

CHAPTER 26
TRANSPARENCY AND ANTI-CORRUPTION

Section A: Definitions

Article 26.1: Definitions

For the purposes of this Chapter:

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

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation 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;

foreign public official means any person holding a legislative, executive, administrative or judicial office of a foreign country, at any level of government, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; and any person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

official of a public international organisation means an international civil servant or any person who is authorised by a public international organisation to act on its behalf; and

public official means:

- (a) any person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;
- (b) any other person who performs a public function for a Party, including for a public agency or public enterprise, or provides a

第 26 章

透明度和反腐败

A 节：定义

第 26.1 条 定义

就本章而言：

在履行公务方面作为或不作为包括对公职人员职务的任何使用，无论是否属该公职人员授权权限之内；

普遍适用的行政裁定指适用于一般属于行政裁定或解释范围的所有人员和事实情况且形成行为准则的一行政裁定或解释，但不包括：

- (a) 在行政或准司法程序中作出的适用于一具体案件中另一缔约方一特定人、货物或服务的决定或裁定；
或
- (b) 对一特定行为或做法作出的裁定；

外国公职人员指在一外国的任何层级政府中担任立法、行政、行政管理或司法职务的任何人，无论经任命或经选举、永久还是临时、有报酬还是无报酬，且与该人的资历无关；以及为一外国的任何层级政府，包括公共机构或公共企业，履行一项公共职能的任何人；

公共国际组织官员指国际职员或经一公共国际组织授权而代表其行事的任何人；以及

公职人员指：

- (a) 担任一缔约方中立法、行政、行政管理或司法职务的任何人，无论经任命还是经选举、长期还是临时、有报酬还是无报酬，且与该人的资历无关；
- (b) 按一缔约方法律下所定义的并在该缔约方法律的相

public service, as defined under the Party's law and as applied in the pertinent area of that Party's law; or

- (c) any other person defined as a public official under a Party's law.¹

Section B: Transparency

Article 26.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and Parties to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
 - (b) provide interested persons and other Parties with a reasonable opportunity to comment on those proposed measures.
3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.
4. With respect to a proposed regulation² of general application of a Party's central level of government respecting any matter covered by this Agreement that is likely to affect trade or investment between the Parties and that is published in accordance with paragraph 2(a), each Party shall:
 - (a) publish the proposed regulation in an official journal, or on an official website, preferably online and consolidated into a single portal;

¹ For the United States, the obligations in Section C shall not apply to conduct outside the jurisdiction of federal criminal law and, to the extent they involve preventive measures, shall apply only to those measures covered by federal law governing federal, state and local officials.

² A Party may, consistent with its legal system, comply with its obligations that relate to a proposed regulation in this Article by publishing a policy proposal, discussion document, summary of the regulation or other document that contains sufficient detail to adequately inform interested persons and other Parties about whether and how their trade or investment interests may be affected.

关领域所适用的，为该缔约方履行一项公共职能，包括公共机构或公共企业，或提供一项公共服务的任何其他人；或

- (c) 根据一缔约方法律定义为公职人员的任何其他人。¹

B 节：透明度

第 26.2 条 公布

1. 每一缔约方应保证迅速公布其有关本协定所涵盖任何事项普遍适用的法律、法规、程序和行政裁定，或以可使利害关系人和缔约方知晓的其他方式提供。
2. 在可能的限度内，每一缔约方应：
 - (a) 提交公布其拟采取的第 1 款中所指任何措施；及
 - (b) 向利害关系人和其他缔约方提供合理机会对这些拟议措施进行评论。
3. 在可能的限度内，在引入或修改第 1 款中所指的法律、法规或程序时，每一缔约方应努力在这些法律、法规或程序依照其法律制度以拟议形式或最终形式公开提供之日与其生效之日之间提供一合理期限。
4. 对于一缔约方中央一级政府与本协定所涵盖任何事项相关的、有可能影响缔约方之间贸易或投资且依照第 2 款(a)项予以公布的一拟议的普遍适用的法规²，每一缔约方应：
 - (a) 在一官方公报或一官方网站上公布该拟议法规，最好选择在线方式并汇总至一单一门户网站；

¹ 对于美国，C 节中的义务不得适用于美国联邦刑法管辖权之外的行为，只要这些义务包含预防性措施，应仅适用于管辖联邦、州和地区官员的联邦法律所涵盖的措施。

² 一缔约方可在符合其法律制度的情况下，通过公布一政策提案、讨论文件、法规摘要或包含足够详细内容的其他文件，以充分告知利害关系人和其他缔约方其贸易或投资利益是否受到影响及如何受到影响，以遵守其在本条下与一拟议法规相关的义务。

- (b) endeavour to publish the proposed regulation:
 - (i) no less than 60 days in advance of the date on which comments are due; or
 - (ii) within another period in advance of the date on which comments are due that provides sufficient time for an interested person to evaluate the proposed regulation, and formulate and submit comments;
- (c) to the extent possible, include in the publication under subparagraph (a) an explanation of the purpose of, and rationale for, the proposed regulation; and
- (d) consider comments received during the comment period, and is encouraged to explain any significant modifications made to the proposed regulation, preferably on an official website or in an online journal.

5. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:

- (a) promptly publish the regulation on a single official website or in an official journal of national circulation; and
- (b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

Article 26.3: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 26.2.1 (Publication) to a particular person, good or service of another Party in specific cases that:

- (a) whenever possible, a person of another Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of 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 issue in question;
- (b) a person of another Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative

- (b) 努力在下列时限公布该拟议法规：
 - (i) 不迟于评论到期日期前 60 天；或
 - (ii) 在评论到期日期前的另一期限内，为一利害关系人提供充分时间以评估该拟议法规并编写和提交评论；
 - (c) 在可能的限度内，在根据(a)项公布的内容中包括对该拟议法规的目的和理由的说明；以及
 - (d) 考虑在评议期内收到的意见，并鼓励最好在一官方网站或在线公报中对拟议法规作出的任何实质性修改作出说明。
5. 对于其中央一级政府通过的有关本协定所涵盖任何事项并依照第 1 款予以公布的一普遍适用的法规，每一缔约方应：
- (a) 迅速在单一官方网站或全国发行的官方公报中公布该法规；及
 - (b) 如适当，在公布内容中包括对该法规目的和理由的说明。

第 26.3 条 行政程序

为以一致、公正和合理的方式管理有关本协定所涵盖任何事项的所有普遍适用的措施，每一缔约方应保证在对特定情况下另一缔约方的特定人、货物或服务适用第 26.2.1 条(公布)中所指措施的行政程序中：

- (a) 只要可能，向直接受一程序影响的另一缔约方的人依照其国内程序提供关于程序启动时间的合理通知，包括对该程序性质的描述、关于该程序据以启动的法律授权的声明以及关于任何所涉问题的概述；
- (b) 在时间、程序的性质以及公共利益允许的情况下，向直接受到一程序影响的另一缔约方的人提供合理机会，以便在采取任何最终行政行动前，使其能够

action, when time, the nature of the proceeding and the public interest permit; and

- (c) the procedures are in accordance with its law.

Article 26.4: Review and Appeal³

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those 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, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a 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 its law, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic law, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 26.5: Provision of Information

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement, it shall, to the extent possible, inform that other Party of the proposed or actual measure.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.

³ For greater certainty, review need not include merits (*de novo*) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

- 提供支持其立场的事实和论据；以及
- (c) 该程序符合其法律。

第 26.4 条 复审和上诉³

1. 每一缔约方应建立或设立司法、准司法或行政法庭或程序，以进行迅速复审，且如确有必要，纠正有关本协定所涵盖任何事项的最终行政行为。这些法庭应公正且独立于受委托负责行政执行的机构或机关，且不得在有关事项的结果中拥有任何实际利益。
2. 每一缔约方应保证，对于第 1 款中所指的法庭或程序，程序的当事方被给予下列权利：
 - (a) 为支持其各自立场或对其各自立场进行辩护的合理机会；及
 - (b) 根据证据和提交的记录，或如法律要求，根据相关机关编写的记录作出一决定。
3. 每一缔约方应保证，在可按其法律中所规定的进行上诉或进一步复审的情况下，第 2 款(b)项中所指的决定应由负责争议行政行为的机构或机关执行，并管辖该机构或机关的实践。

第 26.5 条 信息的提供

1. 如一缔约方认为任何拟议或实际措施可能实质影响本协定的运用或在其他方面实质影响另一缔约方在本协定项下的利益，则该缔约方应在可能的限度内向该另一缔约方告知该拟议或实际措施。
2. 应另一缔约方请求，一缔约方应迅速对提出请求的缔约方认为可能影响本协定运用的任何拟议或实际措施提供信息并答复问题，无论提出请求的缔约方以往是否已获知该措施。

³ 为进一步明确，复审不包括对实体问题的(重新)审查，并可采取普通法司法审查的形式。对最终行政行为的纠正可包括移交采取该行动的机构。

3. A Party may convey any request or provide information under this Article to the other Parties through their contact points.
4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Section C: Anti-Corruption

Article 26.6: Scope

1. The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment. Recognising the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard, the Parties affirm their adherence to the *APEC Conduct Principles for Public Officials*, July 2007, and encourage observance of the *APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector*, September 2007.
2. The scope of this Section is limited to measures to eliminate bribery and corruption with respect to any matter covered by this Agreement.
3. The Parties recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.
4. Each Party shall ratify or accede to the *United Nations Convention against Corruption*, done at New York on October 31, 2003 (UNCAC).

Article 26.7: Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international trade or investment, when committed intentionally, by any person subject to its jurisdiction:⁴
 - (a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in

⁴ A Party that is not a party to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, including its Annex, done at Paris on November 21, 1997, may satisfy the obligations in subparagraphs (a), (b) and (c) by establishing the criminal offences described in those subparagraphs in respect of "in the exercise of his or her official duties" rather than "in relation to the performance of his or her official duties".

3. 一缔约方可通过其联络点向其他缔约方转达根据本条提出的任何请求或提供信息。
4. 根据本条提供的任何信息不得影响所涉措施是否符合本协定。

C 节：反腐败

第 26.6 条 范围

1. 缔约方确认决心消除国际贸易和投资中的贿赂和腐败。认识到在公有和私有部门内均建立诚信的必要性且每一部门在此方面均负有互补责任，缔约方确认遵守订于 2007 年 7 月的《APEC 公职人员行为准则》，并鼓励遵守订于 2007 年 9 月《APEC 商业行为准则：私有部门商业诚信与透明度准则》。
2. 本节的范围仅限于消除与本协定所涵盖任何事项相关的贿赂和腐败的措施。
3. 缔约方认识到，依照本节采用或维持的关于违法行为的描述，以及关于界定行为合法性的适用法律抗辩或法律规则的描述，为每一缔约方的法律所保留，且这些违法行为应依照每一缔约方的法律进行起诉和处罚。
4. 每一缔约方应批准或加入 2003 年 10 月 31 日订于纽约的《联合国反腐败公约》(UNCAC)。

第 26.7 条 打击腐败的措施

1. 每一缔约方应采用或维持必要的立法和其他措施，将其管辖权范围内的任何人在影响国际贸易或投资的事项中故意实施的下列行为确定为其法律项下的刑事犯罪：⁴
 - (a) 直接或间接向一公职人员许诺给予、提议给予或实际给予该公职人员或其他人或实体一项不当利益，

⁴ 如一缔约方不属 1997 年 11 月 21 日订于巴黎的《关于打击国际商业交易中行贿外国公职人员行为的公约》及其附件的参加方，则其可通过将在(a)项、(b)项和(c)项所描述的确定的“在履行他或她的公务方面”的犯罪行为替换为“在执行他或她的公务过程中”而满足在上述三项中的义务。

relation to the performance of or the exercise of his or her official duties;

- (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;
- (c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage,⁵ for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and
- (d) the aiding or abetting, or conspiracy⁶ in the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall make the commission of an offence described in paragraph 1 or 5 liable to sanctions that take into account the gravity of that offence.

3. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraph 1 or 5. In particular, each Party shall ensure that legal persons held liable for offences described in paragraph 1 or 5 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

4. No Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

5. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

⁵ For greater certainty, a Party may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Parties confirm that they are not endorsing those written laws or regulations.

⁶ Parties may satisfy the commitment regarding conspiracy through applicable concepts within their legal systems, including *asociación ilícita*.

使该公职人员在履行或执行他或她的公务方面作为或不作为；

- (b) 一公职人员为其本人或其他人或实体直接或间接索取或收受一项不当利益，使该官员在履行或执行他或她的公务方面作为或不作为；
- (c) 直接或间接向一外国公职人员或一公共国际组织的官员许诺给予、提议给予或实际给予该公职人员或其他人或实体一项不当利益，⁵使该官员在履行或执行他或她的公务方面作为或不作为，以便在开展国际商业方面获得或保留商业或其他不当利益；以及
- (d) 在从事(a)项至(c)项中所述任何犯罪中的协助或教唆，或共谋⁶行为。

2. 每一缔约方应使第 1 款或第 5 款中所述一犯罪行为可受到考虑其严重性的制裁。

3. 每一缔约方应采取或维持与其法律原则相一致的必要措施，确定法人对第 1 款或第 5 款中所述违法行为应承担的责任。特别是，每一缔约方应保证对第 1 款或第 5 款中所述违法行为承担责任的法人应受到有效、适当且具劝戒作用的刑事或非刑事制裁，包括金钱制裁。

4. 任何缔约方不得允许其管辖权范围内的人从税款中扣除因第 1 款中所述一违法行为而发生的费用。

5. 为预防腐败，每一缔约方应依照其法律法规，采取或维持关于账目管理、财务决算披露以及会计和审计标准的必要措施，以禁止下列为从事第 1 款中所述任何违法行为而采取的行动：

⁵ 为进一步明确，一缔约方可在其法律中规定，如该利益为外国公职人员的国家的成文法或法规，包括判例法中所规定或所要求，则不属违法行为。缔约方确认其并不认可此类成文法或法规。

⁶ 缔约方可通过其法律制度中的适用概念，包括非法结社，以满足关于共谋的承诺。

- (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.⁷

6. Each Party shall consider adopting or maintaining measures to protect, against any unjustified treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraph 1 or 5.

Article 26.8: Promoting Integrity among Public Officials

1. To fight corruption in matters that affect trade and investment, each Party should promote, among other things, integrity, honesty and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:

- (a) measures to provide adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;
- (b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;
- (c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;
- (d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities 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

⁷ For the United States, this commitment applies only to issuers that have a class of securities registered pursuant to 15 U.S.C 781 or that are otherwise required to file reports pursuant to 15 U.S.C 78o (d).

- (a) 设立账外账；
- (b) 从事账外或性质不明的交易活动；
- (c) 记录未发生的支出；
- (d) 记录对其对象无正确说明的债务；
- (e) 使用虚假单据；以及
- (f) 故意在法律规定的期限前销毁账目。⁷

6. 每一缔约方均应考虑采取或维持措施，以保护善意且有合理理由向主管机关报告有关第 1 条或第 5 条中所述违法行为事实的人避免受到任何不公正待遇。

第 26.8 条 促进公职人员廉正

1. 为打击影响贸易和投资事项中的腐败，每一缔约方，除其他外，应促进其公职人员的廉正、诚实和责任心。为此，每一缔约方应依照其法律制度的基本原则，努力采取或维持：

- (a) 关于对担任被认为特别容易发生腐败的公共职位的人员规定适当选拔和培训程序的措施，如适当，将相关人员轮换到其他岗位；
- (b) 提高在执行公共职能过程中公职人员行为透明度的措施；
- (c) 确定和管理公职人员实际或潜在利益冲突的适当政策和程序；
- (d) 关于要求高级和其他适当公职人员就其可能导致与其作为公职人员的职能产生利益冲突的外部活动、雇佣、投资、资产、贵重礼物或利益向适当主管机关进行申报的措施；以及

⁷ 对于美国，这一承诺仅适用于根据《美国法典》第 15 编第 781 节对一类证券进行登记的发行人，或在其他方面被要求根据《美国法典》第 15 编第 780 节(d)款提交报告的发行人。

- (e) measures to facilitate reporting by public officials of acts of corruption to appropriate authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted, against public officials who violate the codes or standards established in accordance with this paragraph.

3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence described in Article 26.7.1 (Measures to Combat Corruption) may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 26.9: Application and Enforcement of Anti-Corruption Laws

1. In accordance with the fundamental principles of its legal system, no Party shall fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 26.7.1 (Measures to Combat Corruption) through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement for that Party, as an encouragement for trade and investment.⁸

2. 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 their discretion with respect to the enforcement of its anti-corruption laws. Each Party retains the right to take *bona fide* decisions with regard to the allocation of its resources.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law

⁸ For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures.

(e) 关于便利公职人员向适当主管机关报告腐败行为的措施，如这些行为在其履行其职能时引起其注意。

2. 每一缔约方应努力采用或维持关于正确、正直和适当履行公务职能的行为准则或标准，及如确有必要，针对违反依照本款制定的行为准则或标准的公职人员的纪律措施或其他措施。

3. 每一缔约方，在符合其法律制度的基本原则的限度内，应考虑设立程序，通过该程度被指控犯有第 26.7.1 条(打击腐败的措施)中所述一违法行为的公职人员，如适当，可由适当主管机关开除、停职或调离岗位，同时牢记无罪推定原则。

4. 每一缔约方应依照其法律制度的基本原则，并在不损害司法独立的前提下，采取或维持相关措施，在影响国际贸易或投资的事项中加强司法人员中的廉正并防止腐败的机会。这些措施可包括与司法人员行为相关的规定。

第 26.9 条 反腐败法律的适用和执行

1. 依照其法律制度的基本原则，在本协定对其生效之日后，任何缔约方不得以鼓励贸易和投资为由，通过持续或反复的作为或不作为而未能有效实施其为遵守第 26.7.1 条(打击腐败的措施)而采取或维持的法律或其他措施。⁸

2. 依照其法律制度的基本原则，每一缔约方保留其执法、检察和司法机关在行使反腐败法律执行方面的自由裁量权。每一缔约方保留其在资源配置方面作出善意决定的权利。

3. 缔约方确认其在适用的国际协定或安排项下相互合作的承诺，在符合其各自法律和行政制度的前提下，以增强执法行动的

⁸ 为进一步明确，缔约方认识到，与反腐败法律执行相关的个案或具体自由裁量决定需要遵守每一缔约方各自的国内法和法定程序。

enforcement actions to combat the offences described in Article 26.7.1 (Measures to Combat Corruption).

Article 26.10: Participation of Private Sector and Society

1. Each Party shall take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption. To this end, a Party may:

- (a) undertake public information activities and public education programmes that contribute to non-tolerance of corruption;
- (b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes or measures for preventing and detecting bribery and corruption in international trade and investment;
- (c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; and
- (d) adopt or maintain measures that respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption.

2. Each Party shall endeavour to encourage private enterprises, taking into account their structure and size, to:

- (a) develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of corruption in matters affecting international trade or investment; and
- (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

3. Each Party shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of any incident

有效性以打击第 26.7.1 条(打击腐败的措施)中所述违法行为。

第 26.10 条 私营部门和社会的参与

1. 每一缔约方，在其力所能及范围内并依照其法律制度的基本原则，采取适当措施，以促进公共部门之外的个人和团体，例如企业、公民社会、非政府组织和社区组织积极参与防止和反对影响国际贸易或投资的事项中的腐败行为，并提高公众对腐败的存在、原因、严重性以及所造成的威胁的认识。为此，一缔约方可：

- (a) 开展有助于对腐败零容忍的公布信息活动和公众教育计划；
- (b) 采取或维持鼓励专业协会和其他非政府组织的措施，如适当，以努力支持和帮助企业，特别是中小企业，制定内部控制、道德和合规计划，或采取或维持防止和发现国际贸易和投资中的贿赂和腐败的措施；
- (c) 采取或维持措施以鼓励公司管理层在其公司年度报告中作出声明，或通过其他方式披露其内部控制、道德和合规计划或措施，包括有助于防止和发现国际贸易和投资中贿赂和腐败的计划或措施；以及
- (d) 采取或维持措施以尊重、促进和保护寻找、接收、公布和传播有关腐败的信息的自由。

2. 每一缔约方应鼓励私营企业开展下列活动，同时考虑这些企业的结构和规模：

- (a) 制定和采用充分内部审计控制，以帮助防止和发现影响国际贸易或投资的事项中的腐败行为；及
- (b) 保证其账目和必要财务报表需经适当审计和认证程序。

3. 每一缔约方应采取适当措施以保证其相关反腐败机构为公众所知，且如适当，提供访问这些机构的途径，以就任何可能被

that may be considered to constitute an offence described in Article 26.7.1 (Measures to Combat Corruption).

Article 26.11: Relation to Other Agreements

Subject to Article 26.6.4 (Scope), nothing in this Agreement shall affect the rights and obligations of the Parties under UNCAC, the *United Nations Convention against Transnational Organized Crime*, done at New York on November 15, 2000, the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, with its Annex, done at Paris on November 21, 1997, or the *Inter-American Convention Against Corruption*, done at Caracas on March 29, 1996.

Article 26.12: Dispute Settlement

1. Chapter 28 (Dispute Settlement), as modified by this Article, shall apply to this Section.
2. A Party may only have recourse to the procedures set out in this Article and Chapter 28 (Dispute Settlement) if it considers that a measure of another Party is inconsistent with an obligation under this Section, or that another Party has otherwise failed to carry out an obligation under this Section, in a manner affecting trade or investment between Parties.
3. No Party shall have recourse to dispute settlement under this Article or Chapter 28 (Dispute Settlement) for any matter arising under Article 26.9 (Application and Enforcement of Anti-Corruption Laws).
4. Article 28.5 (Consultations) shall apply to consultations under this Section, with the following modifications:
 - (a) a Party other than a consulting Party may make a request in writing to the consulting Parties to participate in the consultations, no later than seven days after the date of circulation of the request for consultations, if it considers that its trade or investment is affected by the matter at issue. That Party shall include in its request an explanation of how its trade or investment is affected by the matter at issue. That Party may participate in consultations if the consulting Parties agree; and
 - (b) the consulting Parties shall involve officials of their relevant anti-corruption authorities in the consultations.
5. The consulting Parties shall make every effort to find a mutually satisfactory solution to the matter, which may include appropriate cooperative activities or a work plan.

认为构成第 26.7.1 条(打击腐败的措施)中所述一违法行为的任何事件进行举报，包括匿名举报。

第 26.11 条 与其他协定的关系

在遵守第 26.6.4 条(范围)的前提下，本协定中任何条款不得影响缔约方在如下公约项下的权利和义务：即《联合国反腐败公约》、2000 年 11 月 15 日订于纽约的《联合国跨国组织犯罪公约》、1997 年 11 月 21 日订于巴黎的《关于打击国际商业交易中行贿外国公职人员行为的公约》及其附件或 1996 年 3 月 29 日订于加拉加斯的《美洲反腐败公约》。

第 26.12 条 争端解决

1. 经本条修改后的第 28 章(争端解决)应适用于本节。
2. 一缔约方仅可在其认为另一缔约方的一措施与在本节下的一义务不符，或该另一缔约方在其他方面未能履行本节下一义务，从而影响缔约方之间的贸易或投资时，方可援用本条或第 28 章(争端解决)中所列程序。
3. 任何缔约方不得对第 26.9 条(反腐败法律的适用和实施)下产生的任何事项援用本条和第 28 章(争端解决)下的争端解决。
4. 第 28.5 条(磋商)适用于本节下的磋商，并作下列修改：
 - (a) 不属磋商方的一缔约方，如认为其贸易或投资受到争议事项的影响，则可在不迟于磋商请求散发之日后 7 天内，以书面形式向磋商方提出参加该磋商的请求。该缔约方应在其请求中包括关于其贸易或投资如何受到争议事项影响的说明。如磋商方同意，则该缔约方可参加磋商；及
 - (b) 磋商方应请其相关反腐败机关的官员参加磋商。
5. 磋商方应尽一切努力就该事项达成共同满意的解决办法，其中可包括适当的合作活动或工作方案。

ANNEX 26-A

**TRANSPARENCY AND PROCEDURAL FAIRNESS FOR
PHARMACEUTICAL PRODUCTS AND MEDICAL
DEVICES⁹****Article 1: Definitions**

For the purposes of this Annex:

national health care authority means, with respect to a Party listed in the Appendix to this Annex, the relevant entity or entities specified therein, and with respect to any other Party, an entity that is part of or has been established by a Party's central level of government to operate a national health care programme; and

national health care programme means a health care programme in which a national health care authority makes the determinations or recommendations regarding the listing of pharmaceutical products or medical devices for reimbursement, or regarding the setting of the amount of such reimbursement.

Article 2: Principles

The Parties are committed to facilitating high-quality health care and continued improvements in public health for their nationals, including patients and the public. In pursuing these objectives, the Parties acknowledge the importance of the following principles:

- (a) the importance of protecting and promoting public health and the important role played by pharmaceutical products and medical devices¹⁰ in delivering high-quality health care;
- (b) the importance of research and development, including innovation associated with research and development, related to pharmaceutical products and medical devices;

⁹ For greater certainty, the Parties confirm that the purpose of this Annex is to ensure transparency and procedural fairness of relevant aspects of Parties' applicable systems relating to pharmaceutical products and medical devices, without prejudice to the obligations in Chapter 26 (Transparency and Anti-corruption), and not to modify a Party's system of health care in any other respects or a Party's rights to determine health expenditure priorities.

¹⁰ For the purposes of this Annex, each Party shall define the scope of the products subject to its laws and regulations for pharmaceutical products and medical devices in its territory, and make that information publicly available.

附件 26-A

药品和医疗设备的透明度和程序公正⁹

第 1 条 定义

就本附件而言：

国家卫生保健主管机关，对于本附件之附录中所列一缔约方，指其中所规定的一个或多个相关实体；对于任何其他缔约方，指作为一缔约方中央一级政府一部分或由中央一级政府设立的实施国家卫生保健计划的一实体；及

国家卫生保健计划指一卫生保健计划，其中由一国家卫生保健主管机关就药品或医疗设备列入报销清单或就此种报销金额的设定作出决定或提出建议。

第 2 条 原则

缔约方致力于为其国民，包括患者和公众，促进高质量卫生保健和持续改善公共卫生。为实现上述目标，缔约方承认下列原则的重要性：

- (a) 保护和促进公共卫生的重要性，及药品和医疗设备¹⁰在实现高质量卫生保健方面发挥的重要作用；
- (b) 研究和开发的重要性，包括与药品和医疗设备相关的研究和开发所包含的创新；

⁹ 为进一步明确，缔约方确认本附件的目的是保证缔约方与药品和医疗设备相关的适用制度的相关方面的透明度和程序公正，不损害在第 26 章(透明度和反腐败)中的义务，也不会任何其他方面更改一缔约方的卫生保健制度或一缔约方确定医疗保健支出优先事项的权利。

¹⁰ 就本附件而言，每一缔约方应确定受其领土内关于药品和医疗设备的法律法规管辖的产品范围，并使该信息可公开获得。

- (c) the need to promote timely and affordable access to pharmaceutical products and medical devices, through transparent, impartial, expeditious and accountable procedures, without prejudice to a Party's right to apply appropriate standards of quality, safety and efficacy; and
- (d) the need to recognise the value of pharmaceutical products and medical devices through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical product or medical device.

Article 3: Procedural Fairness

To the extent that a Party's national health care authorities operate or maintain procedures for listing new pharmaceutical products or medical devices for reimbursement purposes, or setting the amount of such reimbursement, under national health care programmes operated by the national health care authorities,^{11,12} the Party shall:

- (a) ensure that consideration of all formal and duly formulated proposals for such listing of pharmaceutical products or medical devices for reimbursement is completed within a specified period of time¹³;
- (b) disclose procedural rules, methodologies, principles and guidelines used to assess such proposals;

¹¹ This Annex shall not apply to government procurement of pharmaceutical products and medical devices. If a public entity providing health care services engages in government procurement for pharmaceutical products or medical devices, formulary development and management with respect to that activity by the national health care authority shall be considered an aspect of such government procurement.

¹² This Annex shall not apply to procedures undertaken for the purpose of post-market subsidisation of pharmaceutical products or medical devices procured by public health care entities if the pharmaceutical products or medical devices eligible for consideration are based on the products or devices that are procured by public health care entities.

¹³ In those cases in which a Party's national health care authority is unable to complete consideration of a proposal within a specified period of time, the Party shall disclose the reason for the delay to the applicant and shall provide for another specified period of time for completing consideration of the proposal.

- (c) 通过透明、公正、快速和权责分明的程序，促进以及时和可负担的方式获得药品和医疗设备的必要性，同时不损害一缔约方采用适当质量、安全和功效标准的权利；以及
- (d) 通过竞争性市场的运行或采用或维持可对药品或医疗设备客观证实的治疗效果进行适当评估的程序以认可药品或医疗设备价值的必要性。

第 3 条 程序公正

如在由一缔约方的国家卫生保健主管机关实施的国家卫生保健计划项下，由该国家卫生保健主管机关操作或维护新药品或医疗设备列入报销清单的程序，或为此类报销设定金额，^{11,12}则
该缔约方应：

- (a) 保证在一规定期限¹³内完成对所有关于将药品或医疗设备列入此种报销清单的正式且适当拟定的建议的审核；
- (b) 披露用于评估此类建议的程序规则、方法、原则和指南；

¹¹ 本附件不得适用于药品和医疗设备的政府采购。如一提供卫生保健服务的公共实体从事药品或医疗设备的政府采购，则国家卫生保健主管机关对该活动有关的处方开发和管理应被视为此种政府采购的一方面。

¹² 如有资格被审核的药品或医疗设备根据公共卫生保健实体采购的产品或设备确定，则本附件不适用于以对公共卫生保健实体采购的药品或医疗设备给予上市后补贴为目的而实施的程序。

¹³ 如一缔约方的国家卫生保健主管机关无法在一规定期限内完成对一建议的审核，则该缔约方应向申请人披露迟延的原因，并提供对建议完成审核的另一规定期限。

- (c) afford applicants¹⁴ and, if appropriate, the public, timely opportunities to provide comments at relevant points in the decision-making process;
- (d) provide applicants with written information sufficient to comprehend the basis for recommendations or determinations regarding the listing of new pharmaceutical products or medical devices for reimbursement by national health care authorities;
- (e) make available:
 - (i) an independent review process; or
 - (ii) an internal review process, such as by the same expert or group of experts that made the recommendation or determination, provided that the review process includes, at a minimum, a substantive reconsideration of the application,¹⁵ and

that may be invoked at the request of an applicant directly affected by a recommendation or determination by a Party's national health care authorities not to list a pharmaceutical product or a medical device for reimbursement;¹⁶ and
- (f) provide written information to the public regarding recommendations or determinations, while protecting information considered to be confidential under the Party's law.

Article 4: Dissemination of Information to Health Professionals and Consumers

As is permitted to be disseminated under the Party's laws, regulations and procedures, each Party shall permit a pharmaceutical product manufacturer to disseminate to health professionals and consumers through the manufacturer's website registered in the territory of the Party, and on other websites registered in the territory of the Party linked to that site, truthful and not misleading information regarding its pharmaceutical products that are approved for marketing

¹⁴ For greater certainty, each Party may define the persons or entities that qualify as an "applicant" under its laws, regulations and procedures.

¹⁵ For greater certainty, the review process described in subparagraph (e)(i) may include a review process as described in subparagraph (e)(ii) other than one by the same expert or group of experts.

¹⁶ For greater certainty, subparagraph (e) does not require a Party to provide more than a single review for a request regarding a specific proposal or to review, in conjunction with the request, other proposals or the assessment related to those other proposals. Further, a Party may elect to provide the review specified in subparagraph (e) either with respect to a draft final recommendation or determination, or with respect to a final recommendation or determination.

- (c) 给予申请人¹⁴，且如适当，给予公众在决策过程中的相关阶段提出评论的及时机会；
- (d) 向申请人提供充分的书面信息，以理解国家卫生保健主管机关所作关于将药品或医疗设备列入报销清单的建议或决定的根据；
- (e) 使下列各项可获得：
 - (i) 独立复审程序；或
 - (ii) 内部复审程序，例如由提出建议或作出决定的同一专家或同一组专家进行，只要该复审程序至少包括对申请¹⁵进行实质性重新审议，以及

上述程序可在受到一缔约方国家卫生保健主管机关作出的不将一药品或一医疗设备列入报销清单的建议或决定的直接影响的一申请人请求下援引；¹⁶以及

- (f) 向公众提供关于建议或决定的书面信息，同时保护根据该缔约方法律被视为机密的信息。

第 4 条 对健康专业人士和消费者的信息传播

如根据缔约方的法律、法规和程序允许进行传播，则每一缔约方应允许药品制造商通过该制造商在该缔约方领土内注册的网站，以及链接到该网站的在该缔约方领土内注册的其他网站，向健康专业人士和消费者传播关于其获得批准在该缔约方领土内

¹⁴ 为进一步明确，每一缔约方可根据其法律、法规和程序定义作为“申请人”的人或实体的资格。

¹⁵ 为进一步明确，在(e)项(i)目中所述的复审程序可包括(e)项(ii)目中所述的一复审程序，不同于由同一专家或同一组专家进行的复审。

¹⁶ 为进一步明确，(e)项不要求一缔约方规定对一关于特定建议的请求进行一次以上的复审，或连同该请求一并审议其他建议或与这些其他建议相关的评估意见。此外，一缔约方可选择规定(e)项中所规定的复审针对一最终建议或决定的草案还是针对一最终建议或决定进行。

in the Party's territory. A Party may require that the information includes a balance of risks and benefits and encompasses all indications for which the Party's competent regulatory authorities have approved the marketing of the pharmaceutical product.

Article 5: Consultation

1. To facilitate dialogue and mutual understanding of issues relating to this Annex, each Party shall give sympathetic consideration to and shall afford adequate opportunity for consultation regarding a written request by another Party to consult on any matter related to this Annex. The consultations shall take place within three months of the delivery of the request, except in exceptional circumstances or unless the consulting Parties agree otherwise.¹⁷

2. Consultations shall involve officials responsible for the oversight of the national health care authority or officials from each Party responsible for national health care programmes and other appropriate government officials.

Article 6: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Annex.

¹⁷ Nothing in this paragraph shall be construed as requiring a Party to review or change decisions regarding specific applications.

所销售药品的真实且非误导性信息。一缔约方可要求该信息包括风险与收益的平衡并包含该缔约方监管机关已批准该药品销售的所有标示。

第 5 条 磋商

1. 为促进与本附件相关问题的对话和相互谅解，每一缔约方应对另一缔约方提出的就与本附件相关的任何事项进行磋商的书面请求给予积极考虑，并应提供充分的磋商机会。磋商应在请求递送后 3 个月内进行，除非在特殊情况下或磋商方另有议定。¹⁷
2. 应邀请每一缔约方负责对国家卫生保健主管机关进行监督的官员，或负责国家卫生保健计划的官员以及其他适当政府官员参加磋商。

第 6 条 争端解决的不适用

任何缔约方不得对本附件下产生的任何事项援用第 28 章(争端解决)下的争端解决。

¹⁷ 本款中任何内容不得解释为要求一缔约方复审或改变关于特定适用的决定。

APPENDIX TO ANNEX 26-A**PARTY-SPECIFIC DEFINITIONS**

Further to the definition of national healthcare authorities in Article 1, **national health care authorities** means:

- (a) For Australia, the Pharmaceutical Benefits Advisory Committee (PBAC), with respect to PBAC's role in making determinations in relation to the listing of pharmaceutical products for reimbursement under the Pharmaceutical Benefits Scheme.
- (b) For Brunei Darussalam, the Ministry of Health. For greater certainty, Brunei Darussalam does not currently operate a national health care programme within the scope of this Annex.
- (c) For Canada, the Federal Drug Benefits Committee. For greater certainty, Canada does not currently operate a national health care programme within the scope of this Annex.
- (d) For Chile, the Undersecretary of Public Health. For greater certainty, Chile does not currently operate a national health care programme within the scope of this Annex.
- (e) For Japan, the Central Social Insurance Medical Council with respect to its role in making recommendations in relation to the listing or setting of the amount of reimbursement for new pharmaceutical products.
- (f) For Malaysia, the Ministry of Health. For greater certainty, Malaysia does not currently operate a national health care programme within the scope of this Annex.
- (g) For New Zealand, the Pharmaceutical Management Agency (PHARMAC), with respect to PHARMAC's role in the listing of a new pharmaceutical¹⁸ for reimbursement on the *Pharmaceutical Schedule*, in relation to formal and duly formulated applications by suppliers in accordance with the *Guidelines for Funding Applications to PHARMAC*.

¹⁸ For the purposes of New Zealand, "pharmaceutical" means a "medicine" as defined in the *Medicines Act 1981* as at the date of signature of this Agreement on behalf of New Zealand.

附件 26-A 之附录

缔约方特定定义

在第 1 条中对国家卫生保健主管机关定义的基础上，国家卫生保健主管机关指：

- (a) 对于澳大利亚，药物福利咨询委员会(PBAC)，对于 PBAC 在就药品列入药物福利计划下报销清单所作决定方面的作用。
- (b) 对于文莱达鲁萨兰国，卫生部。为进一步明确，文莱达鲁萨兰国目前未实施本附件范围内的国家卫生保健计划。
- (c) 对于加拿大，联邦药品福利委员会。为进一步明确，加拿大目前未实施本附件范围内的国家卫生保健计划。
- (d) 对于智利，公共健康部副部长。为进一步明确，智利目前未实施本附件范围内的国家卫生保健计划。
- (e) 对于日本，中央社会保险医务委员会，对于其就将新药品列入报销清单或设定新药报销金额提出建议方面的作用。
- (f) 对于马来西亚，卫生部。为进一步明确，马来西亚目前未实施本附件范围内的国家卫生保健计划。
- (g) 对于新西兰，药品管理局(PHARMAC)，对于 PHARMAC 根据供应商依照《药品管理局资金申请指南》提出正式且适当拟定的申请，将新药¹⁸列入药品报销清单方面的作用。

¹⁸ 就新西兰而言，截至代表新西兰签署本协定之日，“药物”指《1981 年药品法案》中所定义的一“药品”。

- (h) For Peru, the Viceministry of Public Health. For greater certainty, Peru does not currently operate a national health care programme within the scope of this Annex.
- (i) For Singapore, the Drug Advisory Committee (DAC) of the Ministry of Health with respect to the DAC's role in the listing of pharmaceutical products. For greater certainty, Singapore does not currently operate a national health care programme within the scope of this Annex.
- (j) For the United States, the Centers for Medicare & Medicaid Services (CMS), with respect to CMS's role in making Medicare national coverage determinations.
- (k) For Viet Nam, the Ministry of Health. For greater certainty, Viet Nam does not currently operate a national health care programme within the scope of this Annex.

- (h) 对于秘鲁，公共健康部副部长。为进一步明确，秘鲁目前未实施本附件范围内的国家卫生保健计划。
- (i) 对于新加坡，卫生部药物咨询委员会(DAC)，对于 DAC 在将药品列入清单方面的作用。为进一步明确，新加坡目前未实施本附件范围内的国家卫生保健计划。
- (j) 对于美国，医疗保险和医疗补助服务中心(CMS)，对于 CMS 在作出国家医疗保险范围决定方面的作用。
- (k) 对于越南，卫生部。为进一步明确，越南目前未实施本附件范围内的国家卫生保健项目。