided.

3. If the authorities of the territory represented by a Party allow for the release of goods conditioned on a security, the Party, through its Designated Representative, shall adopt or maintain procedures that:

- (a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;
- (b) ensure that the security obligation shall be discharged as soon as possible after the customs administration of the territory represented by the Party is satisfied that the obligations arising from the importation of the goods have been fulfilled or, for instruments covering multiple entries, until it is no longer required; and
- (c) except in limited circumstances, allow an importer to provide security using a

non-cash financial instrument.

4. Nothing in this Article requires a Party, either on its own or through its Designated Representative, to require the release of a good where applicable requirements for release have not been met, or to prevent the authorities of the territory represented by the Party from liquidating a security in accordance with their laws, regulations, and procedures.

5. Neither Party, either on its own or through its Designated Representative, shall use reference or minimum prices, including for risk management, for the purpose of assessing the customs value of goods, assessing taxes, or setting a guarantee.

6. Neither Party, either on its own or through its Designated Representative, shall require the use of preshipment inspection within the scope of Article 10.5.1 of the *WTO Agreement on Trade Facilitation*, set out in Annex 1A to the WTO Agreement.<sup>3</sup>

7. Each Party, through its Designated Representative, shall allow, to the extent practicable, goods intended for import to be moved within the territory represented by the Party under customs control from the point of arrival to another customs port in that territory from where the goods are intended to be released, provided the applicable regulatory requirements of the territory represented by the Party are met.

8. Each Party, through its Designated Representative, shall regularly update, as appropriate, risk profiles in the risk management systems of the authorities of the territory represented by the Party, taking into account emerging trends and trade dynamics and the results of previous customs control activities.

9. Each Party, through its Designated Representative, shall adopt or maintain procedures to ensure uniformity of customs treatment across the territory represented by the Party for goods imported into or transiting the territory.

10. Each Party, through its Designated Representative, shall adopt or maintain training programs for the customs officials of the authorities of the territory represented by the Party with a view to encouraging efficiency, consistency, and predictability in the application of customs procedures throughout that territory, including training on:

- (a) laws, regulations, procedures, and guidance documents that apply throughout that territory;
- (b) mechanisms for seeking consistent guidance on applying a particular customs procedure to an individual customs transaction;
- (c) technological developments in customs procedures, such as non-intrusive

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<sup>3</sup> For greater certainty, this paragraph refers to preshipment inspections covered by the *WTO Agreement on Preshipment Inspection*, set out in Annex 1A to the WTO Agreement, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.



inspection techniques, artificial intelligence, and track-and-trace;

- (d) information technology systems being used by the customs administration of that territory;
- (e) business or trade processes that may complicate risk assessment by the customs administration of that territory; and
- (f) decisions and agreements at the international level that affect the application of the customs procedures of that territory.

#### **Article 2.14: Express Shipments**

1. Each Party, through its Designated Representative, shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall include the procedures specified in Article 2.13. Each customs procedure for express shipments adopted or maintained pursuant to this Article shall:

- (a) apply without regard to the weight of the shipment,<sup>4</sup> whether the shipment is personal or commercial, or whether the recipient is a natural person or legal entity;
- (b) not limit the total number, nor limit the number over a certain period of time, of express shipments that a single recipient may receive;
- (c) to the extent practicable, use non-intrusive inspection technology to facilitate any necessary physical examination or inspections of the goods; and
- (d) require only the submission of the minimum information necessary to process, release, and clear the shipment, and, where possible, allow it to be submitted in a single submission through the single window system described in Article 2.12.

2. For express shipments valued at less than US\$2500, each Party, through its Designated Representative, shall adopt or maintain procedures that apply fewer customs formalities than are required for formal entry procedures, provided that the shipments do not form part of a series of importations that may be reasonably considered to have been undertaken or arranged for the purpose of avoiding compliance by an importer with the laws, regulations, or procedures of the territory represented by the Party into which the shipments are to enter.

3. The procedures provided for in paragraph 2 shall:

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<sup>4</sup> The Parties, through their Designated Representatives, recognize that the authorities of the territory represented by a Party may require formal entry procedures as a condition for release based on the good's weight.

- (a) allow for individual shipments, identified by a bill of lading, to be consolidated into one customs entry by either the plane-load or truck-load;
  - (b) allow the release and clearance of shipments without requiring an importer to obtain a customs bond; and
  - (c) allow either:
    - (i) a qualified consignee to request the periodic billing and remittance of customs duties, taxes, fees, and charges assessed for all its imports over a designated time period; or
    - (ii) the levy of a flat percentage rate assessment on all goods, the payment of which will fulfill the requirement to pay any customs duties, tax, fee, or charge owing for the shipment.<sup>5</sup>
4. For express shipments of restricted goods, nothing in this Article shall be interpreted to prohibit a Party, through its Designated Representative, from:
- (a) applying additional formalities for entry;
  - (b) assessing customs duties, taxes, fees, or charges; or
  - (c) requiring the submission of additional import documentation and data.
5. Nothing in this Article shall be interpreted to prohibit a Party, through its Designated Representative, from requiring that express shipments be accompanied by an airway bill or bill of lading.

## **Article 2.15: Returned Goods**

1. Each Party, through its Designated Representative, shall establish or maintain procedures for incoming returns of non-perishable goods<sup>6</sup> that allow for the return and re-importation of goods free of customs duty when returned within three years after having been exported without having been advanced in value or improved in condition by requiring the minimum information necessary to identify the goods as the same goods previously exported, such as an invoice or a bill of lading.

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<sup>5</sup> For greater certainty, a Party, through its Designated Representative, may opt for up to five flat rates consistent with this paragraph.

<sup>6</sup> For greater certainty, nothing in this paragraph shall be construed to prevent a Party, through its Designated Representative, from prohibiting the incoming returns of non-perishable goods that are not permitted to be returned or re-imported by the laws, regulations, or procedures of the territory represented by the Party.

2. Each Party, through its Designated Representative, shall establish or maintain procedures for outgoing rejected goods that, upon the export from the territory represented by the Party of previously imported goods that have been rejected by the importer or purchaser, provide a mechanism for the refund of customs duties and value added taxes. A Party, through its Designated Representative, may require proof of export from the territory represented by the Party before providing the refund. Neither Party, either on its own or through its Designated Representative, shall require the use of a customs broker or that the claimant be established in the territory represented by the Party in order to claim a refund.

#### **Article 2.16: Shipping Containers and Other Substantial Holders**

1. For purposes of this Article, a **shipping container or other substantial holder** includes any container, tank, cube, cask, barrel, box, winding core, pallet, crate, or cylinder, whether collapsible or not, that is constructed of a sturdy material capable of repeated use, such as plastic, wood, or steel, and that is used in the shipment of goods as an instrument of international traffic.

2. Each Party, through its Designated Representative, shall adopt or maintain procedures allowing a shipping container or other substantial holder, whether arriving full or empty, of any size, volume, or dimension, and accessories or equipment accompanying a shipping container or other substantial holder that has an internal volume of one cubic meter or more:

- (a) to be released from customs control without a customs declaration or payment of customs duties, taxes, fees, or charges; and
- (b) to remain within the territory represented by the Party continuously for at least 364 days.

#### **Article 2.17: Agricultural and Other Goods Vulnerable to Deterioration (AOGVD)**

1. To avoid deterioration, for imports of AOGVD, each Party, through its Designated Representative, shall provide that the customs administration of the territory represented by the Party shall:

- (a) allow for electronic submission of entry process documents, including required licenses, permits, market authorizations, and registrations;
- (b) automate the tariff rate quota administration procedures;
- (c) make available up-to-date, free online information on tariff rate quota availability, including eligibility requirements and quantity of quota allocated;
- (d) provide for reasonable hours of inspection service at ports; and

- (e) give appropriate priority to AOGVD when scheduling inspections that may be required in order to determine whether to release product into commerce.
2. Each Party, through its Designated Representative, shall identify opportunities to provide inspection services away from the border crossings of the territory represented by the Party to facilitate the release of AOGVD. These opportunities may include preauthorization of AOGVD and the provision of outside-the-port services, which may include allowing an importer to arrange proper storage of AOGVD in climate-appropriate storage facilities pending release.
3. If the authorities of the territory represented by a Party limit the number of climate-appropriate storage facilities at or near a port, the Party, through its Designated Representative, shall ensure those authorities take into account, as appropriate, the need for sufficient storage for AOGVD in the management of inspection activities and decisions on the number of facilities.
4. Taking into account the particular costs associated with trade in AOGVD, each Party, through its Designated Representative, shall ensure that the authorities of the territory represented by the Party review entry process requirements, including the use of stamps, signatures, attestations, and paper requirements, with a view to reducing and automating requirements, accepting more entry process documents electronically, and reducing their time and burden.

#### **Article 2.18: Humanitarian Cargo and Disaster Supplies**

Each Party, through its Designated Representative, recognizes the need to have response and recovery plans in place to build resiliency and prepare for humanitarian crises and disasters. Each Party, through its Designated Representative, shall endeavor to allow the rapid release of shipments that the Party, through its Designated Representative, designates as humanitarian or disaster-relief shipments and, where practicable, shall exempt such shipments from the payment of customs duties, taxes, fees and charges.

#### **Article 2.19: Consular Transactions**

1. For purposes of this Article, **consular transaction** means a requirement that goods of the territory represented by a Party intended for export to the territory represented by the other Party must first be submitted to the supervision of the consul of the territory into which the goods are to be imported in the territory from which the goods are to be exported for the purpose of obtaining a signature for authentication, a consular invoice, or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration, or any other form or documentation in connection with the importation of the good.

2. Neither Party, either on its own or through its Designated Representative, shall require a consular transaction or consular tax, fee, or charge in connection with the importation of any good.

#### **Article 2.20: Review and Appeal of Customs Determinations**

1. With a view to providing effective, impartial, and easily accessible procedures for review and appeal of administrative determinations on customs matters, each Party, through its Designated Representative, shall ensure that any person to whom the customs administration of the territory represented by the Party issues a determination has access to:
  - (a) an administrative appeal or a review of the determination by an administrative authority higher than or independent of the employee or office that issued the determination; and
  - (b) a judicial review or appeal of the determination or decision made at the final level of an administrative review.
2. Each Party, through its Designated Representative, shall provide a person to whom the customs administration of the territory represented by the Party issues an administrative determination with the reasons for the administrative determination and access to information on how to request reviews and appeals.
3. Each Party, through its Designated Representative, shall provide that the authority of the territory represented by the Party conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.
4. Each Party, through its Designated Representative, shall ensure that if a person receives a determination or decision on an administrative or judicial review or appeal as provided under paragraph 1, that determination or decision shall be applicable in the same manner throughout the territory represented by the Party with respect to that person.
5. With a view to ensuring predictability for traders and consistent application of the customs laws, regulations, and procedures of the territory represented by the Party, each Party, through its Designated Representative, shall ensure the determinations or decisions of the highest administrative appeal authority of the territory represented by the Party are applied to the practices of the customs administration throughout that territory.
6. Each Party, through its Designated Representative, shall ensure that the customs administration of the territory represented by the Party allows a trader to file a request for administrative review or appeal through electronic means.

## **Article 2.21: Administrative Guidance**

1. Each Party, through its Designated Representative, shall adopt or maintain an administrative procedure by which a customs office in the territory represented by the Party may request guidance from a designated centralized office of the customs administration of the territory represented by the Party as to the proper application of laws, regulations, and procedures of the territory represented by the Party for importation into, exportation from, or transit through that territory with respect to a specific customs transaction, regardless of whether the transaction is prospective, pending, or has been completed. This administrative procedure shall provide that a customs office shall request guidance under this administrative procedure on its own initiative or at the written request of an importer or exporter in the territory represented by the Party, or a representative thereof.
2. Each Party, through its Designated Representative, shall provide that the designated centralized office of the customs administration of the territory represented by the Party shall provide guidance in response to a request by a customs office described in paragraph 1 if the customs treatment applied or proposed to be applied by the customs office to the transaction is inconsistent with the customs treatment provided with respect to transactions that are identical in all material respects, including by another customs office in the territory represented by the Party.
3. Each Party, through its Designated Representative, shall make available on a free, publicly accessible website the procedures, including any forms, for an importer or exporter to request guidance as described in paragraph 1.
4. Each Party, through its Designated Representative, shall provide that an importer or exporter to whom a request described in paragraph 1 relates is allowed an opportunity to submit written views and information to the designated centralized office of the customs administration of the territory represented by the Party before it issues its guidance.
5. Each Party, through its Designated Representative, shall provide that guidance in response to a request described in paragraph 1 shall be taken into account by the customs office with respect to the transaction that is the subject of the request, provided that there is not a ruling or determination issued on the transaction and the facts and circumstances remain the same.
6. Nothing in this Article requires a Party, either on its own or through its Designated Representative, to require the customs administration of the territory represented by the Party to provide guidance on transactions for which: a determination has been made; a determination has been applied consistently throughout the territory represented by the Party; a determination is pending; an importer or exporter has requested a ruling or has received a ruling that has been applied consistently throughout the territory represented by the Party; or a determination or ruling is being reviewed.

## **Article 2.22: Penalties**

1. Each Party, through its Designated Representative, shall adopt or maintain measures that allow for the imposition of a penalty by the customs administration of the territory represented by the Party for breach of the customs laws, regulations, or procedures of that territory, including those governing tariff classification, customs valuation, transit procedures, country of origin, or claims for preferential treatment. Each Party, through its Designated Representative, shall ensure that such measures are administered in a uniform manner throughout the territory represented by the Party.
2. Each Party, through its Designated Representative, shall ensure that a penalty imposed by the customs administration of the territory represented by the Party for a breach of the customs laws, regulations, or procedures of that territory is imposed only on the person legally responsible for the breach.
3. Each Party, through its Designated Representative, shall ensure that any penalty imposed by the customs administration of the territory represented by the Party for breach of the customs laws, regulations, or procedures of that territory depends on the facts and circumstances of the case, including any previous breaches by the person receiving the penalty, and be commensurate with the degree and severity of the breach.
4. Each Party, through its Designated Representative, shall provide that a clerical or minor error in a customs transaction, as set forth in the laws, regulations, or procedures of the territory represented by the Party, published in accordance with Article 2.2, may be corrected without assessment of a penalty, unless the error is part of a consistent pattern of such errors by that person.
5. Each Party, through its Designated Representative, shall adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and customs duties. Those measures shall provide that no portion of the remuneration of an official of the authorities of the territory represented by the Party shall be calculated as a fixed portion or percentage of any penalties or customs duties assessed or collected or as a fixed portion or percentage of the value of any goods seized.
6. Each Party, through its Designated Representative, shall ensure that when the customs administration of the territory represented by the Party imposes a penalty for a breach of the customs laws, regulations, or procedures of that territory, it provides an explanation in writing to the person on whom the penalty is imposed, specifying the nature of the breach, including the specific law, regulation, or procedure concerned and the basis for determining the penalty amount if not set forth specifically in the law, regulation, or procedure.
7. Each Party, through its Designated Representative, shall provide that a person may disclose an error in a customs transaction that is a potential breach of a customs law, regulation, or procedure of the territory represented by the Party, excluding fraud, prior to the discovery of the error by the authorities of that territory, if the person does so in accordance with the laws,

regulations, or procedures of that territory and pays any owed customs duties, taxes, fees, and charges, including interest. Each Party, through its Designated Representative, shall provide that the disclosure must include the identification of the transaction and circumstances of the error. Neither Party, either on its own or through its Designated Representative, shall use this disclosure to assess a penalty for a breach of a customs law, regulation, or procedure of the territory represented by a Party.

8. Each Party, through its Designated Representative, shall specify a fixed, finite period within which the authorities of the territory represented by the Party may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedure.

### **Article 2.23: Standards of Conduct**

1. Further to Article 2.22, each Party, through its Designated Representative, shall adopt or maintain measures to deter customs officials of the territory represented by the Party from engaging in any action that would result in, or reasonably create the appearance of, use of their public service position for private gain, including any monetary benefit.

2. Each Party, through its Designated Representative, shall provide a mechanism for importers, exporters, carriers, customs brokers, trade unions, and other stakeholders to submit complaints regarding perceived improper or corrupt behavior of the customs administration personnel in the territory represented by the Party, including at ports of entry and other customs offices. Each Party, through its Designated Representative, shall take appropriate action on a complaint in a timely manner in accordance with the laws, regulations, or procedures of the territory represented by the Party.

### **Article 2.24: Protection of Trader Information**

1. Each Party, through its Designated Representative, shall ensure that the customs administration and other authorities of the territory represented by the Party apply measures on the collection, protection, use, disclosure, retention, correction, and disposal of information that is collected from traders.

2. Each Party, through its Designated Representative, shall ensure that the customs administration and other authorities of the territory represented by the Party protect, in accordance with the law of that territory, confidential information from unauthorized use or disclosure and from physical and cyber security threats.

3. A Party, either on its own or through its Designated Representative, may use or disclose confidential information only for the purposes of administration or enforcement of the customs laws of the territory represented by the Party or as otherwise provided under the law of that territory, including in an administrative or judicial proceeding.



4. If information collected from a trader is used or disclosed other than as provided in this Article, the Party, through its Designated Representative, shall address the incident, in accordance with the laws, regulations, or procedures of the territory represented by the Party, impose a penalty on those responsible for the unauthorized use or disclosure, if possible, and implement a plan to prevent a reoccurrence.

## **Article 2.25: Cooperation**

1. The Parties, through their Designated Representatives as appropriate, agree to strengthen and expand the customs and trade enforcement efforts and cooperation between the authorities of the territories represented by the Parties, as set out in this Article and Articles 2.26 to 2.28. In these efforts, the Parties, either on their own or through their Designated Representatives, may use any applicable mechanism, including cooperation mechanisms.

2. Each Party, through its Designated Representative, shall take appropriate measures to enhance coordination between the customs administration and other authorities of the territory represented by the Party, and for cooperation with the authorities of the territory represented by the other Party, related to customs offenses.

3. The measures under paragraph 2 may include:

- (a) specific operations, such as enforcement actions to detect, prevent, or address customs offenses, especially on identified customs priorities, taking into account trade data, including patterns of imports, exports, or goods in transit to identify potential or real sources of these offenses;
- (b) providing advice on detecting the submission of false information with respect to tariff classification, customs valuation, or other information required for import, export, or transit;
- (c) adopting or maintaining penalties aimed at deterring or penalizing customs offenses; and
- (d) providing officials of the authorities of the territory represented by the Party with the legal authority to enforce measures as described under this Agreement.

4. Each Party, through its Designated Representative, shall, whenever practicable, and subject to the laws, regulations, and procedures of the territory represented by the Party, provide the authorities of the territory represented by the other Party with non-confidential information that has come to its attention that it believes would assist the authorities of the territory represented by the other Party in detecting, preventing, or addressing potential or actual customs offenses, in particular those related to unlawful activities, including duty evasion, smuggling, and similar infractions. Such information may include specific data on any person suspected to be involved in unlawful activity, the mode of transportation, other

relevant information, and the results of enforcement actions, application of penalties, or unusual trade patterns, both collected directly by the authorities of the territory represented by the providing Party and received from other sources.

5. The Parties, through their Designated Representatives, shall endeavor to cooperate, subject to the laws, regulations, and procedures of the territories represented by the Parties, by developing customs enforcement operations, which may include the creation of task forces, coordinated data analysis, and identification of special monitoring measures and other actions, to prevent, deter, and address customs offenses, particularly with respect to identified customs priorities of mutual concern.

#### **Article 2.26: Exchange of Specific Confidential Information**

1. For the purposes of this Article, **relevant facts indicating that a customs offense is occurring or is likely to occur** means historical evidence of non-compliance with laws or regulations, or other specific information that the authorities of the territories represented by the Parties mutually understand is sufficient in the context of a particular request.

2. For the purposes of enforcing or assisting in the enforcement of measures of the authorities of the territory represented by a Party concerning customs offenses, a Party, through its Designated Representative as appropriate, may request that the other Party, through its Designated Representative as appropriate, provide specific confidential information held by the authorities of the territory represented by the other Party that is normally collected in connection with the importation, exportation, or transit of a good if the authorities of the territory represented by the Party have relevant facts indicating that a customs offense is occurring or is likely to occur.

3. A request under paragraph 2 shall be made in writing or through another means that allows for the acknowledgement of receipt, and shall include a brief statement of the matter at issue, the information requested, the relevant facts indicating that a customs offense is occurring or is likely to occur, and sufficient information for the Party that receives, through its Designated Representative as appropriate, a request to respond in accordance with the laws, regulations, and procedures of the territory represented by the Party.

4. The Party that receives a request under paragraph 2, through its Designated Representative as appropriate, shall, subject to the laws, regulations, procedures, or other legal obligations of the territory represented by the Party, provide to the other Party, through its Designated Representative as appropriate, a written response containing the requested information held by the authorities of the territory represented by the Party as soon as practicable.

5. A Party, through its Designated Representative as appropriate, may provide information under this Article in paper or electronic format.

6. To facilitate the rapid and secure exchange of confidential information, each Party, in consultation with its Designated Representative, shall designate or maintain a contact point for cooperation under this Article in accordance with Article 7.7 (Contact Points).

#### **Article 2.27: Customs Compliance Visit Requests**

1. A Party, through its Designated Representative as appropriate, may request that the authorities of the territory represented by the other Party conduct a visit in that territory to assist the authorities of the territory represented by the Party to determine whether a customs offense is occurring or has occurred by obtaining information, including documents, from relevant entities, such as an exporter or producer of exported goods. The Party, through its Designated Representative as appropriate, shall make the request to the other Party, through its Designated Representative as appropriate, in writing.

2. If a Party, through its Designated Representative as appropriate, receives a request under paragraph 1, the Party through its Designated Representative as appropriate, shall respond to the request promptly and in no case later than 30 days after the date the request is received. In responding to the request, the Party, through its Designated Representative as appropriate, shall indicate whether the authorities of the territory represented by the Party will conduct the visit and, if so, the intended timing and other relevant details.

3. If a Party, through its Designated Representative as appropriate, receives a request under paragraph 1 and the authorities of the territory represented by the Party do not intend to conduct the visit, the Party, through its Designated Representative as appropriate, shall indicate the basis for refusal and authorize the authorities of the territory represented by the other Party to conduct a visit on their own. The other Party, through its Designated Representative as appropriate, shall give reasonable advance notice to the authorities of the territory represented by the Party of the proposed date of the visit that the authorities of the territory represented by the other Party plan to conduct on their own.

4. If a Party, through its Designated Representative as appropriate, receives a request under paragraph 1 and the authorities of the territory represented by the Party conduct the requested visit, the other Party, through its Designated Representative as appropriate, may request to accompany the authorities of the territory represented by the Party and participate in the visit. If the authorities of the territory represented by the Party do not allow the authorities of the territory represented by the other Party to participate in the visit, the other Party, through its Designated Representative, may provide for the authorities of the territory represented by the other Party to take this fact into consideration when making their determination.

5. If a Party, through its Designated Representative as appropriate, receives a request under paragraph 1 and the authorities of the territory represented by the Party conduct the requested visit, the Party, through its Designated Representative as appropriate, shall provide the authorities of the territory represented by the other Party, promptly upon completion of the

visit, a report containing the relevant information, including data and documents, obtained during the visit.

6. Without regard to whether a request to conduct a visit was made under paragraph 1, absent extraordinary circumstances, a Party, through its Designated Representative, shall grant an eligible official from the authorities of the territory represented by the other Party access to the territory represented by the Party to conduct a visit under this Article.<sup>7</sup>

#### **Article 2.28: Confidentiality between Parties**

1. If a Party, either on its own or through its Designated Representative, provides information to the other Party, its Designated Representative, or the authorities of the territory represented by the other Party in accordance with Article 2.26 or 2.27 and designates it as confidential information, or if the information is confidential under the law of the territory represented by the providing Party, the other Party, both on its own and through its Designated Representative, shall protect the information from unauthorized use or disclosure and from physical and cyber threats in accordance with the laws, regulations, and procedures of the territory represented by the other Party.

2. A Party, either on its own or through its Designated Representative, may decline to provide information requested if the other Party or its Designated Representative has failed to act in accordance with paragraph 1.

3. A Party, either on its own or through its Designated Representative, may use or disclose confidential information received from the other Party, its Designated Representative, or the authorities of the territory represented by the other Party under Articles 2.26 or 2.27 only for the purposes of administration or enforcement of the customs laws or as otherwise provided under the law of the territory represented by the Party, including in an administrative, quasi-judicial, or judicial proceeding.

#### **Article 2.29: Trade Facilitation Committee**

1. The Parties, through their Designated Representatives as appropriate, hereby establish a Committee on Trade Facilitation (the Trade Facilitation Committee) composed of the representatives of the Parties and relevant representatives of the authorities of the territories represented by the Parties, including the customs administrations.

2. With a view to facilitating the effective operation of this Chapter, the Trade Facilitation Committee's functions shall include:

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<sup>7</sup> For greater certainty, this paragraph is without prejudice to the requirements of the authorities of the territory represented by a Party concerning entry of persons into the territory represented by the Party, including visa requirements.

- (a) encouraging cooperation between the authorities of the territories represented by the Parties regarding customs issues that affect goods traded between the territories represented by the Parties;
  - (b) encouraging cooperation between the authorities of the territories represented by the Parties regarding the operation and implementation of this Chapter; and
  - (c) encouraging cooperation between the authorities of the territories represented by the Parties to provide advance notice of any significant administrative or procedural change, newly proposed law or regulation, or modification of a law or regulation of the territory represented by a Party that governs importations, exportations, or transit procedures that is likely to substantially affect the operation of this Agreement or likely to affect the effective implementation and enforcement of the customs and trade laws and regulations of the territory represented by a Party.
3. Each Party, through its Designated Representative, shall provide opportunities for persons of the territory represented by the Party to provide views to the Trade Facilitation Committee on the implementation of this Chapter.
4. Unless the Parties, in consultation with their Designated Representatives, decide otherwise, the Trade Facilitation Committee shall meet at least once a year. The Trade Facilitation Committee may also invite persons that may have an interest to contribute to its work.

#### **Article 2.30: Transitional Period**

Notwithstanding Article 8.4 (Entry into Force) of this Agreement, TECRO, through its Designated Representative, shall implement its obligations with respect to paragraphs 2 and 3(c) of Article 2.14 within three years of the date of entry into force of this Agreement. Prior to the end of that time period, the Parties, in consultation with their Designated Representatives, shall determine whether it is appropriate to extend the time period for an additional period not to exceed one year.

## CHAPTER 3

### GOOD REGULATORY PRACTICES

#### Article 3.1: Definitions

For the purposes of this Chapter:

**regulation** means a measure of general application, with which compliance is mandatory, adopted, issued, or maintained by a regulatory authority, of the territory represented by a Party except as set forth in Annex 3-A;

**regulatory authority** means a central level administrative authority or agency of the authorities of the territory represented by a Party that develops, proposes, or adopts a regulation, and does not include legislatures or courts; and

**regulatory cooperation** means an effort between the authorities of the territory represented by a Party and the authorities of the territory represented by the other Party to prevent, reduce, or eliminate unnecessary regulatory differences to facilitate international trade and investment and promote economic growth, while maintaining or enhancing standards of public health and safety and environmental protection.

#### Article 3.2: Subject Matter and General Provisions

1. The Parties, through their Designated Representatives, recognize that implementation of practices by all regulatory authorities to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability can facilitate international trade and investment and promote economic growth, while contributing to the ability of the authorities of the territory represented by each Party to achieve their public policy objectives (including health, safety, labor, environmental, and sustainability goals) at the level they consider appropriate. The application of good regulatory practices can support greater regulatory compatibility between the regulatory authorities, which can reduce or eliminate, as appropriate, unnecessarily burdensome or duplicative regulatory requirements and encourage cooperation to address shared transboundary and global challenges.

2. The Parties, through their Designated Representatives, also recognize the importance of transparency in the regulatory development process and the need to engage persons that may have an interest, including small enterprises, workers' organizations, rural communities, and individuals that may be historically disadvantaged, vulnerable, or marginalized, such as women, minorities, and Indigenous peoples.

3. Accordingly, this Chapter sets out obligations and other provisions with respect to good

regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of regulations.

4. For greater certainty, this Chapter does not prevent the Parties, either on their own or through their Designated Representatives, from:

- (a) pursuing public policy objectives (including health, safety, labor, environmental, and sustainability goals) at the level they consider to be appropriate;
- (b) determining the appropriate method of implementing their obligations in this Chapter within the framework of the legal system and institutions of the territories represented by the Parties; or
- (c) adopting good regulatory practices in addition to those that are set out in this Chapter.

### **Article 3.3: Central Regulatory Coordinating Bodies or Mechanisms**

Recognizing that institutional arrangements are particular to the system of the authorities of the territory represented by a Party, the Parties, through their Designated Representatives, note the important role of central regulatory coordinating bodies and mechanisms in promoting good regulatory practices; performing key advisory, coordination, and review functions to improve the quality of regulations; and developing improvements to their regulatory systems. Each Party, through its Designated Representative, intends to establish or maintain central regulatory coordinating bodies or mechanisms within their mandates and consistent with the laws of the territory represented by the Party.

### **Article 3.4: Internal Consultation, Coordination, and Review**

1. Each Party, through its Designated Representative, shall adopt or maintain processes or mechanisms to pursue, among others, the following objectives:

- (a) promoting adherence to good regulatory practices, including those set forth in this Chapter, by all regulatory authorities;
- (b) identifying and developing improvements to regulatory processes by all regulatory authorities;
- (c) identifying potential overlap or duplication between proposed and existing regulations and preventing the creation of inconsistent requirements by all regulatory authorities;

- (d) reviewing regulations early in the development process to take into account compliance with international trade and investment obligations, including, as appropriate, review of the use of relevant international standards, guides, and recommendations;
- (e) promoting consideration of regulatory impacts, including burdens on small enterprises, of information collection and implementation; and
- (f) encouraging regulatory approaches that promote job creation, innovation, and competition in the marketplace.

2. Each Party, through its Designated Representative, shall make publicly available online a description of the processes or mechanisms referred to in paragraph 1. Each Party, through its Designated Representative, shall strive to provide that information on a website described in Article 3.7 or through links from that website.

### **Article 3.5: Information Quality**

1. Each Party, through its Designated Representative, shall adopt or maintain publicly available guidance or mechanisms that encourage regulatory authorities, when developing a regulation, to:

- (a) seek the best, reasonably obtainable information, including scientific, technical, economic, or other information, relevant to the regulation they are developing;
- (b) rely on information that is appropriate for the context in which it is used; and
- (c) identify sources of information in a transparent manner, as well as any significant assumptions and limitations.

2. If a regulatory authority systematically collects information from members of the Party, through its Designated Representative, shall provide that the regulatory authority should:

- (a) use sound statistical methodologies before drawing generalized conclusions concerning the impact of the regulation on the population affected by the regulation; and
- (b) avoid unnecessary duplication and otherwise minimize unnecessary burdens on those being surveyed.



### **Article 3.6: Early Planning**

1. Each Party, through its Designated Representative, shall make publicly available online annually a list of regulations reasonably expected to be adopted, or proposed to be adopted, within the following 12 months. Each regulation identified in the list shall be accompanied by:

- (a) a concise description of the planned regulation;
- (b) a point of contact for a knowledgeable individual in the regulatory authority responsible for the regulation; and
- (c) an indication, if known, of sectors to be affected and whether there is any expected significant effect on international trade or investment.

2. Entries in the list should include, to the extent available, time periods for subsequent actions, including time periods for those providing opportunities for public comment under Article 3.9.

3. Each Party, through its Designated Representative, shall strive to provide the information in paragraphs 1 and 2 on the website described in Article 3.7.3.

### **Article 3.7: Regulatory Transparency Tools**

1. The Parties, through their Designated Representatives, recognize that using information technology can enhance processes for developing and implementing regulations, improve a regulatory authority's operational performance, provide greater access to information, and increase participation in the regulatory process. Accordingly, each Party, through its Designated Representative, shall use information technology tools that increase transparency and efficiency, where appropriate.

2. Each Party, through its Designated Representative, shall ensure that final regulations are published and maintained on a single, free, publicly available website. On the website, each Party, through its Designated Representative, shall endeavor to organize the regulations by regulatory authority or regulatory area to allow for ease of use, including searchability.

3. Each Party, through its Designated Representative, shall maintain a single, free, publicly available website that, to the extent practicable, contains all information required for publication pursuant to Article 3.9.

4. A Party, through its Designated Representative, may comply with paragraph 3 by making publicly available information on, and providing for the submission of comments through, more than one website, provided the information can be accessed, and submissions can be made, from a single web portal that links to other websites.

5. Each Party, through its Designated Representative, shall allow for the acceptance of digital signatures and digital record submissions for regulatory approvals and compliance documentation, where appropriate.

### **Article 3.8: Use of Plain Language**

Each Party, through its Designated Representative, should provide that proposed and final regulations are written using plain language to ensure that regulations are written in a clear, concise, and well-organized manner, recognizing that some regulations address technical issues and that relevant expertise may be required to understand or apply them.

### **Article 3.9: Transparent Development of Regulations**

1. During the period described in paragraph 2, when a regulatory authority is developing a regulation, the Party, through its Designated Representative, shall, under normal circumstances,<sup>1</sup> publish:

- (a) the proposed text of the regulation along with its regulatory impact assessment, if any;
- (b) an explanation of the regulation, including its objectives, how the regulation achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered;
- (c) an explanation of the data, other information, and analyses the regulatory authority relied upon to support the regulation; and
- (d) the name and contact information of an individual official from the regulatory authority with lead responsibility for developing the regulation who may be contacted concerning questions regarding the regulation.

At the same time the Party, through its Designated Representative, publishes the information listed in subparagraphs (a) through (d), the Party, through its Designated Representative, shall also make

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<sup>1</sup> For the purposes of paragraphs 1, 4, and 5, “normal circumstances” do not include, for example, situations in which: publication in accordance with those paragraphs would render the regulation ineffective in addressing the particular harm to the public interest that the regulation aims to address; if the authorities of the territory represented by the Party consider that urgent problems (for example, of safety, health, or environmental protection) arise or threaten to arise for the territory represented by the Party; or if the authorities of the territory represented by the Party consider that the regulation has no substantive impact upon members of the public, including persons of the territory represented by the other Party.

publicly available data, other information, and scientific and technical analyses the regulatory authority relied upon in support of the regulation, including any risk assessment.

2. Each Party, through its Designated Representative, shall publish the items required to be published under paragraph 1 before the regulatory authority finalizes its work on a regulation<sup>2</sup> and at a time that will enable the regulatory authority to take into account the comments received and, as appropriate, make revisions to the text of the regulation published under paragraph 1(a).

3. After the items identified in paragraph 1 have been published, the Party, through its Designated Representative, shall ensure that any interested person, regardless of domicile, has an opportunity, on terms no less favorable than those afforded to a person of the territory represented by the Party, to submit written comments on the items identified in paragraph 1 for consideration by the relevant regulatory authority. Each Party, through its Designated Representative, shall allow interested persons to submit any comments or other input electronically and may also allow written submissions by mail to a published address or through another technology.

4. If a Party, through its Designated Representative, expects a proposed regulation to have a significant impact on international trade or investment, the Party, through its Designated Representative, should normally provide a time period to submit written comments or other input on the items published in accordance with paragraph 1 that is:

- (a) not less than 60 days from the date the items identified in paragraph 1 are published;  
or
- (b) a longer time period, as appropriate due to the nature and complexity of the regulation, in order to provide interested persons adequate opportunity to understand how the regulation may affect their interests and to develop informed responses.

5. With respect to proposed regulations not covered by paragraph 4, each Party, through its Designated Representative, shall endeavor, under normal circumstances, to provide a time period to submit written comments or other input on the information published in accordance with paragraph 1 that is not less than four weeks from the date the items identified in paragraph 1 are published.

6. Each Party, through its Designated Representative, shall consider reasonable requests to extend the comment period under paragraph 4 or 5 to submit written comments or other input on a proposed regulation.

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<sup>2</sup> For TECRO, a regulatory authority “finalizes its work” on a regulation when a regulation is promulgated by the regulatory authority. For AIT, a regulatory authority “finalizes its work” on a regulation when a final rule is signed and published in the *Federal Register*.

7. Each Party, through its Designated Representative, shall, without undue delay, make publicly available online any written comments received respecting proposed regulations, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content. If it is impracticable to make publicly available online all the comments on the website provided for in Article 3.7.3, the Party, through its Designated Representative, shall endeavor to make those comments publicly available on the website of the relevant regulatory authority. Each Party, through its Designated Representative, shall also normally make publicly available online a list, docket, or other form of compilation, identifying persons, according to their self-identification, that have submitted public comments.

8. Before a regulatory authority finalizes its work on a regulation, each Party, through its Designated Representative, shall evaluate any relevant information provided in written comments received during the comment period.

9. When a regulatory authority finalizes its work on a regulation, the Party, through its Designated Representative, shall, without undue delay, make publicly available online the text of the regulation, any final regulatory impact assessment, and other items as set out in Article 3.12.

10. Each Party, through its Designated Representative, shall strive to publish items identified in this Article that are generated by the regulatory authorities in a format that can be read and digitally processed through word searches and data mining by a computer or other technology.

### **Article 3.10: Expert Advisory Groups and Bodies**

1. The Parties, through their Designated Representatives, recognize that regulatory authorities may seek expert advice and recommendations with respect to the preparation or implementation of regulations from groups or bodies that include persons who are not representatives of the Parties or of the authorities of the territories represented by the Parties. The Parties, through their Designated Representatives, also recognize that obtaining that advice and those recommendations should be a complement to, rather than a substitute for, the procedures for seeking public comment pursuant to Article 3.9.3.

2. For the purposes of this Article, an **expert group or body** means a group or body:

- (a) established by the central level authorities of the territory represented by the Party;
- (b) the membership of which includes persons who are not employees or contractors of a Party or of the authorities of the territory represented by the Party; and
- (c) the function of which includes providing advice or recommendations, including of a scientific or technical nature, to a regulatory authority with respect to the preparation or implementation of regulations.

This Article does not apply to a group or body that is established to enhance coordination between the authorities of the territory represented by a Party or to provide advice related to international affairs or the essential security interests of the authorities of the territory represented by the Party.

3. Each Party, through its Designated Representative, shall ensure that the membership of any expert group or body established by the regulatory authorities includes a range and diversity of views and interests, as appropriate to the particular context.

4. Recognizing the importance of keeping the public informed with respect to the purpose, membership, and activities of expert groups and bodies, and that those expert groups or bodies can provide an important additional perspective or expertise on matters affecting the operations of the authorities of the territory represented by a Party, each Party, through its Designated Representative, shall encourage the regulatory authorities to provide public notice of:

- (a) the name of any expert group or body they create or use, and the names of the members of the group or body and their affiliations;
- (b) the mandate and functions of the expert group or body;
- (c) information about upcoming meetings of an expert group or body;
- (d) a summary of the outcome of any meeting of an expert group or body; and
- (e) a summary of the final outcome on any substantive matter considered by an expert group or body.

5. Each Party, through its Designated Representative, shall make publicly available, preferably on the relevant regulatory authority's website, any final documents made available to or prepared for or by the expert group or body, except to the extent necessary to protect confidential information or withhold personal identifying information.

6. Each Party, through its Designated Representative, should provide a means for interested persons to provide input to expert groups or bodies, including by allowing interested persons to:

- (a) attend or appear before meetings of an expert group or body; or
- (b) submit written comments to an expert group or body.

### **Article 3.11: Regulatory Analysis**

1. The Parties, through their Designated Representatives, recognize that a regulatory authority may analyze a proposed regulation to anticipate and evaluate its likely consequences.

2. Each Party, through its Designated Representative, shall consider procedures that encourage a regulatory authority to examine the following when developing regulations that have anticipated costs or impacts exceeding certain levels established by each Party, through its Designated Representative:

- (a) the need for a proposed regulation, including a description of the nature and significance of the problem the regulation is intended to address;
- (b) feasible and appropriate regulatory and non-regulatory alternatives that would address the need identified in subparagraph (a), including alternatives to direct regulation;
- (c) anticipated impacts of the selected and other feasible alternatives (such as economic costs and benefits, social, equity, environmental, public health, and safety effects), as well as risks and distributional effects over time, recognizing that some costs and benefits are difficult to quantify or monetize due to inadequate information. The analysis of these impacts by the regulatory authority may vary according to the complexity of the issue as well as the available data and information; and
- (d) the grounds for concluding that the selected alternative is preferable.

3. Each Party, through its Designated Representative, should consider whether a proposed regulation may have significant adverse economic effects on a substantial number of small enterprises. If so, the Party, through its Designated Representative, should consider potential steps to minimize those adverse economic impacts, while allowing fulfillment of the objectives.

### **Article 3.12: Final Publication**

When a regulatory authority finalizes its work on a regulation, the Party, through its Designated Representative, shall, without undue delay, publish in the text of the regulation, in the final regulatory impact assessment, or in another document:

- (a) the date by which compliance is required;
- (b) an explanation of how the regulation achieves the stated objectives, the rationale for the material features of the regulation (to the extent different than the explanation provided for in Article 3.9), and the nature of and reasons for any significant revisions made since making the regulation available for public comment;
- (c) the regulatory authority's views on any substantive issues raised in timely submitted comments;
- (d) major alternatives, if any, that the regulatory authority considered in developing the

regulation and reasons supporting the alternative that it selected;

- (e) the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in finalizing its work on the regulation;
- (f) any forms or documents required to comply with the regulation and indication of their expected availability, which should be, to the extent possible, made publicly available online; and
- (g) a point of contact for a knowledgeable individual in the regulatory authority responsible for implementing the regulation who may be contacted concerning questions regarding the regulation.

### **Article 3.13: Review of Regulations Currently in Effect**

1. The Parties, through their Designated Representatives, recognize that adopting or maintaining procedures or mechanisms to carry out review of regulations can ensure that a regulation remains relevant and meets its intended policy objective.

2. If a regulation currently in effect is reviewed, the Party, through its Designated Representative, should consider, as appropriate:

- (a) the effectiveness of the regulation in meeting its initial stated objectives;
- (b) any circumstances that have changed since the development of the regulation, including availability of new information;
- (c) impacts on small enterprises;
- (d) ways to address regulatory differences between the authorities of the territories represented by the Parties with a view to avoiding unnecessary disruptions to international trade and investment; and
- (e) relevant suggestions from any interested persons submitted pursuant to Article 3.14.

3. Each Party, through its Designated Representative, should make publicly available online, to the extent available and appropriate, any official plans or results of a review.

4. Each Party, through its Designated Representative, should consider how to make regulatory review procedures and mechanisms more agile, especially when facing shared transboundary and global challenges.

### **Article 3.14: Suggestions for Improvement**

Each Party, through its Designated Representative, shall provide the opportunity for any interested person to submit for consideration to a regulatory authority written suggestions for the issuance, modification, or repeal of a regulation. The basis for those suggestions may include, for example, that in the view of the interested person, the regulation has become ineffective at protecting health, safety, welfare, or the environment, has become more burdensome than necessary to achieve its objective (for example, with respect to its impact on international trade and investment), fails to take into account changed circumstances (such as fundamental changes in technology, or relevant scientific and technical developments, or relevant international standards), or relies on incorrect or outdated information.

### **Article 3.15: Information About Regulatory Processes and Authorities**

1. Each Party, through its Designated Representative, shall publish online a description of the processes and mechanisms employed by the regulatory authorities to prepare, evaluate, or review regulations. The description shall identify the applicable guidelines, rules, or procedures, including those regarding opportunities for the public to provide input.

2. Each Party, through its Designated Representative, shall also make publicly available online:

- (a) a description of the functions and organization of each regulatory authority, including the appropriate offices through which persons can obtain information, make submissions or requests, or obtain decisions;
- (b) any procedural requirements or forms promulgated or utilized by any regulatory authority;
- (c) the legal authority for verification, inspection, and compliance activities by the regulatory authorities;
- (d) information concerning the judicial or administrative procedures available to challenge regulations; and
- (e) any fees charged by a regulatory authority to a person of the territory represented by a Party for services rendered in connection with the implementation of a regulation, including for licensing, inspections, audits, and other administrative actions required under the law of the territory represented by the Party, to import, export, sell, buy, market, or use, as appropriate, either a good or a service.



Each Party, through its Designated Representative, shall, without undue delay, publish online any material changes to this information as well as any changes, or any proposals to make changes, to the regulatory system of the authorities of the territory it represents.

### **Article 3.16: Encouragement of Regulatory Compatibility and Cooperation**

1. The Parties, through their Designated Representatives, recognize that regulatory compatibility and cooperation can contribute to achieving shared regulatory objectives and assisting the authorities of the territories represented by the Parties in meeting shared transboundary and global challenges. Accordingly, where appropriate, each Party, through its Designated Representative, should encourage the regulatory authorities to engage in mutually beneficial regulatory cooperation activities with the relevant counterparts of the authorities of the territory represented by the other Party in appropriate circumstances to achieve these objectives.

2. The Parties, through their Designated Representatives, recognize that effective regulatory cooperation requires the participation of regulatory authorities that possess the authority and technical expertise to develop, adopt, and implement regulations. Each Party, through its Designated Representative, should encourage input from members of the public to identify promising avenues for cooperation activities.

3. The Parties, through their Designated Representatives, recognize that a broad range of mechanisms, including those set forth in the WTO Agreement, exists to help minimize unnecessary regulatory differences and to avoid unnecessary disruptions to international trade and investment, while contributing to meeting the public policy objectives of the authorities of the territories represented by the Parties.

### **Article 3.17: Committee on Good Regulatory Practices**

1. The Parties, through their Designated Representatives as appropriate, hereby establish a Committee on Good Regulatory Practices (the GRP Committee) composed of representatives of the Parties and relevant representatives of the authorities of the territories represented by the Parties, including relevant regulatory authorities and any coordinating bodies.

2. Through the GRP Committee, the Parties, through their Designated Representatives, shall enhance their communication and collaboration in matters relating to this Chapter.

3. The GRP Committee's functions include:

- (a) monitoring the implementation and operation of this Chapter, including through updates on regulatory practices and processes of the authorities of the territories represented by the Parties;

- (b) exchanging information on effective methods for implementing this Chapter, including with respect to relevant work in international forums;
  - (c) consulting on matters and positions in advance of meetings in international forums that are related to the work of this Chapter, including opportunities for workshops, seminars, and other relevant activities to support strengthening of good regulatory practices;
  - (d) considering suggestions from a diverse array of stakeholders regarding opportunities to strengthen the application of good regulatory practices;
  - (e) considering developments in good regulatory practices with a view to identifying future work for the GRP Committee and improving the operation and implementation of this Chapter;
  - (f) exploring opportunities to cooperate to advance the application of good regulatory practices; and
  - (g) taking any other steps that the Parties, through their Designated Representatives, consider will assist them in implementing this Chapter.
4. Each Party, through its Designated Representative, shall provide opportunities for persons of the territory represented by the Party to provide views on the implementation of this Chapter.
5. In carrying out its work, the GRP Committee shall take into account the activities of other committees, working groups, and other subsidiary bodies established under this Agreement in order to avoid duplication of activities.
6. Unless the Parties, in consultation with their Designated Representatives, decide otherwise, the GRP Committee shall meet at least once a year. The Parties, in consultation with their Designated Representatives, shall endeavor to schedule meetings to permit participation of representatives engaged in the work of other relevant chapters in this Agreement. The GRP Committee may also invite persons that may have an interest to contribute to its work.

### **Article 3.18: Contact Points**

Each Party, in consultation with its Designated Representative, shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 7.7 (Contact Points), and without undue delay notify the other Party of any material changes to its contact point.

## ANNEX 3-A

### ADDITIONAL PROVISIONS CONCERNING THE SCOPE OF “REGULATIONS”AND “REGULATORY AUTHORITIES”

1. The following measures are not regulations for the purposes of this Chapter:
  - (a) general statements of policy or guidance that do not prescribe legally enforceable requirements;
  - (b) for **TECRO**: a measure concerning:
    - (i) a military or foreign affairs function of the authorities of the territory represented by TECRO;
    - (ii) the management, personnel, public property, loans, grants, benefits, or contracts of an agency of the authorities of the territory represented by TECRO;
    - (iii) the organization, procedure, or practice of an agency of the authorities of the territory represented by TECRO; or
    - (iv) financial services or anti-money laundering measures.
  - (c) for **AIT**: a measure concerning:
    - (i) a military or foreign affairs function of the authorities of the territory represented by AIT;
    - (ii) the management, personnel, public property, loans, grants, benefits, or contracts of an agency of the authorities of the territory represented by AIT;
    - (iii) the organization, procedure, or practice of an agency of the authorities of the territory represented by AIT; or
    - (iv) financial services or anti-money laundering measures.
2. The following entities are not regulatory authorities for the purposes of this Chapter:
  - (a) for **TECRO**: the President of the territory represented by TECRO; and
  - (b) for **AIT**: the President of the territory represented by AIT.

## CHAPTER 4

### DEVELOPMENT AND ADMINISTRATION OF SERVICES AUTHORIZATION MEASURES (SERVICES DOMESTIC REGULATION)

#### Article 4.1: Definitions

For the purposes of this Chapter:

**authorization** means the permission to supply a service, resulting from a procedure to which a person must adhere in order to demonstrate compliance with licensing requirements or qualification requirements; and

**public enterprise** means an enterprise that is owned, or controlled through ownership interests, by the authorities of the territory represented by a Party.

#### Article 4.2: Scope

1. This Chapter applies to measures related to authorization and technical standards adopted or maintained by the competent authorities of the territory represented by a Party affecting trade in services by a service supplier of the territory represented by the other Party.

2. This Chapter does not apply to:

- (a) procurement by the authorities of the territories represented by the Parties;
- (b) any service that is supplied in the territory represented by a Party neither on a commercial basis nor in competition with one or more service suppliers;<sup>1</sup>
- (c) a subsidy or grant provided by the authorities of the territory represented by a Party or a public enterprise, including loans, guarantees, or insurance supported by the authorities of the territory represented by the Party;
- (d) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than aircraft repair or maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance; or

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<sup>1</sup> The Parties, through their Designated Representatives, understand that this limitation has the same scope as Article I:3(c) of the GATS with respect to the authorities of the territories represented by the Parties.

- (e) measures concerning the entry of natural persons into the territory represented by a Party, including conditions of admission for temporary entry.

**Article 4.3: Development and Administration of Measures for Supply of a Service Other than a Financial Service**

1. Provisions of this Article apply in addition to the provisions of Chapter 3 (Good Regulatory Practices). This Article does not apply to measures affecting the supply of a financial service.

2. Each Party, through its Designated Representative, shall ensure that all measures of general application of the authorities of the territory represented by the Party are administered in a reasonable, objective, and impartial manner.

3. If the authorities of the territory represented by a Party adopt or maintain a measure of general application, the Party, through its Designated Representative, shall, with respect to that measure, ensure that:

- (a) the measure is based on objective and transparent criteria;<sup>2</sup>
- (b) the competent authority of the territory represented by the Party reaches and administers any decision in a manner independent from any supplier of the service for which authorization is required;
- (c) the procedures in the measure are impartial, adequate for applicants to demonstrate whether they meet the requirements for authorization, and do not in themselves prevent fulfilment of a requirement;
- (d) to the extent practicable, the measure does not require an applicant to approach more than one competent authority of the territory represented by the Party for each application for authorization;<sup>3</sup> and
- (e) the measure does not discriminate on the basis of gender.<sup>4</sup>

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<sup>2</sup> For greater certainty, these criteria may include competence and the ability to supply a service, including to do so in a manner consistent with the regulatory requirements of the authorities of the territory represented by the Party, such as health, labor, and environmental requirements. Competent authorities of the territory represented by the Party may assess the weight to be given to each criterion.

<sup>3</sup> For greater certainty, a Party, through its Designated Representative, may require multiple applications for authorization if a service is within the jurisdiction of multiple competent authorities of the territory represented by the Party.

<sup>4</sup> Nothing in this subparagraph shall prevent reasonable and objective differential treatment to achieve a legitimate purpose or temporary measures to accelerate *de facto* equality.

4. If the authorities of the territory represented by a Party require authorization for the supply of a service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) to the extent practicable, permits submission of an application at any time;
- (b) if a specific time period for applications exists, allows a reasonable period for the submission of an application;
- (c) if an examination of the suitability of an individual for authorization is required, schedules the examination at reasonably frequent intervals and provides a reasonable period of time to enable an applicant to request to take the examination;
- (d) to the extent practicable, provides an indicative timeframe for processing an application;
- (e) ascertains without undue delay the completeness of an application for processing under the law of the territory represented by the Party;
- (f) at the request of the applicant, provides without undue delay information concerning the status of the application;
- (g) if an application is considered complete under the law of the territory represented by the Party, within a reasonable period of time after the submission of the application, ensures that the processing of the application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;<sup>5</sup>
- (h) if an application is considered incomplete for processing under the law of the territory represented by the Party, within a reasonable period of time, to the extent practicable:
  - (i) informs the applicant that the application is incomplete;
  - (ii) if the applicant requests, identifies the additional information required to complete the application or otherwise provides guidance on why the application is considered incomplete; and

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<sup>5</sup> A competent authority of the territory represented by the Party may inform an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, “in writing” includes in electronic form.

- (iii) provides the applicant with an opportunity<sup>6</sup> to provide the additional information that is required for the application to be considered complete,

however, if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensures that the applicant is informed of the rejection within a reasonable period of time;

- (i) if an application is rejected, to the extent possible, either upon its own initiative or upon the request of the applicant, informs the applicant of the reasons for rejection and, if applicable, the timeframe for an appeal or review of the decision to reject the application and the procedures for resubmission of an application; an applicant should not be prevented from submitting another application<sup>7</sup> solely on the basis that an application had been previously rejected; and
- (j) ensures that authorization, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

5. Each Party, through its Designated Representative, shall ensure that any authorization fee charged by each of the competent authorities of the territory represented by the Party is reasonable, transparent, based on authority set out in a measure, and does not, in itself, restrict the supply of the relevant service.<sup>8</sup>

6. Each Party, through its Designated Representative, shall encourage the competent authorities of the territory represented by the Party, when adopting a technical standard, to adopt technical standards developed through an open and transparent process, and shall encourage any body designated to develop a technical standard to use an open and transparent process.

7. If the authorities of the territory represented by a Party require authorization for the supply of a service, the Party, through its Designated Representative, shall provide to a service supplier the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization. That information shall include:

- (a) any fee;

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<sup>6</sup> For greater certainty, providing this opportunity does not require extensions of deadlines.

<sup>7</sup> Competent authorities of the territory represented by the Party may require that the content of such an application has been revised.

<sup>8</sup> For the purposes of this paragraph, an authorization fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

- (b) the contact information of a relevant competent authority of the territory represented by the Party;
- (c) any procedure for appeal or review of a decision concerning an application;
- (d) any procedure for monitoring or enforcing compliance with the terms and conditions of authorizations;
- (e) any opportunities for public involvement, such as through hearings or comments;
- (f) any indicative timeframe for processing of an application;
- (g) any requirement or procedure; and
- (h) any technical standard.

8. If the authorities of the territory represented by a Party require authorization for the supply of a service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) endeavors to accept applications in electronic format;
- (b) endeavors to accept requests in electronic format to take any required examination of the suitability of an individual for authorization and to consider, to the extent practicable, the use of electronic means in other aspects of the examination process; and
- (c) subject to any authentication requirements under the law of the territory represented by the Party, accepts copies of documents, including electronic copies, unless the competent authority of the territory represented by the Party requires original documents to protect the integrity of the authorization process.

9. Each Party, through its Designated Representative, shall endeavor to ensure that measures related to authorization do not impose disproportionate burdens on SMEs.

#### **Article 4.4: Development and Administration of Measures for Supply of a Financial Service**

1. This Article applies to measures related to authorization adopted or maintained by the authorities of the territory represented by a Party affecting trade in a financial service by a service supplier of the territory represented by the other Party. Chapter 3 (Good Regulatory Practices) does not apply to a measure covered by this Article.

2. Each Party, through its Designated Representative, shall ensure that all measures of general



application are administered in a reasonable, objective, and impartial manner.

3. Each Party, through its Designated Representative, shall, to the extent practicable and in a manner consistent with the legal system of the territory represented by the Party for adopting measures:

- (a) publish in advance any regulation of general application proposed for adoption and the purpose of the regulation; and
- (b) provide interested persons, the authorities of the territory represented by the other Party, and the other Party with a reasonable opportunity to comment on that proposed regulation of general application.

4. At the time that the authorities of the territory represented by a Party adopt a final regulation of general application, the Party, through its Designated Representative, shall, to the extent practicable and in a manner consistent with the legal system of the territory represented by the Party for adopting measures, address in writing the substantive comments received from interested persons, the authorities of the territory represented by the other Party, and the other Party with respect to the proposed regulation. For greater certainty, a Party, through its Designated Representative, may address those comments collectively on an official website maintained by the authorities of the territory represented by the Party.

5. To the extent practicable, each Party, through its Designated Representative, shall allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party, through its Designated Representative, shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons, the authorities of the territory represented by the other Party, or the other Party regarding measures of general application covered by this Article.

7. If the authorities of the territory represented by a Party adopt or maintain a measure of general application to which this Article applies, the Party, through its Designated Representative, shall, with respect to that measure, ensure that:

- (a) the measure is based on objective and transparent criteria;<sup>9</sup>
- (b) each relevant competent authority of the territory represented by the Party reaches and administers decisions in a manner independent from any supplier of the service for which authorization is required;

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<sup>9</sup> For greater certainty, these criteria may include competence or ability to supply a financial service, and financial regulatory authorities of the territory represented by the Party may assess the weight given to such criteria.

- (c) the procedures in the measure are impartial, adequate for applicants to demonstrate whether they meet the requirements for authorization, and do not in themselves prevent fulfilment of a requirement; and
- (d) the measure does not discriminate on the basis of gender.<sup>10</sup>

8. If the authorities of the territory represented by a Party require authorization for the supply of a financial service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) to the extent practicable, permits submission of an application at any time;
- (b) if specific time periods for applications exist, allows a reasonable period for the submission of an application;
- (c) if an examination of the suitability of an individual for authorization is required, schedules the examination at reasonably frequent intervals and provides a reasonable period of time to enable an applicant to request to take the examination;
- (d) provides to service suppliers the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization; that information shall include:
  - (i) any requirement or procedure;
  - (ii) contact information of a relevant competent authority of the territory represented by the Party;
  - (iii) any procedures for appeal or review of decisions concerning applications;
  - (iv) any procedures for monitoring or enforcing compliance with the terms and conditions of authorizations; and
  - (v) any opportunities for public involvement, such as through hearings or comments;
- (e) to the extent practicable, provides an indicative timeframe for processing of an application;
- (f) at the request of the applicant, provides without undue delay information

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<sup>10</sup> Nothing in this subparagraph shall prevent reasonable and objective differential treatment to achieve a legitimate purpose or temporary measures to accelerate *de facto* equality.

concerning the status of the application;

- (g) to the extent practicable, ascertains without undue delay the completeness of an application for processing under the law of the territory represented by the Party;
- (h) if an application is considered complete under the law of the territory represented by the Party, within a reasonable period of time after the submission of the application, ensures that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;<sup>11</sup>
- (i) if an application is considered incomplete under the law of the territory represented by the Party, within a reasonable period of time, to the extent practicable:
  - (i) informs the applicant that the application is incomplete;
  - (ii) at the request of the applicant, identifies the additional information required to complete the application, or otherwise provides guidance on why the application is considered incomplete; and
  - (iii) provides the applicant with the opportunity<sup>12</sup> to provide the additional information that is required to complete the application;

however, if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensures that the applicant is informed within a reasonable period of time;

- (j) in the case of a rejected application, to the extent practicable, either on its own initiative or upon the request of the applicant, informs the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application; an applicant should not be prevented from submitting another application<sup>13</sup> solely on the basis that an application had been previously rejected;

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<sup>11</sup> A competent authority of the territory represented by the Party may inform an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, “in writing” includes in electronic form.

<sup>12</sup> For greater certainty, providing this opportunity does not require extensions of deadlines.

<sup>13</sup> Competent authorities of the territory represented by the Party may require that the content of such an application has been revised.

- (k) with respect to any authorization fee:<sup>14</sup>
  - (i) provides applicants with a schedule of fees or information on how fee amounts are calculated; and
  - (ii) does not use the fees as a means of enabling the avoidance of the Party's commitments or obligations under this Article; and
- (l) ensures that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions.

9. If the authorities of the territory represented by a Party require authorization for the supply of a financial service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) endeavors to accept applications in electronic format;
- (b) endeavors to accept requests in electronic format to take any required examination of the suitability of an individual for authorization and to consider, to the extent practicable, the use of electronic means in other aspects of the examination process; and
- (c) subject to any authentication requirements under a law of the territory represented by the Party, accepts copies of documents, including electronic copies, unless the competent authority of the territory represented by the Party requires original documents to protect the integrity of the authorization process.

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<sup>14</sup> For the purposes of this paragraph, an authorization fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

## CHAPTER 5

### ANTICORRUPTION

#### Article 5.1: Definitions

For the purposes of this Chapter:

**act or refrain from acting in relation to the performance of or the exercise of official duties** includes any use of the public official's or foreign public official's position, whether or not within the official's authorized competence;

**foreign public official** means an individual holding a legislative, executive, administrative or judicial office of the authorities of a territory that is not the territory represented by the Party, at any level, whether that individual is appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that individual's seniority; and an individual exercising a public function for the authorities of a territory that is not the territory represented by the Party, at any level, including for a public agency or public enterprise;

**issuers** means:

- (a) for AIT, issuers that have a class of securities registered pursuant to 15 U.S.C. 78l or that are otherwise required to file reports pursuant to 15 U.S.C. 78o(d); and
- (b) for TECRO, companies which publicly offer and issue securities, or promoters who publicly offer securities pursuant to Article 5 of the *Securities and Exchange Act*.

**official of a public international organization** means an international civil servant or an individual authorized by a public international organization to act on its behalf;

**public enterprise** means an enterprise over which the authorities of the territory represented by a Party may, directly or indirectly, exercise a dominant influence;<sup>1</sup> and

**public official** means an individual:

- (a) holding a legislative, executive, administrative, or judicial office of the authorities of the territory represented by a Party, whether that individual is appointed or elected,

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<sup>1</sup> Dominant influence for purposes of this definition shall be deemed to exist, *inter alia*, if the authorities of the territory represented by the Party hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise, or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board.

permanent or temporary, paid or unpaid, and irrespective of that individual's seniority;

- (b) who performs a public function for the authorities of the territory represented by a Party, including for a public agency or public enterprise, or provides a public service, as defined under the laws of the territory represented by a Party and as applied in the pertinent area of the law of the territory represented by a Party; or
- (c) defined as a public official under the law of the territory represented by a Party.

## **Article 5.2: Scope and General Provisions**

1. This Chapter addresses legislative and other measures of the authorities of the territories represented by the Parties to prevent and combat bribery and corruption in any matter affecting international trade and investment.<sup>2</sup>

2. Each Party, through its Designated Representative, recognizes the importance of preventing and combatting bribery and corruption in matters affecting international trade and investment.

3. Each Party, through its Designated Representative, recognizes the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard.

4. Each Party, through its Designated Representative, recognizes the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade and investment and, through its Designated Representative, commits to work jointly with the other Party, through its Designated Representative, to encourage and support appropriate initiatives to prevent and combat such bribery and corruption.

5. The Parties, through their Designated Representatives, recognize that the respective competent anticorruption authorities of the territories represented by the Parties have established working relationships in many bilateral and multilateral forums and that cooperation under this Chapter can enhance joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting international trade and investment.

6. AIT, through its Designated Representative, recognizes the obligations of the authorities of the territory that it represents under the *United Nations Convention against Corruption* (UNCAC), done at New York October 31, 2003. TECRO, through its Designated Representative,

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<sup>2</sup> For AIT, this Chapter does not apply to conduct outside the jurisdiction of federal criminal law of the territory that AIT represents and, to the extent that an obligation involves preventive measures, shall apply only to those measures covered by federal law governing federal, state, and local officials of the authorities of the territory that AIT represents.

recognizes the obligations of the authorities of the territory that it represents under the May 20, 2015 *Act to Implement United Nations Convention Against Corruption*.

7. Each Party, through its Designated Representative, recognizes the obligations of the authorities of the territory that it represents to conduct public procurement in a transparent and impartial manner under the World Trade Organization *Agreement on Government Procurement*, done at Marrakesh, April 15, 1994, as amended, March 30, 2012.

8. Each Party, through its Designated Representative, recognizes the importance of preventing and combating bribery and corruption in the context of labor law implementation and enforcement and that corruption increases the particular vulnerability of migrant workers with respect to labor protections and internationally recognized labor rights. To this end, each Party, through its Designated Representative, shall adopt or maintain measures to eliminate the charging of recruitment fees and related costs to migrant workers.

9. Each Party, through its Designated Representative, recognizes the importance of preventing and combating bribery and corruption by promoting transparency and strengthening environmental governance and enforcement, with a view to enhancing efforts to combat environmental degradation.

### **Article 5.3: Measures to Prevent and Combat Bribery and Corruption**

1. Each Party, through its Designated Representative, shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offenses under the laws of the territory represented by the Party, in matters affecting international trade and investment, when committed intentionally, by any person subject to the jurisdiction of the authorities of the territory represented by the Party:

- (a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;
- (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;
- (c) the promise, offering, or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

- (d) the aiding and abetting, or conspiracy,<sup>3</sup> in the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party, through its Designated Representative, shall adopt or maintain legislative and other measures as may be necessary regarding the maintenance of books and records and internal controls, financial statement disclosures, and accounting and auditing standards, to prohibit or prevent the following acts carried out by issuers for the purpose of committing any of the offenses described in this Article:

- (a) the establishment of off-the-books accounts;
- (b) the making of off-the-books or inadequately identified transactions;
- (c) the recording of non-existent expenditure;
- (d) the entry of liabilities with incorrect identification of their objects;
- (e) the use of false documents; and
- (f) the intentional destruction of bookkeeping documents earlier than foreseen by the laws of the territory represented by the Party.

3. Each Party, through its Designated Representative, shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offenses under the laws of the territory represented by the Party, in matters affecting international trade and investment, when committed intentionally, by any person subject to the jurisdiction of the authorities of the territory represented by the Party:

- (a) the embezzlement, misappropriation, or other diversion by a public official for the benefit of the public official or for the benefit of another person, of any property, public or private funds or securities, or any other thing of value entrusted to the public official by virtue of the public official's position;
- (b) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illegal origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of that person's action;

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<sup>3</sup> Parties may satisfy the commitment regarding conspiracy through applicable concepts within the respective legal systems of the territories represented by the Parties, including, for TECRO, 共謀共同正犯.



- (c) the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
  - (d) the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; and
  - (e) participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counseling the commission of any of the offenses established in accordance with subparagraphs (a) through (d).
4. Each Party, through its Designated Representative, shall adopt or maintain effective, proportionate, and dissuasive sanctions and procedures to enforce the measures adopted or maintained pursuant to paragraphs 1, 2, and 3.
5. Each Party, through its Designated Representative, shall disallow the tax deductibility of bribes and other expenses, considered illegal according to the laws of the territory represented by the Party, and incurred in furtherance of the commission of an offense described in paragraphs 1 and 3.
6. Each Party, through its Designated Representative, shall adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in criminal, civil, or administrative proceedings of:
- (a) proceeds, including any property, derived from the offenses described in paragraphs 1 and 3; and
  - (b) property, equipment, or other instrumentalities used in or destined for use in such offenses.
7. Each Party, through its Designated Representative, shall adopt or maintain measures in a manner consistent with the laws and regulations of the territory represented by the Party to permit denial of entry for any foreign public official who engaged in the commission of an offense described in paragraphs 1 or 3 or any other person that assisted in the commission of such an offense.

#### **Article 5.4: Persons that Report Bribery or Corruption Offenses**

1. Each Party, through its Designated Representative, shall identify the competent authorities of the territory represented by the Party that are responsible for the enforcement of the measures that it adopts or maintains under Article 5.3 and make such information publicly available.

2. Each Party, through its Designated Representative, shall adopt or maintain publicly available procedures for a person to report to the competent authorities of the territory represented by the Party, including anonymously, any incidents that may be considered to constitute an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2.

3. Each Party, through its Designated Representative, shall adopt or maintain measures to protect against any discriminatory or improper disciplinary treatment of any individual who, upon reasonable belief, reports to the competent authorities of the territory represented by the Party any suspected incidents that may be considered to constitute an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2.

4. Each Party, through its Designated Representative, shall seek to require an external auditor of an issuer's financial statement who discovers indications of a suspected incident that may be considered an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2, to report this discovery to management and, as appropriate, to corporate monitoring bodies. Each Party, through its Designated Representative, also shall seek to encourage issuers that receive such a report from an external auditor to actively and effectively respond to the report.

5. Each Party, through its Designated Representative, shall consider requiring external auditors of an issuer's financial statement to report to the competent authorities of the territory represented by the Party concerning any suspected incidents that may be considered an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2. Each Party, through its Designated Representative, shall adopt or maintain measures protecting an external auditor from improper legal action related to the reporting, based upon reasonable belief, of such suspected incidents to the competent authorities of the territory represented by the Party.

#### **Article 5.5: Promoting Integrity Among Public Officials<sup>4</sup>**

1. To prevent and combat bribery and corruption in matters affecting international trade and investment, each Party, through its Designated Representative, shall promote, among other things, integrity, honesty, and responsibility among public officials. To this end, each Party, through its Designated Representative, shall adopt or maintain legislative and other measures to:

- (a) provide adequate procedures for the selection and training of public officials for public positions considered by the authorities of the territory represented by the Party to be especially vulnerable to bribery and corruption;
- (b) promote transparency and accountability of public officials in the exercise of public functions;

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<sup>4</sup> For AIT, this Article applies only at the central level.

- (c) require senior officials, and other public officials as considered appropriate by the authorities of the territory represented by the Party, to make available to appropriate authorities of the territory represented by the Party declarations regarding, among other things, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and
- (d) facilitate and require reporting by public officials of acts of bribery and corruption to competent authorities of the territory represented by the Party, when such acts come to their notice in the performance of their functions.

Each Party, through its Designated Representative, shall also adopt or maintain appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials.

2. Each Party, through its Designated Representative, shall adopt or maintain codes or standards of conduct for the correct, honorable, and proper performance of public functions, and the avoidance of conflicts of interest by public officials. Each Party, through its Designated Representative, shall also adopt or maintain measures providing for disciplinary or other actions, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.

3. Each Party, through its Designated Representative, shall establish procedures through which a public official charged or convicted of an offense described in this Chapter may be removed, suspended, or reassigned by the appropriate authority of the territory represented by the Party, bearing in mind respect for the principle of presumption of innocence.

4. Without prejudice to judicial independence, each Party, through its Designated Representative, shall adopt or maintain measures to strengthen integrity and prevent opportunities for corruption of public officials that are members of the judiciary in matters affecting international trade and investment. Such measures may include rules with respect to the conduct of public officials that are members of the judiciary.

#### **Article 5.6: Participation of Private Sector, Worker Organizations, and Civil Society**

1. Each Party, through its Designated Representative, shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organizations, worker organizations, and community-based organizations, in preventing and combatting bribery and corruption in matters affecting international trade and investment, and to raise public awareness regarding the existence, causes, and gravity of and the threat posed by such bribery and corruption. To this end, each Party, through its Designated Representative, may, for example:

- (a) engage in public information activities and public education programs that contribute to non-tolerance of bribery and corruption;
- (b) encourage professional associations and other non-governmental organizations, where appropriate, to encourage and assist enterprises, in particular small and medium size enterprises, in developing codes, standards of conduct, and compliance programs for preventing and detecting bribery and corruption;
- (c) promote public awareness of the harmful effects of corruption on the environment, build capacity to address corruption that leads to environmental degradation, and ensure that information on measures against corruption is available to communities and regions in danger of environmental degradation;
- (d) encourage enterprise management to make statements in the enterprise's annual reports or otherwise publicly disclose the enterprise's internal control programs, including those that contribute to preventing and detecting bribery and corruption; and
- (e) respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption, in matters affecting international trade and investment.

2. Each Party, through its Designated Representative, shall encourage enterprises, taking into account their size, legal structure, and the sectors in which they operate, to:

- (a) adopt or maintain sufficient internal accounting controls, compliance programs, or monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards, to assist in preventing and detecting offenses described in Articles 5.3.1 and 5.3.3 or acts described in Article 5.3.2; and
- (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

#### **Article 5.7: Application and Enforcement of Measures Adopted or Maintained to Prevent and Combat Bribery and Corruption**

1. Each Party, through its Designated Representative, affirms its commitment to enhance the effectiveness of law enforcement actions to prevent and combat the offenses described in Articles 5.3.1 and 5.3.3 or the acts described in Article 5.3.2.

2. In accordance with the fundamental principles of the legal systems of the territories represented by the Parties, each Party, through its Designated Representative, shall ensure that the authorities of the territory represented by the Party do not fail to effectively enforce the measures

adopted or maintained under Articles 5.3, 5.4, and 5.5, through a sustained or recurring course of action or inaction.

3. In accordance with the fundamental principles of the legal systems of the territories represented by the Parties, each Party, through its Designated Representative, recognizes that the law enforcement, prosecutorial, and judicial authorities of the territories represented by the Parties retain the right to exercise discretion with respect to the enforcement of measures adopted or maintained to prevent and combat bribery and corruption in matters affecting international trade and investment. Each Party, through its Designated Representative, also recognizes that the authorities of the territories represented by the Parties retain the right to take bona fide decisions with regard to the allocation of their resources with respect to such enforcement.

## **CHAPTER 6**

### **SMALL AND MEDIUM-SIZED ENTERPRISES**

#### **Article 6.1: General Principles on Small and Medium-Sized Enterprises**

1. Recognizing the fundamental role of SMEs in maintaining dynamism and enhancing competitiveness of their respective economies, the Parties, through their Designated Representatives, shall seek to foster cooperation between SMEs located in the territories represented by the Parties and cooperate in promoting jobs and growth in SMEs.
2. The Parties, through their Designated Representatives, recognize the integral role of the private sector in the SME cooperation.

#### **Article 6.2: Cooperation to Increase Trade and Investment Opportunities for SMEs**

With a view to enhancing commercial opportunities for SMEs located in the territories represented by the Parties, each Party, through its Designated Representative, shall consider ways to increase and improve the quality of trade and investment opportunities, subject to the availability of resources for the activities described in this Article, and in particular may:

- (a) promote cooperation between the small business support infrastructures located in the territories represented by the Parties, such as dedicated SME centers, incubators and accelerators, export assistance centers, and other centers as appropriate, with a view to sharing best practices, exchanging market research, and promoting SME participation in international trade, as well as business growth in local markets;
- (b) strengthen its collaboration with the other Party, through its Designated Representative, on activities to promote SMEs owned by underserved and underrepresented groups, including women, indigenous peoples, youth, and minorities, as well as start-ups, agricultural, and rural SMEs, and promote partnership among these SMEs and their participation in international trade;
- (c) enhance its cooperation with the other Party, through its Designated Representative, to exchange information and best practices in areas such as improving SME access to capital and credit, training programs, trade education, trade finance, trade missions, trade facilitation, digital trade, and helping SMEs adapt to changing market conditions; and
- (d) promote the participation of SMEs in digital trade in order to take advantage of the opportunities to increase and improve the quality of trade and investment.

### **Article 6.3: Information Sharing**

1. Each Party, through its Designated Representative, shall publish a free, publicly accessible website with links or information to the websites of the authorities of the territory represented by the Party and other appropriate entities that provide information that such authorities consider useful to any person interested in trading, investing, or doing business in the territory represented by the Party.
2. The information described in paragraph 1 may include:
  - (a) customs regulations, procedures, or enquiry points;
  - (b) regulations or procedures concerning intellectual property rights;
  - (c) technical regulations, standards, or conformity assessment procedures;
  - (d) sanitary or phytosanitary measures relating to importation or exportation;
  - (e) foreign investment regulations;
  - (f) business registration procedures;
  - (g) trade promotion programs;
  - (h) competitiveness programs;
  - (i) SME financing programs;
  - (j) employment regulations;
  - (k) taxation information; and
  - (l) additional information that would be useful for SMEs interested in benefitting from trade between the territories represented by the Parties.
3. Each Party, through its Designated Representative, shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure the information and links are up-to-date and accurate.
4. To the extent possible, each Party, through its Designated Representative, shall make the information provided in accordance with this Article available in English.

#### **Article 6.4: SME Dialogue**

The Parties, in consultation with their Designated Representatives, may periodically convene an SME Dialogue when the Parties, in consultation with their Designated Representatives, decide that such a Dialogue would be useful. The SME Dialogue may include the Parties, their Designated Representatives, private sector, employees, non-government organizations, academic experts, SMEs owned by diverse, underserved, and underrepresented groups, and other stakeholders from each of the territories represented by the Parties.



## CHAPTER 7

### EXCEPTIONS AND GENERAL PROVISIONS

#### Section A: Exceptions

##### Article 7.1: General Exceptions

1. For the purposes of Chapter 2 (Customs Administration and Trade Facilitation), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.<sup>1</sup>
2. For the purposes of Chapter 4 (Services Domestic Regulation), paragraphs (a), (b), and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.
3. The Parties, through their Designated Representatives, understand that the measures referred to in Article XX(b) of the GATT 1994 and GATS Article XIV(b) include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

##### Article 7.2: Essential Security

Nothing in this Agreement shall be construed to:

- (a) require a Party, either on its own or through its Designated Representative, to furnish or allow access to information the disclosure of which the authorities of the territory represented by the Party determine to be contrary to their essential security interests; or
- (b) preclude any measure that the authorities of the territory represented by the Party consider necessary for the fulfilment of any obligations with respect to the maintenance or restoration of international peace or security, or for the protection of their own essential security interests.

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<sup>1</sup> For greater certainty, the existing rights and obligations of the United States and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu under the WTO Agreement that are incorporated into this Agreement shall be available to, or carried out by, the Parties, both on their own and through their Designated Representatives.

### **Article 7.3: Taxation Measures**

1. For the purposes of this Article, **taxes** and **taxation measures** include excise duties, but do not include:
  - (a) a “customs duty” as defined in Article 1.4 (General Definitions); or
  - (b) the measures listed in subparagraphs (b), (c), and (d) of that definition.
2. Except as provided in this Article, this Agreement does not apply to a taxation measure.
3. Chapter 2 (Customs Administration and Trade Facilitation) applies to value added taxes.

### **Article 7.4: Exceptions for Financial Services**

1. Notwithstanding the other provisions of this Agreement except for Chapter 2 (Customs Administration and Trade Facilitation), nothing in this Agreement prevents the authorities of the territory represented by a Party from adopting or maintaining a measure for prudential reasons,<sup>2</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a supplier of financial services, or to ensure the integrity and stability of the financial system. If the measure does not conform with the provisions of this Agreement to which this exception applies, the measure shall not be used as a means of avoiding the commitments or obligations under those provisions.
2. Nothing in this Agreement applies to any non-discriminatory measure of general application taken by a central bank or monetary authority of the territory represented by a Party or a supplier of financial services owned or controlled by the authorities of the territory represented by the Party in pursuit of monetary and related credit policies or exchange rate policies.
3. Nothing in this Agreement restricts the authorities of the territory represented by a Party from preventing or limiting a transfer by a supplier of financial services to, or for the benefit of, an affiliate of or person related to that supplier, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity, or financial responsibility of a supplier of financial services. Nothing in this paragraph prejudices any other provision of this Agreement that permits the restriction of such transfers.

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<sup>2</sup> The term “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of suppliers of financial services as well as the safety, and financial and operational integrity of payment and clearing systems.

4. For greater certainty, nothing in this Agreement prevents the authorities of the territory represented by a Party from adopting or maintaining a measure necessary to secure compliance with laws or regulations that are not inconsistent with this Agreement, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts.

#### **Article 7.5: Rights of Indigenous Peoples**

Provided that these measures are not used as a means of arbitrary or unjustified discrimination against persons of the territory represented by the other Party or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party, either on its own or through its Designated Representative, from adopting or maintaining a measure the authorities of the territory represented by the Party deem necessary to fulfill its obligations to Indigenous peoples.

### **Section B: General Provisions**

#### **Article 7.6: Disclosure of Information**

This Agreement does not require a Party, either on its own or through its Designated Representative, to furnish or allow access to information, the disclosure of which would be contrary to law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### **Article 7.7: Contact Points**

1. Each Party, in consultation with its Designated Representative, shall designate an overall contact point to facilitate communications between the Parties, their Designated Representatives, and the authorities of the territories represented by the Parties, on any matter covered by this Agreement.

2. Each Party, in consultation with its Designated Representative, shall designate contact points as may be required by this Agreement.

3. Unless otherwise provided in this Agreement, each Party shall notify the other Party in writing of any contact point provided for in this Agreement no later than 60 days after the date of entry into force of this Agreement.

4. Each Party shall promptly notify the other Party, in writing, of any changes to any contact point.

## **CHAPTER 8**

### **FINAL PROVISIONS**

#### **Article 8.1: Annex and Footnotes**

The annex and footnotes to this Agreement constitute an integral part of this Agreement.

#### **Article 8.2: Amendments**

1. The Parties may agree, in writing, to amend this Agreement.
2. An amendment shall enter into force 60 days after the date on which the latter Party has provided written notice to the other Party of the approval of the amendment in accordance with applicable legal procedures, or such other date as the Parties may agree.

#### **Article 8.3: Amendment of the WTO Agreement**

In the event of an amendment of the WTO Agreement that amends a provision that the Parties have incorporated into this Agreement, the Parties, in consultation with their Designated Representatives, shall, unless otherwise provided in this Agreement, consult on whether to amend this Agreement.

#### **Article 8.4: Entry into Force**

Each Party shall notify the other Party, in writing, once the internal procedures required for entry into force of this Agreement have been completed. This Agreement shall enter into force the day following the date of the last notification.

#### **Article 8.5: Review**

1. The Parties, through their Designated Representatives, shall review implementation and operation of this Agreement no later than 90 days after the date of entry into force of this Agreement and thereafter as appropriate, but not less than annually.
2. Prior to a review, each Party, through its Designated Representative, shall, when appropriate, solicit views from the public, such as through advisory committees, regarding the implementation of this Agreement.

#### **Article 8.6: Consultation**

1. If at any time one Party has concerns with the other Party's implementation of a provision of this Agreement, the concerned Party, in consultation with its Designated Representative, may request in writing consultations with the other Party. The Parties, in consultation with their Designated Representatives, shall make every attempt to arrive at a mutually satisfactory resolution.

2. The Parties, through their Designated Representatives, recognize the importance of implementation of each Chapter of this Agreement and their shared objective of promoting bilateral trade and investment.

#### **Article 8.7: Termination**

Either Party may terminate this Agreement by providing written notice of termination to the other Party. Termination shall take effect six months after the date of such notification.

#### **Article 8.8: Authentic Texts**

The English and Chinese texts of this Agreement are equally authentic.

## 關務行政及貿易便捷化

我國在關務管理方面向以數位化、科技化為目標，並且積極促進與他國雙邊關務合作，建構優質通關環境，確保貨物通關便捷與安全。本議題內容正切合上述目標，重點內容如次：

### 1. 透過電子化方式加速通關：

- 貨物抵港前即透過單一窗口系統處理通關資料及進行風險評估，符合放行要件的貨物於抵港後立即放行。
- 於公開網路提供進出口相關所需之電子書表格式，並致力允許業者以電子方式提交申請。
- 邊境機關應允許以電子方式支付稅款等費用。

### 2. 其他加速通關措施：

- 優化快遞貨物通關程序。
- 加速農產品及其他易腐品的通關。
- 禁止要求進口貨物逐批進行領事驗證作業。
- 便捷退回貨物之復運進口程序。
- 簡化國際貨物運輸用之貨櫃通關流程。

### 3. 重視貿易商權益

- 資訊透明化，包括上網公開與進出口及轉運相關的法規與流程、稅費徵收及查詢聯絡窗口等資料。
- 對關務違規行為的相關罰則應公平且透明。

- 建立關務人員行為準則，避免其為私利而不當行使公權力。
- 對貿易商資料採取妥當的保護措施，並應防止機密資料被不當使用、洩漏、損壞，或被駭客竊取。

#### 4. 新興議題的處理

- 推行雙方各自的電子發票及電子發票網絡系統。
- 減少障礙以鼓勵中小企業參與國際貿易。

#### 5. 臺美雙方政府的合作

- 雙方政府深化關務執法方面的合作，加速合規貨物通關，防範或處理關務違規行為。
- 雙方設立貿易便捷化委員會，就本議題相關事務定期溝通與交流。



## 良好法制作業

本議題呼應及落實我國持續發展之良好法制作業概念，規範中央行政機關應採用完善、透明化的原則訂定法規，但仍得依適當的方式追求衛生、安全、勞動、環境與永續目標等雙方認同的公共政策，並透過臺美合作，減少不必要之法規差異，以促進國際貿易與投資及經濟成長。本議題正切合上述目標，重點內容如次：

1. **強化國內法制作業的協調效能：**建立中央協調的機關或機制，督導法制作業，使各機關能相互溝通、協調及檢討。
2. **行政機關研擬法規時應遵循的規範：**
  - 預先公告合理預期將訂定的法規及其相關資訊。
  - 避免訂定重複或不一致的法規，並將國際規範內容納入考量。
  - 鼓勵參考合理預期可取得的資訊來訂定法規。
  - 在一般情況下應於網站公布法規草案及其相關資訊，並提供足夠的時間讓利害關係人提交評論意見，據以評估是否修正法規草案。
  - 若諮詢專家的意見，是補充而非代替公眾諮詢，並鼓勵公布專家諮詢的相關資訊。
  - 鼓勵針對成本或影響超過特定門檻的法規草案，於適當情況下進行法規分析。
3. **行政機關訂定法規後應遵循的規範：**
  - 完成法規訂定後，應即時於網站公布法規內容及其相

關資訊。

- 在適當時應接受電子簽章及電子文件。
- 應有檢討法規是否需要修正或廢止的程序或機制，同時應提供利害關係人對法規之訂定、修正或廢止表示意見的機會。

#### 4. 重視中小企業權益：

- 研擬法規時認知到小型企業等利害關係人參與的必要性。
- 如進行法規分析，分析內容宜包括考慮法規是否可能對小型企業造成負面經濟衝擊。
- 在檢討現行法規時，宜在適當時考量對小型企業的影響。

#### 5. 加強雙邊合作：雙方建立合作溝通機制，包括創設良好法制作業委員會，以監督本議題義務之執行、資訊分享、及進行具共同利益的法規合作。

## 服務業國內規章

我國服務業主管機關對於外國服務業提供者申請來我國服務之許可證照時，對於申請文件之審核一向採取客觀、公正、透明之原則處理。本議題規定我國中小企業赴美申請提供服務之證照許可時，美方亦將依照相同原則處理我國業者的申請案，故本議題可協助業者拓展美國市場，本議題正切合上述目標，重點內容如次：

1. **主管機關對於證照審核程序之原則：**服務業監管機關處理外國服務業提供者提出申請時，核發執業證照的程序 (authorization procedures)，要求主管機關應以合理、客觀、公正、獨立方式執行相關措施。
2. 本議題內容基於我方業已接受之 WTO「服務業國內規章參考文件」為基礎，擴大規範適用於所有對外開放之服務業別，不限於 WTO 所承諾開放之業別。
3. **對於申請文件之處理流程：**
  - 告知申請人案件所需處理之時程及申請案進度。
  - 主管機關需即時審理、提供申請人有補件機會、告知申請人該案被拒絕之原因及可提出之複查及訴願等程序。
  - 主管機關需允許申請人可於任何時間提出案件申請。
4. **技術標準制定：**允許監管機關在制定標準時，必須考量保護勞工、消費者權益、安全、健康、環境等因素；且標準制定程序需公開及透明。
5. **申請規費：**規費之制定應符合合理及透明化原則。

6. **資訊公布：**需公布所需繳納之規費、主管機關聯繫資訊、以及公眾可參與法規制定評論之機會。
7. **申請方式：**主管機關應儘可能接受電子方式申請之文件，且應接受經公證後之文件影本。
8. **著重性別平等、中小企業：**審核過程中應考慮性別平等，以及不應對中小企業造成過度負擔。
9. **給予金融業較大彈性：**本議題可區分為「一般服務業」及「金融服務業」兩部分。金融服務業因有高度監管之需求，需賦予監管機關較多彈性，因此本議題將金融服務業單獨規範，授予監管機關較有彈性處理金融服務業證照核發程序。

# 反貪腐

我國於 2015 年 5 月 20 日公布「聯合國反貪腐公約施行法」，並自 2015 年 12 月 9 日正式施行，自主實踐公約。依據施行法規定，政府應與各國政府、政府間國際組織、非政府間國際組織及反貪腐機構共同合作，以落實公約所建立之反貪腐法律架構。本議題正切合上述目標，重點內容如次：

## 1. 雙方就打擊及預防貪腐所採取之措施

- 應採取或維持必要之立法及其他措施，將影響國際貿易及投資之貪腐及賄賂行為定為犯罪。犯罪行為包含賄賂、侵占和洗錢等。
- 為防止相關罪行，應就帳冊及紀錄之保存、內部控制、財務報表之揭露，會計及審計標準等採取或維持必要之措施。
- 不得將貪腐犯罪所生之相關費用列為應稅收入減免支出。
- 應於法律程序中採取措施能辨認、追查、凍結或扣押沒收犯罪所得及利用於相關犯罪之財產、設備或其他工具等。
- 在符合臺美各自法規情況下，採取或維持拒絕有貪腐罪行之外國公職人員，或任何幫助此類犯罪之人入境之措施。

## 2. 鼓勵舉報可疑貪腐事件，保護舉報者

- 應使民眾廣為知悉預防和打擊賄賂和貪腐之相關措施及訊息，讓民眾及財務報表的外部審查者得以向主管

機關舉報可疑貪腐事件，包含以不具名方式舉報，並採取或維持保護舉報者遭受不當之法律訴訟之措施。

### 3. 促進公務員廉政措施

- 訂定公務人員行為守則，針對政府機關內負責具貪腐風險較高（例如採購單位）之公務員，加強其選任程序及教育訓練。
- 為促進公職人員履行公務時之透明化及責任，以提升政府之廉潔性，要求公職人員就與其職權發生利益衝突之職務外活動、投資、資產及重大饋贈等提出申報。
- 對被起訴或判決犯貪腐罪之公職人員予以撤職、停職或調職，但應遵守無罪推定原則。
- 在不影響司法獨立之情形下，訂有預防司法人員貪腐之相關措施。

### 4. 促進私部門、勞工組織及社會之參與

- 政府應強化反貪腐資訊之公開，使民眾知悉相關資訊，應採取適當措施以促進公部門以外之個人及團體，例如企業、公民社會、非政府組織、勞工組織及社區組織等參與有助於去除貪腐之公共資訊活動及公共教育計畫，以預防及打擊影響國際貿易及投資事務之貪腐行為。
- 提高公眾認識貪腐之存在、原因、嚴重性以及所造成之威脅。
- 鼓勵專業協會或其他非政府組織，在適當情形下協助企業，特別是中小企業發展準則及法遵計畫等。

- 鼓勵企業管理階層在年報或其他方式公開內部控制計畫。
- 鼓勵企業考量本身之企業規模，採取或維持充分之審計控制計劃等措施。
- 認同預防和打擊賄賂與貪腐對環境領域之重要性，以增進貪腐對環境造成有害影響之公共意識。

5. 為預防及打擊貪腐及賄賂所採取或維持措施之適用及執行

- 為確保對打擊或預防影響國際投資及貿易所產生之賄賂及貪腐方面之有效執法，雙方保留執法、檢察及司法機關之裁量權，且善意決定分配該執行相關資源之權利。

## 中小企業

台灣中小企業占全體企業達 98%以上，是我國經濟成長之重要骨幹。政府持續協助中小企業取得資源，在疫情變局下力挺中小企業提升國際競爭力，輔導企業數位轉型，並強化國際鏈結及合作，以促進中小企業的就業與成長。本議題符合我國上述協助中小企業發展之目標，重點內容如次：

### 1. 為中小企業增加經商機會：

- 臺美將促進彼此對中小企業育成中心、出口協助中心等機構之合作，加強對於中小企業融資、教育訓練計劃、貿易便捷等方面之資訊交換與分享最佳實踐，與促進中小企業參與數位貿易，協助中小企業適應變動的市場條件，使中小企業能自更優質的貿易與投資活動中獲得更多利益。
- 臺美亦將共同協助由婦女、原住民族、青年及少數族群、新創及農村等代表性不足團體經營的中小企業互相建立夥伴關係及參與國際貿易。

### 2. 加強資訊分享：

- 臺美將建立專屬網頁提供中小企業與進行國際貿易、投資與經商相關之最新資訊，例如關務、技術法規、智慧財產權、外國投資、商業登記、中小企業融資計畫、就業法規、稅務資訊等，並將盡可能提供英文版本的內容，便於中小企業掌握雙方政府為協助中小企業所提供的資源。

### 3. 建立中小企業對話：



- 臺美可定期召開中小企業對話，邀請官方代表、私部門、產學代表、中小企業(含由代表性不足團體所經營者)等廣泛參與，討論臺美中小企業貿易之機會與挑戰，除為各方參與者創造彼此建立聯繫與商談合作之平台外，亦確保中小企業及相關利害關係者之意見被聽取。



## **新聞稿附件四：首批協定整體利益說明**

### **一、本倡議係以協助中小企業為主要目的**

- (一) 關務管理及貿易便捷化：**關務程序的透明化、自動化、邊境程序的簡化以及透過電子化方式加速通關等，可嘉惠中小企業，使其能以較低的成本完成進出口程序，進而增進參與進出口貿易的能力及機會。
- (二) 良好法制作業：**法規訂定過程中宜在適當時考量法規對中小企業的影響，並聽取中小企業的看法，有助提升中小企業權益。
- (三) 服務業國內規章：**對於有意拓展美國市場的中小型服務業者，將更能掌握執照之申請程序及核發進度。
- (四) 反貪腐：**鑒於擁有資源及管道之企業較易接觸政府官員進行不正當及不合法之活動，因此嚴格防制該等企業之貪腐行為，可提供中小企業更公平之競爭環境。
- (五) 設立中小企業專章：**為使雙方政府均能以協助中小企業之投資貿易活動為施政重點，特別訂定專章作更詳細之規範，例如建立專屬網站協助中小企業即時掌握經商資訊，以及建立中小企業對話機制，使我國中小企業與美國企業有更直接互動之合作平台。

### **二、增加民間部門在政府法規之制定過程有更多表示意見的機會**

- **良好法制作業：**透過改善行政機關法制作業相關作法及流程，遵循公正、公開與民主之程序，提供公眾、

利害關係人與政府的溝通管道，保障人民特別是中小企業、勞工、代表性不足群體之權益，增進民眾對行政機關之信賴。

### **三、強化我國在各項議題與國際接軌**

- (一) **關務管理及貿易便捷化**：我國並非與處理關務有關之國際組織成員，例如世界關務組織(國際間稅則號列之更新、關務合作等)、萬國郵政聯盟及國際植物保護公約等，經由雙方在關務方面之合作，有利強化我國與國際接軌的努力。
- (二) **服務業國內規章**：雙方深化在 WTO「服務業國內規章參考文件」的內容，強化雙方監管機關以公平、獨立、合理、透明之方式審理證照之核發程序。可改善商業環境、降低貿易成本，並為中小企業提供更多元的貿易機會。
- (三) **反貪腐**：我國雖非聯合國會員國，然已自主實踐聯合國反貪腐公約，於 2015 年 12 月 9 日施行「聯合國反貪腐公約施行法」，採取強而有力之反貪腐標準，主動展現與國際接軌之決心，臺美協定更能進一步強化區域連結性。

### **四、展現我國符合 CPTPP 高標準規範的能力**

我國已申請加入 CPTPP，CPTPP 亦包含貿易便捷化、良好法制作業、反貪腐、中小企業等規範，臺美協定之內容較 CPTPP 詳盡，亦可彰顯我國有能力符合 CPTPP 的高標準規範，已做好加入 CPTPP 之準備。

### **五、受益對象十分廣泛，例如：**

### (一) 貿易便捷化

- 貨運業者、快遞業者
- 航商(空運、海運)
- 報關行
- 貨主
- 出口業者，特別是農產品通關

### (二) 良好法制作業

- 受到高度監理行業(例如通訊、醫藥)業者
- 民間社團
- 對公益事務有興趣之民間人士
- 意見領袖

### (三) 反貪腐

- 外銷業者
- 在國外從事工程及建設業者
- 與政府部門有商業往來之民間企業

### (四) 國內規章

- 擬赴美國發展的中小型服務業者

### (五) 中小企業

- 所有中小企業