

**PROTOCOL TO THE AGREEMENT ON TRADE AND ECONOMIC  
COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF  
BRAZIL RELATING TO TRADE RULES AND TRANSPARENCY**

The Government of the United States of America and the Government of the Federative Republic of Brazil (individually a “Party” and collectively the “Parties”), having entered into the Agreement on Trade and Economic Cooperation on 19 March 2011 (hereinafter referred to as the “Agreement”):

Seeking to:

ENHANCE their bilateral economic partnership;

FACILITATE trade, investment, and good regulatory practices;

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;

IMPROVE regulatory processes;

PROMOTE anti-corruption measures; and

PROVIDE transparency to the public and traders of all sizes and in all sectors; and

AFFIRMING each Party’s existing rights and obligations with respect to each other under the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on April 15, 1994 (the “WTO Agreement”), the Agreement, and other agreements to which the United States and Brazil are parties,

HAVE AGREED as follows:

**Article 1: Regulatory Annexes**

1. This Protocol and its Annexes are incorporated into, and made an integral part of, the Agreement.
2. The Parties may include additional annexes by amendment of this Protocol in accordance with Article 5.

**Article 2: Review**

1. The Parties shall review implementation and operation of the Annexes to this Protocol by convening the Commission on Economic and Trade Relations not later than 90 days after the date of its entry into force and thereafter as appropriate, but not less than annually.
2. Prior to a review, each Party shall, when appropriate, solicit views from the public, such

as through advisory committees, regarding the implementation of the Annexes.

### **Article 3: Consultation**

1. If at any time a Party has concerns with the other Party's implementation of a provision of the Annexes to this Protocol, the Party may request consultations with the other Party in writing. The Parties shall make every attempt to arrive at a mutually satisfactory resolution.
2. The Parties recognize the importance of implementation of each Annex under this Protocol to development of the Agreement work program and their shared objective of promoting bilateral trade and investment.

### **Article 4: Disclosure of Information**

This Protocol does not require a Party to furnish or allow access to information, the disclosure of which would be contrary to its 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 5: Entry into Force, Amendment, and Termination**

1. Each Party shall notify the other Party, in writing, once it has completed the internal procedures required for the entry into force of this Protocol. This Protocol shall enter into force the day following the last notification.
2. This Protocol may be amended by written agreement of the Parties. Any amendment shall enter into force according to paragraph 1.
3. Either Party may terminate this Protocol or one or more Annexes by providing written notice of termination to the other Party. The termination shall take effect on a date agreed by the Parties or, if the Parties cannot agree on a date, 180 days after the date of delivery of the notice of termination.

## **ANNEX I: TRADE FACILITATION AND CUSTOMS ADMINISTRATION**

### **Article 1: Online Publication**

1. Each Party 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 of the Party;
  - (b) the documentation and data that it requires for importation into, exportation from, or transit through its territory;
  - (c) its laws, regulations, and procedures for importation into, exportation from, or transit through its territory;
  - (d) all current customs duties, taxes, fees, and charges it imposes 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 its enquiry point or points established or maintained pursuant to Article 3 (Enquiry Points);
  - (f) its laws, regulations, and procedures for becoming a customs broker, for issuing customs broker licenses, and regarding the use of customs brokers;
  - (g) informational resources that help an interested person understand the person's obligations when importing into, exporting from, or transiting goods through the Party's territory, how to be compliant, and any additional facilitations available based on a record of compliance, such as through a trusted trader program; and
  - (h) procedures to correct an error in a customs transaction, including the information to submit and, if applicable, the circumstances when penalties will not be imposed.

### **Article 2: Communication with Traders**

1. To the extent possible, in accordance with its law, each Party shall:
  - (a) publish, in advance, regulations of general application governing trade and customs matters that it proposes to adopt;
  - (b) provide interested persons the opportunity to comment before the Party adopts such regulations; and
  - (c) take these comments into account as appropriate.
2. Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraph 1, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraph 1.
3. Each Party shall adopt or maintain a mechanism to regularly communicate with traders

within its territory on its procedures related to the importation, exportation, and transit of goods. These communications shall provide traders with an opportunity to raise emerging issues and provide their views to the customs administration and other governmental agencies on these procedures.

### **Article 3: Enquiry Points**

1. Each Party shall establish or maintain one or more enquiry points to respond to enquiries by interested persons concerning importation, exportation, and transit procedures.
2. No Party shall require the payment of a fee or charge for answering enquiries through the enquiry point established under paragraph 1.
3. For greater certainty, a Party may require payment of a fee or charge with respect to other enquiries requiring document search, duplication, review, and processing of large volumes of documents and data in connection with requests in accordance with its laws and regulations providing public access to government records.
4. Each Party shall ensure that its enquiry point responds to enquiries within 20 days.
5. Notwithstanding paragraph 4, a Party 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 4: Advance Rulings**

1. Each Party shall, through its customs administration, issue a written advance ruling prior to the importation of a good into its territory that sets forth the treatment that the Party 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 shall allow a person of a Party who is an exporter, importer, producer, or any other person that has a justifiable cause, or a representative thereof, to request a written advance ruling.
3. No Party shall require, as a condition for requesting an advance ruling, a person of the other Party to establish or maintain a contractual or other relation with a person located in the territory of the importing Party.
4. Notwithstanding paragraph 3, each Party may require a person of the other Party requesting an advance ruling to submit a commercial or government-issued publicly-available document that provides assurance of that person's status as a trader.
5. Each 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.
6. Each Party shall adopt or maintain uniform procedures throughout its territory for the issuance of advance rulings, including a detailed description of the information required to process an application for a ruling.
7. Each Party shall provide that its customs administration:
- (a) may, at any time during the course of an evaluation of a request for an advance ruling, request supplemental information from the person requesting the ruling or a sample of the good for which the advance ruling was requested;
  - (b) in issuing an advance ruling, take into account the facts and circumstances provided by the person requesting that ruling;
  - (c) 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
  - (d) provide to the person requesting an advance ruling the reasons for that ruling with the factual and legal basis.
8. Each Party shall provide that its advance rulings take effect on the date that they are issued or on a later date specified in the ruling, and remain in effect unless the advance ruling is modified or revoked.
9. Each Party shall provide to a person requesting an advance ruling the same treatment as it 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. An advance ruling issued by a Party shall apply throughout its territory to the person to whom the ruling is issued.
11. After issuing an advance ruling, the Party may modify, revoke, or invalidate the advance ruling if:
- (a) there is a change in the law, facts, or circumstances on which the ruling was based;
  - (b) the ruling was based on inaccurate or false information; or
  - (c) the ruling was based on an error.
12. A Party may decline 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. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.
13. No Party shall apply retroactively a revocation or modification or invalidation to the detriment of the person requesting the advanced ruling unless that person has not acted in accordance with its terms and conditions or the ruling was based on inaccurate, misleading, or false information provided by the requester.

14. Each Party shall provide that, unless it retroactively applies a modification, revocation, or invalidation as described in paragraph 13, any modification, revocation, or invalidation of an advance ruling shall be effective on the date on which the modification, revocation, or invalidation is issued, or on such later date as may be specified therein.

15. Each Party shall, in accordance with its laws, regulations, and procedures, make its advance rulings, complete or redacted, available on a free, publicly accessible website.

## **Article 5: Electronic Documents and Systems for Traders**

1. Except under limited circumstances set out in its law, a Party shall, by electronic means, make available and accept for processing any document required for import, export, or transit of goods. In particular, a Party shall:

- (a) make available by electronic means any declaration or other form that is required for import, export, or transit of goods through its territory; and
- (b) allow a customs declaration and related documentation to be submitted in electronic format.

2. Except under limited circumstances set out in its law, whenever an electronic or digital version or copy of a document is submitted to a Party for import, export, or transit of goods, the Party shall accept it as a legal equivalent of a paper version. Under these circumstances, a Party shall not require submission of a paper version of a document required for import, export, or transit of goods.

3. Each Party shall:

- (a) make electronic systems accessible to importers, exporters, persons engaged in the transit of goods through its territory, and other customs users in order to submit and receive information;
- (b) promote the use of its electronic systems to facilitate the communication between traders and its customs administration and other related agencies; and
- (c) endeavor to allow an importer, through its electronic systems, to correct multiple import declarations previously submitted to the Party involving the same issue through a single submission.

4. Recognizing that use of an international standard for utilization of an electronic document can facilitate trade, each Party shall issue, accept, and exchange at least the following documents in accordance with such standards:

- (a) electronic phytosanitary certificate (e-Phyto), as defined in the International Standard for Phytosanitary Measures 12 produced by the International Plant Protection Convention;
- (b) International Air Transport Association (IATA) electronic air waybill (e-AWB); and
- (c) cargo XML.

5. The Parties shall consult on additional documents for utilization in accordance with relevant international standards, including electronic CITES permits (eCITES) for the implementation of the *Convention on International Trade in Endangered Species of Wild Fauna*

*and Flora*. The Parties shall also consult on the exchange of electronic sanitary certifications.

#### **Article 6: Use of Technology for the Release and Clearance of Goods**

1. Each Party shall use information technology that expedites procedures for the release of goods, including by:
  - (a) allowing for the data and electronic documents provided for in Article 5 (Electronic Documents and Systems for Traders) to be submitted to the Party prior to arrival of the goods; and
  - (b) providing for risk assessment and processing of those data and documents prior to the arrival of the goods in its territory.
2. Each Party shall, whenever practicable, utilize available data provided by information technology systems or sensors embedded on vehicles, shipping containers, packing materials, or otherwise with the shipment to:
  - (a) perform risk analysis for customs and other border controls; and
  - (b) expedite the release of low risk consignments.
3. Each Party shall consult with stakeholders on opportunities to use embedded technology to facilitate processing of goods by the customs administration and other border agencies.
4. Each Party shall use electronic risk management systems in accordance with best practices.
5. Each Party shall apply data analytics methodologies within their risk management systems for customs control.
6. Each Party shall regularly update, as appropriate, risk profiles in its risk management systems, taking into account emerging trends and trade dynamics, and the results of previous customs control activities.
7. Each Party shall endeavor to employ appropriate emerging technology, such as machine learning and other artificial intelligence technologies, to improve the efficiency of its customs administration risk management systems. The Parties are encouraged to share information on these technologies and their use in risk management.
8. Each Party shall endeavor to apply information technology in risk management systems for trade related controls performed by other governmental agencies, such as those in charge of sanitary, phytosanitary, and quality controls, or conformity assessments.
9. When physical inspections of cargos are deemed necessary by the customs administration or other governmental agencies, each Party shall, whenever practicable, employ non-intrusive or remote technologies in order to expedite the release of goods.
10. Each Party shall use, to the extent possible, non-intrusive technologies for processing expedited shipments and other small consignments.
11. Nothing in paragraphs 9 and 10 shall affect the right of a Party to use traditional physical inspections.
12. The Parties are encouraged to cooperate with private sector stakeholders, such as

authorized economic operators and customs warehouses, on the use of non-intrusive or remote technologies to aid cargo inspections performed by customs or other governmental agencies.

#### **Article 7: Electronic Payments**

Each Party 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 and other related agencies.

#### **Article 8: Authorized Economic Operator (AEO)**

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

2. With a view to pursuing mutual recognition of the Parties' AEO programs and providing the benefits of each Party's AEO program to the qualified participants of the other Party's AEO program, the Parties, through their customs administrations, shall cooperate through a joint work plan. The joint work plan shall include at least the following:

- (a) mutual information sharing that enables the examination of the compatibility of each Party's AEO program, including the exchange of publicly published applicant criteria and how it rationally and proportionally relates to the trade facilitation benefits it expects its AEO program to provide;
- (b) comprehensive and rigorous evaluation of each Party's respective validation process by which that Party ensures applicants and existing participants meet the published criteria, in particular those criteria related to safety and security and involving remote inspection, non-intrusive inspection as well as physical controls;
- (c) joint development of written mutual recognition operational procedures that includes the implementation of a valid customs mutual assistance agreement to ensure the proper functioning of information sharing and mutual recognition; and
- (d) any mutually agreeable additional element the Parties agree would further enhance the strength of a mutual recognition arrangement, broaden its scope, or provide additional benefits to the Parties' respective traders.

3. The Parties shall consult on the status of the joint work plan described in paragraph 2 on a regular basis. In case of delay under the joint work plan, the Parties shall work expeditiously to identify and address the reasons for the delay.

4. Once each Party has completed the joint work plan and taken its results into account, each Party shall determine whether the two AEO programs are sufficiently compatible with one another. If the Parties agree that the respective AEO programs are sufficiently compatible, a mutual recognition arrangement shall be pursued.

#### **Article 9: Single Window**

1. Each Party shall establish or maintain a single window system that enables the electronic submission through a single entry point of the documentation and data the Party requires for



importation into, exportation from, and transit through its territory.

2. Each Party shall, in a timely manner, inform a person that is using its single window system of the status of the release of goods, through the single window system.
3. In building and maintaining its single window system, each Party shall:
  - (a) incorporate, as appropriate, the World Customs Organization Data Model for data elements;
  - (b) endeavor to implement standards and data elements for import, export, and transit that are the same as the other Party's single window system;
  - (c) on an ongoing basis, streamline its single window system, including by adding functionality to facilitate trade, improve transparency, and reduce release times and costs; and
  - (d) endeavor to implement a reference number to uniquely identify data related to individual transactions.
4. In implementing paragraph 3, the Parties shall:
  - (a) share with each other their respective experiences in developing and maintaining their single window system; and
  - (b) work towards a harmonization, to the extent possible, of data elements and customs processes that facilitate use of a single transmission of information to both the exporting and importing Party.
5. Each Party shall endeavor to allow traders and other stakeholders to use the services of authorized private entities to exchange data with the single window system.
6. Each Party shall take into consideration the specific interests of small and medium enterprises when allowing them to use authorized private service providers to submit data to the single window.

#### **Article 10: Transparency, Predictability, and Consistency in Customs Procedures**

1. Each Party shall apply its customs procedures related to the importation, exportation, and transit of goods in a manner that is transparent, predictable, and consistent throughout its territory.
2. Nothing in this Article prevents a Party from differentiating its import, export, and transit procedures, and documentation and data requirements:
  - (a) based on the nature and type of goods, or their means of transport;
  - (b) based on risk management;
  - (c) to provide total or partial exemption to a good from customs duties, taxes, fees, or charges;
  - (d) to allow electronic filing, processing, or payment; or
  - (e) in a manner consistent with the *Agreement on the Application of Sanitary and*

*Phytosanitary Measures*, set out in Annex 1A to the WTO Agreement (SPS Agreement).

3. Each Party shall review its import, export, and transit procedures, and documentation and data requirements, and, based on the results of the review, ensure, as appropriate, that these procedures and requirements are:

- (a) adopted and applied with a view to a rapid release of goods;
- (b) adopted and applied in a manner that aims at reducing the time, administrative burden, and cost of compliance with these procedures and requirements;
- (c) the least trade restrictive of any alternative measures that are reasonably available to fulfil the Party's policy objectives; and
- (d) not maintained, including parts thereof, if no longer required to fulfil the Party's policy objectives.

4. If a Party holds the original version of a document submitted for the importation into, exportation from, or transit through its territory, the Party shall not require an additional submission of the same document.

5. Each Party shall take into consideration, to the extent practicable and appropriate, relevant international standards and international trade instruments for the development of its customs procedures related to the importation, exportation, and transit of goods.

6. Each Party shall adopt or maintain measures with a view to ensuring consistency and predictability for traders throughout its territory in the application of its customs procedures, including determinations on tariff classification and customs valuation of goods. These measures may include training of customs officials or issuing documents that serve to guide customs officials. If an inconsistency in the application of its customs procedures, including determinations on tariff classification or customs valuation of goods, is discovered, the Party shall seek to resolve the inconsistency, if practicable.

#### **Article 11: Agricultural and Other Goods Vulnerable to Deterioration (AOGVD)**

1. In order to avoid deterioration of AOGVD, each Party for imports of AOGVD shall:

- (a) provide for electronic submission of any entry process documents, including any required license, permit, market authorization, and registration;
- (b) automate its quota administration procedures;
- (c) make available promptly online information on 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 when scheduling any inspections that may be required in order to determine whether to release product into commerce.

2. Each Party shall identify opportunities to provide inspection services away from its border in order 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 a Party limits the number of climate-appropriate storage facilities at or near a port, that Party shall take into account, as appropriate, the need for sufficient storage for AOGVD in its management of inspection activities and decisions on the number of facilities.

4. Taking into account the particular costs for trade in AOGVD, each Party shall review its entry process requirements, including the use of stamps, signatures, attestations, and paper requirements, with a view to reducing or automating requirements and reducing the time and burden for processing. The review of these requirements shall include an opportunity for interested persons to comment on requirements, including persons of the other Party and any non-Party. Each Party shall make publicly available the instructions for submitting comments.

5. Each Party shall endeavor to share with each other information on the review under paragraph 4, in particular input from stakeholders involved in trade between the Parties, and to exchange views on how to apply the results of the review to improve their respective processes for the release of AOGVD.

#### **Article 12: Consular Transactions**

1. A Party shall not require a consular transaction, including any related fee or charge, in connection with the importation of any good.

2. Consular transactions means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party, or in the territory of a non-Party, for the purpose of obtaining a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration, or any other customs documentation in connection with the importation of the good.

#### **Article 13: 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 shall ensure that any person to whom a customs administration 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.

A Party is not required to provide an administrative review under this Article for an advance ruling under Article 4.

2. Each Party shall provide a person to whom it 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 shall ensure that an authority 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 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 of the Party with respect to that person.

5. With a view to ensuring predictability for traders and consistent application of its customs laws, regulations, and procedural requirements, each Party shall apply the decisions of its highest administrative appeal authority to the practices of its customs administration throughout its territory.

6. Each Party shall allow a trader to file a request for administrative review or appeal to be conducted by the customs administration through electronic means.

#### **Article 14: Administrative Guidance**

1. Each Party shall adopt or maintain an administrative procedure by which a customs office in its territory may request the appropriate authority of the customs administration to provide guidance as to the proper application of laws, regulations, and procedures for importation into, exportation from, or transit through its territory with respect to a specific customs transaction, regardless of whether the transaction is prospective, pending, or has been completed.

2. The appropriate authority of a Party shall provide guidance in response to a request under 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 of the Party.

3. Each Party shall make available to the public on a free, publicly accessible website the guidance provided in response to a request under paragraph 2.

4. When a person with an interest in the transaction disagrees with the customs office submitting a request under paragraph 1, the Party shall allow the person an opportunity to submit additional documents and supporting information in writing to the appropriate authority of the customs administration before the authority issues its guidance.

5. The customs office shall take into account guidance in response to a request under paragraph 1 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 the customs administration to provide guidance on transactions for which a determination has been made, or for which a determination has been applied consistently throughout its territory; on transactions for which a determination is pending; if an importer or exporter has requested a ruling or has received a ruling that has been applied consistently throughout its territory; or on transactions for which a determination or ruling is being reviewed.

#### **Article 15: Penalties**

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for breach of its customs laws, regulations, or procedural requirements, including those governing tariff classification, customs valuation, transit

procedures, country of origin, or claims for preferential treatment. Each Party shall ensure that such measures are administered in a uniform manner throughout its territory.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of its customs laws, regulations, or procedural requirements is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that any penalty imposed by its customs administration for breach of its customs laws, regulations, or procedural requirements 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 shall provide that a minor error in a customs transaction, as set forth in its laws, regulations, or procedures, published in accordance with Article 1 (Online Publication), 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 shall adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

6. Each Party shall ensure that when its customs administration imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, 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 procedural requirement concerned, and the basis for determining the penalty amount if not set forth specifically in the law, regulation, or procedural requirement.

7. Each Party shall provide that a person may correct an error in a customs transaction that is a potential breach of a customs law, regulation, or procedural requirement, excluding fraud, prior to the discovery of the error by the Party, if the person does so in accordance with the Party's laws, regulations, or procedural requirements, and pays any owed customs duties, taxes, fees, and charges, including interest. The correction shall include the identification of the transaction and circumstances of the error. The Party shall not use this error to assess a penalty for a breach of a customs law, regulation, or procedural requirement.

8. Each Party shall specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedural requirement.

## **Article 16: Standards of Conduct**

1. Further to Article 15 (Penalties), each Party shall adopt or maintain measures to deter its customs officials from engaging in any action that would result in, or that reasonably creates the appearance of, use of their public service position for private gain, including any monetary benefit.

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

### **Article 17: Protection of Trader Information**

1. Each Party's customs administration and other governmental agencies shall apply measures governing the collection, protection, use, disclosure, retention, correction, and disposal of information that it collects from traders.
2. Each Party's customs administration and other governmental agencies shall protect, in accordance with its law, confidential information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.
3. Notwithstanding paragraph 2, a Party may use or disclose confidential information but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative or judicial proceeding.
4. If confidential information is used or disclosed other than in accordance with this Article, the Party shall address the incident, in accordance with its laws, regulations, or procedural requirements, and strive to prevent a reoccurrence.

### **Article 18: Shipping Containers and Other Substantial Holders**

1. Each Party shall adopt or maintain procedures, such as for temporary admission, that allow a shipping container or other substantial holder being used or to be used in the shipment of goods in international traffic, whether arriving full or empty, of any size, volume, or dimension:
  - (a) to be released from customs control without a customs declaration and without assessment of duties, taxes, fees, or charges; and
  - (b) to remain within the territory of the Party for at least 364 consecutive days.
2. For purposes of this Article, a shipping container or other substantial holder includes any container, tank, cube, cask, barrel, box, holder, 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 in international traffic.
3. Each Party shall include in the treatment of any shipping container or other substantial holder that has an internal volume of one cubic meter or more, the accessories or equipment accompanying it.

### **Article 19: Cooperation**

1. Following the entry into force of this Annex, the Parties shall continue to explore and, when feasible and appropriate, promote the administration of measures that seek to facilitate trade beyond the obligations contained in the WTO *Trade Facilitation Agreement* and this Annex. In this regard, the Parties shall cooperate on customs and other trade related matters between their respective authorities.
2. Cooperation may include:
  - (a) identifying customs initiatives to promote trade facilitation as described in this Annex;
  - (b) facilitating the exchange of information between the Parties with respect to their respective experiences regarding the development and implementation of a

single window including information regarding each Party's participating border agencies and the automation of its forms, documents, and procedures;

- (c) facilitating the exchange of information between the Parties regarding the formulation and implementation of, and experiences with, each Party's measures that promote voluntary compliance by traders;
- (d) identifying and cooperating in the development and support of initiatives for joint action by their respective customs administrations and other governmental agencies, in cases where joint action could facilitate trade between the Parties, and taking into account priorities and experiences of their customs administrations and other governmental agencies;
- (e) strengthening their cooperation in the fields of customs and trade facilitation in international organizations and initiatives;
- (f) providing a forum for the sharing of views on individual cases involving questions of tariff classification, customs valuation, other customs treatments, or emerging industry trends and issues, with a view to reconciling inconsistencies, supporting a competitive business environment, or otherwise facilitating trade and investment among the Parties;
- (g) exchanging experiences on national committees on trade facilitation, their functions, and their work towards facilitating domestic coordination and implementing WTO commitments.
- (h) identifying areas for future work on trade facilitation;
- (i) sharing information to promote cooperation between their respective customs administrations and other interested agencies with an aim to strengthen domestic and cross border enforcement of trade laws, including those concerning trade remedies;
- (j) exchanging experiences and promoting cooperation on the development and implementation of digital trade information solutions, taking special consideration of the interests of small and medium enterprises; and
- (k) developing initiatives for the creation of conditions for the exchange of the documents referred to in Article 5.4 and 5.5 (Electronic Documents and Systems for Traders).

3. Each Party shall designate and notify a contact point for matters arising under this Annex. A Party shall promptly notify the other Party of any material changes to its contact point.

4. Each Party shall provide opportunities for persons to provide input on matters related to this Annex.

#### **Article 20: Bilateral Cooperation on Enforcement**

1. The Parties agree to strengthen and expand their customs and trade enforcement efforts and cooperation.

2. Each Party shall, in accordance with its laws and regulations, cooperate with other Party for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offenses in the trade in goods between the Parties.
3. With a view to facilitating bilateral trade between them, each Party shall:
  - (a) encourage cooperation with the other Party regarding customs issues that affect goods traded between the Parties; and
  - (b) endeavor to provide the other Party with advance notice of any significant administrative change, modification of a law or regulation, or issuance of other measure related to its laws or regulations that governs importations, exportations, or transit procedures that is likely to affect the effective implementation and enforcement of the customs and trade laws and regulations of a Party.
4. Each Party shall take appropriate measures, such as legislative, administrative, or judicial actions for enforcement of its laws, regulations, and procedural requirements related to customs offenses, to enhance coordination between its customs administration and other relevant agencies and for cooperation with the other Party.
5. The measures under paragraph 4 shall include:
  - (a) specific measures, 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 transit goods to identify potential or real sources of these offenses;
  - (b) penalties aimed at deterring or penalizing customs offenses; and
  - (c) providing a Party's government officials with the legal authority to meet enforcement objectives under its laws and for cooperation with the other Party on enforcement.

#### **Article 21: Transitional Periods**

1. Notwithstanding Article 5.1 of this Protocol, each Party shall implement paragraph 4(b) and (c) of Article 5 (Electronic Documents and Systems for Traders) within one year of the date of entry into force of this Protocol.
2. Notwithstanding Article 5.1 of this Protocol, paragraph 4 of Article 4 (Advance Rulings) shall lapse after a period of two years from the date of entry into force of this Protocol. Prior to the end of the time period, the Parties shall discuss whether it is appropriate to extend the duration of the provision. Any extension agreed between the Parties shall be in accordance with Article 4 and shall not exceed one year.



## ANNEX II: GOOD REGULATORY PRACTICES

### Article 1: Definitions

For the purposes of this Annex:

**regulation** means a measure of general application adopted, issued, or maintained by a regulatory authority with which compliance is mandatory;

**regulatory authority** means an administrative authority or agency at the Party's federal level of government that develops, proposes, or adopts a regulation, and does not include legislatures, courts, or, in the case of the United States, the President and, in the case of Brazil, presidential decrees; and

**regulatory cooperation** means an effort between the two Parties to prevent, reduce, or eliminate unnecessary regulatory differences to facilitate trade and promote economic growth, while maintaining or enhancing standards of public health and safety and environmental protection, among others.

### Article 2: Subject Matter and General Provisions

1. The Parties recognize that implementation of government-wide practices to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability can facilitate international trade, investment, and economic growth, while contributing to each Party's ability to achieve its public policy objectives (including health, safety, and environmental goals) at the level of protection it considers appropriate. The application of good regulatory practices can support the development of compatible regulatory approaches among the Parties, and reduce or eliminate unnecessarily burdensome, duplicative, or divergent regulatory requirements. Good regulatory practices also are fundamental to effective regulatory cooperation.

2. Accordingly, this Annex sets out specific obligations and other provisions with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of the Parties' respective regulations, subject to paragraph 3.

3. For greater certainty, this Annex does not prevent a Party from:

- (a) pursuing its public policy objectives (including health, safety, and environmental goals) at the level it considers to be appropriate;
- (b) determining the appropriate method of implementing its obligations in this Annex within the framework of its own legal system and institutions; or
- (c) adopting good regulatory practices in addition to those that are set out in this Annex.

### Article 3: Central Regulatory Coordinating Body or Mechanism

Recognizing that institutional arrangements are particular to each Party's system of governance, the Parties 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. The Parties intend to establish or maintain their respective central

regulatory coordinating bodies or mechanisms, within their respective mandates and consistent with law.

#### **Article 4: Internal Consultation, Coordination, and Review**

1. The Parties recognize that internal processes or mechanisms providing for consultation, coordination, and review within and among domestic authorities in the development of regulations can increase regulatory compatibility between the Parties and facilitate trade. Accordingly, each Party shall adopt or maintain those processes or mechanisms to pursue, among others, the following objectives:

- (a) promoting government-wide adherence to good regulatory practices, including those set forth in this Annex;
- (b) identifying and developing improvements to government-wide regulatory processes;
- (c) identifying potential overlap or duplication between proposed and existing regulations, and preventing the creation of inconsistent requirements across domestic authorities;
- (d) reviewing regulations early in the development process to support compliance with international trade and investment obligations undertaken by the Party, including, as appropriate, consideration 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 avoid unnecessary burdens and restrictions on innovation and competition in the marketplace.

2. Each Party shall make publicly available online a description of the processes or mechanisms referred to in paragraph 1.

#### **Article 5: Information Quality**

1. Each Party recognizes the need to base regulations upon information that is reliable and of high quality. To that end, each Party should adopt or maintain publicly available guidance or mechanisms that encourage its 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 it is 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 public through identical questions in a survey for use in developing a regulation, each Party shall provide that the 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 6: Early Planning**

1. Each Party shall make publicly available online at least every two years a list of regulations that it reasonably expects to adopt or propose to adopt. Each regulation identified in the list should be accompanied by:

- (a) a concise description of the planned regulation;
- (b) a point of contact 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 also include, to the extent available, timetables for subsequent actions, including those providing opportunities for public comment under Article 9 (Transparent Development of Regulations).

3. Parties are encouraged to provide the information in paragraphs 1 and 2 on the website described in Article 7 or through links from that website.

### **Article 7: Dedicated Website**

1. Each Party shall maintain a single, free, publicly available website that, to the extent practicable, contains all information that it is required to publish pursuant to Article 9 (Transparent Development of Regulations).

2. With respect to each regulatory authority at the federal level of government that has responsibility for implementing or enforcing regulations, the Party shall make publicly available online a description of that regulatory authority, including the regulatory authority's specific responsibilities. Each Party shall, without undue delay, notify the other Party of any material changes to this information and update the information online, as appropriate.

3. A Party may comply with paragraphs 1 and 2 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.

### **Article 8: Use of Plain Language**

Each Party should provide that proposed and final regulations are written using plain language to ensure that those regulations are clear, concise, and easy for the public to understand, recognizing that some regulations address technical issues and that relevant expertise may be required to understand or apply them.

## **Article 9: Transparent Development of Regulations**

1. During the period described in paragraph 2, when a regulatory authority is developing a regulation, the Party shall, under normal circumstances, 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 that 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 publishes the information listed in subparagraphs (a) through (d), the Party shall also make publicly available data, other information, and scientific and technical analyses it relied upon in support of the regulation, including any risk assessment.

2. With respect to the items required to be published under paragraph 1, each Party shall publish them before the regulatory authority finalizes its work on the regulation 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 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 Party, to submit written comments on the items identified in paragraph 1 for consideration by the relevant regulatory authority of the Party. Each Party shall allow interested persons to submit any comments and other inputs electronically and may also allow written submissions by mail to a published address or through another technology.

4. If a Party expects a proposed regulation to have a significant impact on trade, the Party should under normal circumstances provide a time period to submit written comments and 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 is 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 under paragraph 4, a Party shall endeavor, under normal circumstances, to provide a time period to submit written comments and 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. In addition, the Party 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.

7. Each Party shall, without undue delay, make publicly available online any written comments it receives, 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 7 (Dedicated Website), the regulatory authority of a Party shall endeavor to make publicly available those comments on its own website. Each Party shall also normally make publicly available on the Internet a list, docket, or other form of compilation, identifying persons that have submitted public comments.

8. Before finalizing its work on a regulation, a regulatory authority of a Party shall evaluate any relevant information provided in written comments received during the comment period.

9. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall, without undue delay, make publicly available online the text of the regulation, any final impact assessment, and other items as set out in Article 12 (Final Publication).

10. The Parties are encouraged to make publicly available online government-generated items identified in this Article in a format that can be read and digitally processed through word searches and data mining by a computer or other technology.

11. For the purposes of paragraphs 1, 4, and 5, “normal circumstances” do not include, for example, situations when 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 urgent problems (for example, of safety, health, or environmental protection) arise or threaten to arise for a Party; or if the regulation has no substantive impact upon members of the public, including persons of the other Party.

#### **Article 10: Expert Advisory Groups or Bodies**

1. The Parties recognize that their respective regulatory authorities may seek expert advice and recommendations with respect to the preparation or implementation of regulations from groups or bodies that include non-governmental persons. The Parties also recognize that obtaining those advice and recommendations should be a complement to, rather than a substitute for, the procedures for seeking public comment pursuant to Article 9.3 (Transparent Development of Regulations).

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

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

This Article does not apply to a group or body that is established to enhance intergovernmental coordination, or to provide advice related to international affairs, including national security.

3. Each Party shall encourage its regulatory authorities to ensure that the membership of any expert group or body 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 government operations, each Party shall encourage its regulatory authorities to provide public notice of:

- (a) the name of any expert group or body it creates or uses, 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;
- (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 shall endeavor, as appropriate, to make publicly available online any documentation made available to or prepared for or by the expert group or body.

6. An expert group or body may seek public input related to any topic under its mandate and shall provide a means for interested persons to provide input.

#### **Article 11: Regulatory Impact Assessment**

1. The Parties recognize that regulatory impact assessment is a tool to assist regulatory authorities in assessing the need for and potential impacts of regulations they are preparing. Each Party should encourage the use of regulatory impact assessments in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain levels established by the Party.

2. Each Party shall maintain procedures that promote the consideration of the following when conducting a regulatory impact assessment:

- (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 the alternative of not regulating;
- (c) anticipated positive and negative impacts of the selected and other feasible alternatives (such as economic costs and benefits, social, environmental, public health, and safety effects) as well as risks and distributional effects over time, recognizing that qualitative analysis may be appropriate when costs and benefits are difficult to quantify or monetize due to inadequate information. A Party's analysis of these impacts 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 should consider whether a proposed regulation may have significant adverse economic effects on a substantial number of small enterprises. If so, the Party should consider potential steps to minimize those adverse economic impacts, while allowing the Party to fulfill its objectives.

## **Article 12: Final Publication**

1. When a regulatory authority of a Party finalizes its work on a regulation, the Party 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 Party's objectives, the rationale for the material features of the regulation (to the extent different than the explanation provided for in Article 9 (Transparent Development of Regulations)), 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) to the extent possible, a reference to any forms or documents required to comply with the regulation and indication of their expected availability; and
- (g) the name and contact information of an individual official from the regulatory authority with lead responsibility for implementing the regulation who may be contacted concerning questions regarding the regulation.

2. Each Party shall ensure that all regulations in effect and any forms and documents necessary for compliance are made available on a free, publicly available website. On the website, each Party shall endeavor to organize the regulations by regulatory authority or regulatory area to allow for ease of searchability.

## **Article 13: Review of Regulations Currently in Effect**

1. Each Party shall adopt or maintain procedures or mechanisms to conduct reviews of its regulations currently in effect to determine whether modification or repeal is appropriate. A review may be initiated, for example, pursuant to a Party's law, on a regulatory authority's own initiative, or in response to a suggestion submitted pursuant to Article 14 (Suggestions for Improvement).

2. When conducting a review, each Party should consider, as appropriate and applicable, among other things:

- (a) the effectiveness of the regulation in meeting its initial stated objectives, for example by examining its actual social or economic impact;
- (b) any circumstances that have changed since the development of the regulation, including availability of new information;

- (c) new opportunities to eliminate unnecessary regulatory burdens;
  - (d) ways to address unnecessary regulatory differences that may adversely affect trade, including trade between the Parties; and
  - (e) any relevant suggestions of members of the public submitted pursuant to Article 14 (Suggestions for Improvement).
3. Each Party shall include among the procedures or mechanisms adopted pursuant to paragraph 1 provisions addressing impacts on small enterprises.
4. Each Party is encouraged to make publicly available online, to the extent available and appropriate, any official plans and results of a review.

#### **Article 14: Suggestions for Improvement**

Each Party shall provide the opportunity for any interested person to submit to any regulatory authority of the Party 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, welfare, or safety, has become more burdensome than necessary to achieve its objective (for example with respect to its impact on trade), fails to take into account changed circumstances (such as fundamental changes in technology, relevant scientific and technical developments, or relevant international standards), or relies on incorrect or outdated information.

#### **Article 15: Information About Regulatory Processes and Authorities**

1. Each Party shall make publicly available online a description of the processes and mechanisms employed by its 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 shall also make publicly available online:
- (a) a description of the functions and organization of each of its regulatory authorities, 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 of its regulatory authorities;
  - (c) the legal authority for verification, inspection, and compliance activities by its 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 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 Party's law to import, export, sell, market, or use a good.

Each Party shall, without undue delay, make publicly available online any material changes to this information.



## **Article 16: Annual Report**

Each Party shall prepare and make freely and publicly available online, on an annual basis, a report setting forth:

- (a) to the extent feasible, an estimate of the relevant impacts of economically significant regulations, as established by the Party, issued in that period by its regulatory authorities, on an aggregate or individual basis; and
- (b) any changes, or any proposals to make changes, to its regulatory system.

## **Article 17: Encouragement of Regulatory Compatibility and Cooperation**

1. The Parties recognize the important contribution of dialogues between their respective regulatory authorities in promoting regulatory compatibility and regulatory cooperation when appropriate, with a view to increasing mutual understanding of their respective systems and to improve the implementation of good regulatory practices and in order to facilitate trade and investment and to achieve regulatory objectives. Accordingly, each Party should encourage its regulatory authorities to engage in mutually beneficial regulatory cooperation activities with relevant counterparts of the other Party in appropriate circumstances to achieve these objectives.

2. The Parties recognize the valuable work of bilateral cooperation fora, and intend to continue to work together on a mutually beneficial basis in such fora or under this Annex. The Parties also 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 should encourage input from members of the public to identify promising avenues for cooperation activities.

3. The Parties recognize that a broad range of mechanisms, including those set forth in the WTO Agreement, exist to help minimize unnecessary regulatory differences and to facilitate trade or investment, while contributing to each Party's ability to meet its public policy objectives.

## **Article 18: Contact Points**

1. Each Party shall designate and notify a contact point for matters arising under this Annex. A Party shall, without undue delay, notify the other Party of any material changes to its contact point.

2. The contact points shall coordinate communication and collaboration in matters relating to this Annex, including encouraging regulatory cooperation, with a view to facilitating trade between the Parties.

3. Activities related to this Annex may include:

- (a) monitoring the implementation and operation of this Annex, including through updates on each Party's regulatory practices and processes;
- (b) exchanging information on effective methods for implementing this Annex, including with respect to approaches to regulatory cooperation, and relevant work in international fora;

- (c) consulting on matters and positions in advance of meetings in international fora that are related to the work of this Annex, including opportunities for workshops, seminars and other relevant activities to support strengthening of good regulatory practices and to support improvements in approaches to regulatory cooperation.
- (d) considering suggestions from stakeholders regarding opportunities to strengthen the application of good regulatory practices;
- (e) identifying areas for future work by the Parties; and
- (f) taking any other steps that the Parties consider will assist them in implementing this Annex.

4. Each Party shall provide opportunities for persons of that Party to provide views on the implementation of this Annex, and the contact points shall exchange information on these views.

#### **Article 19: Transitional Periods**

Notwithstanding Article 5.1 of the Protocol, Brazil shall implement its obligations with respect to the following articles two years from the date of entry into force of this Protocol:

- (a) Article 6 (Early Planning);
- (b) Article 7 (Dedicated Website);
- (c) paragraphs 1, 2, 3, 7, and 9 of Article 9 (Transparent Development of Regulations);
- (d) Article 12 (Final Publication);
- (e) Article 15 (Information About Regulatory Processes and Authorities); and
- (f) Article 16 (Annual Report).

## APPENDIX

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

1. The following measures are not regulations for the purposes of this Annex:
  - (a) **for the Parties:** general statements of policy or guidance that do not prescribe legally enforceable requirements;
  - (b) **for Brazil:** a measure concerning:
    - (i) a military or foreign affairs function of Brazil,
    - (ii) public sector management, personnel, public property, budgetary execution, loans, grants, benefits, or contracts,
    - (iii) public sector organization, procedure, or practice,
    - (iv) financial services or anti-money laundering measures,
    - (v) taxation measures, or
    - (vi) monetary and exchange rate policies.
  - (c) **for the United States:** a measure concerning:
    - (i) a military or foreign affairs function of the United States,
    - (ii) agency management, personnel, public property, loans, grants, benefits, or contracts,
    - (iii) agency organization, procedure, or practice,
    - (iv) financial services or anti-money laundering measures, or
    - (v) taxation measures.

## ANNEX III: ANTI-CORRUPTION

### Article 1: Scope and General Provisions

1. Articles 1 through 6 apply to legislative and other measures to prevent and combat bribery and corruption in any matters affecting international trade and investment. This Annex does not apply to conduct outside the jurisdiction of federal law 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.
2. Each Party affirms its resolve to prevent and combat bribery and corruption in matters affecting international trade and investment.
3. Each Party 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 recognizes the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade and investment and commits to work jointly with the other Party to encourage and support appropriate initiatives to prevent and combat such bribery and corruption.
5. The Parties recognize that their respective competent anticorruption authorities have established working relationships in many bilateral and multilateral forums and that cooperation under this Annex can enhance the Parties' joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting international trade and investment.
6. Each Party affirms obligations it has under the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, done at Paris, December 19, 1997; the *United Nations Convention against Corruption*, done at New York, October 31, 2003; and the *Inter-American Convention Against Corruption*, done at Caracas, March 29, 1996.

### Article 2: Measures to Prevent and Combat Bribery and Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal, civil, or administrative offenses under its law, in matters affecting international trade and investment, when committed intentionally, by any person subject to its jurisdiction:
  - (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) complicity, including incitement, aiding and abetting, or conspiracy in the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party 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 law.

3. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal, civil, or administrative offenses under its law, in matters affecting international trade and investment, when committed intentionally, by any person subject to its jurisdiction:

- (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;
- (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 shall adopt or maintain effective, proportionate, and dissuasive sanctions and procedures to enforce the measures that it adopts or maintains pursuant to paragraphs 1, 2, and 3.

5. Each Party shall disallow the tax deductibility of bribes and other expenses considered illegal by the Party incurred in furtherance of the commission of an offense described in paragraphs 1 and 3.

6. Each Party 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 shall adopt or maintain measures in accordance with its laws and regulations that permit it to impose visa restrictions on any foreign public official who engaged in the commission of an offense described in paragraphs 1 and 3 or any other person that assisted in the commission of such an offense.

### **Article 3: Persons that Report Bribery or Corruption Offenses**

1. Each Party shall identify the competent authorities that are responsible for the enforcement of the measures that it adopts or maintains under Article 2.3 (Measures to Prevent and Combat Bribery and Corruption) and make such information publicly available.

2. Each Party shall adopt or maintain publicly available procedures for a person to report to its competent authorities, including anonymously, any incidents that may be considered to constitute an offense described in Article 2.1 and 2.3 or an act described in Article 2.2.

3. Each Party shall adopt or maintain measures to protect against discriminatory or disciplinary treatment any person who, upon reasonable belief, reports to the competent authorities any suspected incidents that may be considered to constitute an offense described in Article 2.1 and 2.3 or an act described in Article 2.2.

4. Each Party should 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 Article 2.1 and 2.3 or an act described in Article 2.2, to report this discovery to management and, as appropriate, to corporate monitoring bodies. Each Party also should encourage issuers that receive such a report from an external auditor to actively and effectively respond to the report.

5. Each Party should consider requiring external auditors of an issuer's financial statement to report to the competent authorities concerning any suspected incidents that may be considered an offense described in Article 2.1 and 2.3 or an act described in Article 2.2. Each Party shall ensure that any external auditor who, upon reasonable belief, reports to the competent authorities any such suspected incidents is protected from legal action.

### **Article 4: Promoting Integrity Among Public Officials**

1. This Article applies only at the central level of government.

2. To prevent and combat bribery and corruption in matters affecting international trade and investment, each Party shall promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party 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 Party to be especially vulnerable to bribery and corruption;
- (b) promote transparency and accountability of public officials in the exercise of public functions;
- (c) require senior officials, and other public officials as considered appropriate by the Party, to make available to appropriate authorities 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, when such acts come to their notice in the performance of their functions.

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

3. Each Party 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 interests by public officials. Each Party 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.

4. Each Party shall establish procedures through which a public official charged, convicted, or officially sanctioned of an offense described in this Annex may be removed, suspended, or reassigned by the appropriate authority, bearing in mind respect for the principle of presumption of innocence.

5. Without prejudice to judicial independence, each Party shall adopt or maintain measures to strengthen integrity and prevent opportunities for corruption of public officials that are members of its 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 its judiciary.

#### **Article 5: Participation of Private Sector and Civil Society**

1. Each Party 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, 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, a Party may, for example:

- (a) undertake 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) 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
  - (d) 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 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 that violate measures adopted or maintained under Article 2.1 and 2.3 or acts that violate measures adopted or maintained under Article 2.2 (Measures to Prevent and Combat Bribery and Corruption); and
  - (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

#### **Article 6: Application and Enforcement of Measures Adopted or Maintained to Prevent and Combat Bribery and Corruption**

1. Each Party affirms its commitment to enhance the effectiveness of law enforcement actions to prevent and combat the offenses described in Article 2.1 and 2.3 or the acts described in Article 2.2 (Measures to Prevent and Combat Bribery and Corruption).
2. In accordance with the fundamental principles of its legal system, a Party shall not fail to effectively enforce the measures adopted or maintained to comply with Articles 2 (Measures to Prevent and Combat Bribery and Corruption), 3 (Persons that Report Bribery or Corruption Offenses), and 4 (Promoting Integrity Among Public Officials), through a sustained or recurring course of action or inaction.
3. In accordance with the fundamental principles of its legal system, each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise discretion with respect to the enforcement of the Party's measures adopted or maintained to prevent and combat bribery and corruption in matters affecting international trade and investment. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources with respect to such enforcement.

#### **Article 7: Definitions**

For purposes of this Annex:

**enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

**foreign public official** means an individual holding a legislative, executive, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that person's seniority; and an



individual exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

**individual** means a natural person;

**issuers** means:

- (a) for the Federative Republic of Brazil, issuers are defined by the applicable laws and regulations of the Federative Republic of Brazil.
- (b) for the United States, 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).

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

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

**public enterprise** means an enterprise over which a government or governments may, directly or indirectly, exercise a dominant influence. “Dominant influence” shall be deemed to exist, *inter alia*, if the government or governments 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; and

**public official** means:

- (a) any individual holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that individual’s seniority;
- (b) any other individual who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service as defined under that Party’s law and as applied in the pertinent area of law in that Party; or
- (c) any other individual of a Party defined as a “public official” under a Party’s law.