

CHAPTER 26

GOOD REGULATORY PRACTICE

Article 26.1 Definitions

For the purposes of this Chapter:

“regulatory authority” means:

- (a) for Australia, Australian Government departments at the central level of government listed under relevant administrative arrangements orders, excluding where those departments are regulating human health;
- (b) for the United Kingdom, a ministerial department of the central level of government; and

“regulatory measure” means:

- (a) for Australia: Acts and legislative instruments made under an Act of the Commonwealth Parliament related to any matter covered by this Agreement and for which a regulatory impact statement is required under relevant rules and procedures;
- (b) for the United Kingdom:
 - (i) an Act of the UK Parliament; or
 - (ii) a statutory instrument made, by a Minister of the Crown, under an Act of the UK Parliament;

related to any matter covered by this Agreement and in relation to a business activity, excluding:

- (A) any measure imposing, abolishing or varying any tax, duty, levy or other charge (or any measure in connection with that measure);
- (B) any measure in connection with public sector procurement;
- (C) any measure in connection with the giving of grants or other financial assistance by or on behalf of a public authority; or

- (D) any measure which is to have effect for a period of less than 12 months.

Article 26.2

General Provisions

1. The purpose of this Chapter is to promote good regulatory practices in the process of planning, designing, issuing, implementing, and reviewing regulatory measures to facilitate achievement of domestic policy objectives and regulatory cooperation between the Parties with the aim of enhancing bilateral trade and investment, as well as economic growth and employment, by promoting:
 - (a) an effective, transparent, and predictable regulatory environment;
 - (b) compatible regulatory approaches and reducing unnecessarily burdensome, duplicative, or divergent regulatory requirements;
 - (c) the exchange of information on regulatory measures, practices, or approaches of the Parties, including how to enhance their efficient application; and
 - (d) bilateral cooperation between the Parties in international fora.
2. Each Party shall be free to determine its approach to good regulatory practices and regulatory cooperation under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles underlying its regulatory system.
3. Provisions of this Chapter shall not be construed so as to require a Party to:
 - (a) deviate from domestic procedures for identifying its regulatory priorities and preparing and adopting regulatory measures ensuring the levels of protection that the Party considers appropriate to achieve its public policy objectives (including health, safety, and environmental goals);
 - (b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives or prevent a party from implementing regulatory measures in urgent or unforeseen circumstances; or
 - (c) achieve any particular regulatory outcome.

Article 26.3
Internal Coordination and Review Processes or Mechanisms

Each Party shall endeavour to ensure that it has processes or mechanisms to facilitate effective internal coordination and review with respect to regulatory measures its regulatory authorities are preparing.

Article 26.4
Descriptions of Regulatory Processes and Mechanisms

Each Party shall ensure that descriptions of the processes and mechanisms employed by its regulatory authorities in undertaking regulatory impact assessments, and other relevant good regulatory practices it deems appropriate, are freely and publicly available online.

Article 26.5
Impact Assessment

1. Each Party shall endeavour to systematically carry out, in accordance with its relevant rules and procedures, a regulatory impact assessment of major regulatory measures¹ under preparation. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.
2. Each Party shall endeavour to ensure that regulatory impact assessments it conducts:
 - (a) assess the need for the major regulatory measure, including the nature and the significance of the problem or issue that the regulatory measure intends to address;
 - (b) examine feasible and appropriate regulatory or non-regulatory alternatives, including the option of not regulating, if available, that would achieve the Party's public policy objectives; and
 - (c) rely on reasonably obtainable existing information including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates and resources of the particular regulatory authority.
3. When carrying out a regulatory impact assessment in accordance with

¹ The regulatory authority of each Party may determine what constitutes a "major" regulatory measure for the purposes of its obligations under this Chapter.

paragraph 1, each Party should consider, to the extent possible and relevant, the potential impact of the proposed major regulatory measure on SMEs.²

4. Each Party shall, where possible and in accordance with its relevant rules and procedures, publish the findings of its regulatory impact assessments in a timely manner. Each Party is encouraged to explain the grounds for concluding that the selected option achieves its public policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits, and the potential for managing risks.

Article 26.6 Public Consultation

1. When preparing a proposed major regulatory measure, each Party shall endeavour to, in accordance with its relevant rules and procedures:
 - (a) publish sufficient information concerning the proposed regulatory measure to allow interested persons to assess their interests in connection to the measure;
 - (b) allow interested persons³ a reasonable opportunity, including adequate time, to consider the proposed regulatory measure and to provide comments;⁴ and
 - (c) consider the comments received.
2. Each Party is encouraged to make use of electronic means of communication and to make information related to public consultation freely and publicly available online, including information on how to provide comments.
3. Each Party is encouraged to publicly explain how the comments received have informed the proposed regulatory measure.

² For the United Kingdom, for the purposes of this Chapter, “SMEs” means small and micro businesses.

³ For greater certainty, this subparagraph does not prevent a Party from undertaking targeted consultations with interested parties under the conditions defined by its relevant rules and procedures.

⁴ For greater certainty, this paragraph should be implemented consistently with each Party’s obligations under other international agreements concerning human health, such as the *WHO Framework Convention on Tobacco Control* done at Geneva on 16 June 2003 to 22 June 2003 and at New York on 30 June 2003 to 29 June 2004.

Article 26.7
Use of Plain Language

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

Article 26.8
Regulatory Register

In accordance with its laws and regulations, each Party shall ensure that regulatory measures that are in effect are freely and publicly available online. The website should allow searches for regulatory measures by citation or by word and be periodically updated.

Article 26.9
Retrospective Review

1. The Parties recognise the importance of maintaining processes or mechanisms to promote periodic retrospective reviews of major regulatory measures at intervals each Party deems appropriate.
2. When conducting a retrospective review, each Party shall consider whether there are opportunities to achieve its public policy objectives more effectively and reduce unnecessary regulatory burdens, including on SMEs.

Article 26.10
Regulatory Cooperation

1. The Parties shall cooperate to facilitate the implementation of this Chapter and to maximise the benefits arising from it, including those envisioned in paragraph 1 of Article 26.2 (General Provisions).
2. Each Party may propose a regulatory cooperation activity to the other Party through the contact points designated in accordance with Article 26.11 (Contact Points) or through direct contact between the regulatory authorities.
3. Regulatory cooperation activities may include:
 - (a) information exchange, dialogue, or meetings with the other Party, including in particular:
 - (i) exchanging experiences with regulatory tools and instruments, including regulatory impact assessments, risk

assessments, retrospective reviews, and compliance with regulatory practices;

- (ii) exchanging information on planned or existing regulatory measures to maximise the opportunity for common approaches;
 - (b) information exchanges, dialogues, or meetings with interested persons, including with SMEs, of the other Party;
 - (c) training programmes, seminars, and other relevant assistance;
 - (d) strengthening cooperation and other relevant activities between regulatory agencies; or
 - (e) seeking to collaborate in relevant international fora.
4. In accordance with its laws and regulations, each Party shall endeavour to encourage its relevant regulatory authorities to consider, where appropriate, regulatory measures in the other Party, as well as relevant developments in international, regional, and other fora when planning regulatory measures.

Article 26.11 Contact Points

1. Each Party shall designate and notify a contact point on good regulatory practices to facilitate communication and cooperation between the Parties on any matter covered by this Chapter.
2. Each Party shall promptly notify the other Party of any change to its contact point.
3. The contact points may assist any other committee, working group, subsidiary body, or contact point established by this Agreement in considering matters of relevance to this Chapter.

Article 26.12 Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

Article 26.13
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.