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Subject to Legal Review for Accuracy, Clarity, and Consistency
January 28, 2004

Chapter Eighteen

Transparency

Section A: Transparency

Article 18.1: Contact Points

1. Each Party shall designate, within 60 days of the entry into force of the Agreement, a contact point to facilitate communications between the Parties on any matter covered by this Agreement.
2. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 18.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.
2. To the extent possible each Party shall:
 - (a) publish in advance any such measure that it proposes to adopt; and
 - (b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

Article 18.3: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

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Article 18.4: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceeding applying measures referred to in Article 18.2 to particular persons, goods or services of another Party in specific cases that:

- (a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such person are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

Article 18.5: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

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Article 18.6: Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

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

Section B: Anti-corruption

Article 18.7: Statement of Principle

The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment.

Article 18.8: Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

- (a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;
- (b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;
- (c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the

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performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

- (d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in this paragraph.

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption described in paragraph 1.

Article 18.9: Cooperation in International Fora

The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

Article 18.10: Definitions

For purposes of this Section:

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

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as public procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.