

CHAPTER ELEVEN

COMPETITION AND RELATED MATTERS

SECTION A

ANTI-COMPETITIVE CONDUCT AND MERGERS

ARTICLE 11.1

Principles

1. The Parties recognise the importance of free and undistorted competition in their trade relations. They acknowledge that anti-competitive business conduct and anti-competitive transactions have the potential to distort the proper functioning of their markets and undermine the benefits of trade liberalisation.

2. To promote free and undistorted competition in all sectors of their economy, each Party shall maintain in its respective territory comprehensive legislation which effectively addresses the following practices, where such practices affect trade between the Parties:

- (a) horizontal and vertical agreements¹ between undertakings, decisions by associations of undertakings, and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition in the territory of either Party as a whole or in a substantial part thereof;
- (b) abuses by one or more undertakings of a dominant position in the territory of either Party as a whole or in a substantial part thereof; and
- (c) concentrations between undertakings which result in a substantial lessening of competition or which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof.

¹ Where the competent authority in Singapore assesses that according to the prohibition laid down in section 34 of the Competition Act (Chapter 50B), the anti-competitive effects of a vertical agreement will likely outweigh its pro-competitive effects, the competent authority will refer the matter to the Minister. The Minister shall decide on the applicability of section 34 of the Competition Act to the vertical agreement in question. This is without prejudice to the possibility of the competent authority in Singapore applying section 47 of the Competition Act, which is applicable to vertical agreements concluded by a dominant firm.

ARTICLE 11.2

Implementation

1. Each Party shall maintain its autonomy in developing and enforcing its law. The Parties undertake, however, to maintain authorities that are responsible for, and appropriately equipped to effectively enforce the legislation referred to in paragraph 2 of Article 11.1 (Principles).
2. The Parties will apply their respective legislation referred to in paragraph 2 of Article 11.1 (Principles) in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defence of the parties concerned, including the right of the parties concerned to be heard prior to the taking of a decision in a case.

SECTION B

PUBLIC UNDERTAKINGS, UNDERTAKINGS ENTRUSTED WITH SPECIAL OR EXCLUSIVE RIGHTS AND STATE MONOPOLIES

ARTICLE 11.3

Public Undertakings and Undertakings Entrusted with Special or Exclusive Rights

1. Nothing in this Chapter prevents a Party from establishing or maintaining public undertakings, or entrusting undertakings with special or exclusive rights according to its respective law.

2. Each Party shall ensure that public undertakings and undertakings that are entrusted with special or exclusive rights are subject to the legislation referred to in Section A (Anti-Competitive Conduct and Mergers), insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.
3. Each Party shall ensure that undertakings entrusted with special or exclusive rights do not use those special or exclusive rights to engage either directly or indirectly, including through their dealings with their parents, subsidiaries, or other undertakings with common ownership, in anti-competitive practices in another market in respect of which such undertakings have no special or exclusive rights, that adversely affect investments, trade in goods or services of the other Party.
4. Singapore shall ensure that any public undertaking and any undertaking entrusted with special or exclusive rights acts solely in accordance with commercial considerations in its purchase or sale of goods or services, such as with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, and provides non-discriminatory treatment to establishments of the Union, to goods of the Union, and to service suppliers of the Union.

ARTICLE 11.4

State Monopolies

While nothing in this Chapter shall be construed to prevent a Party from designating or maintaining state monopolies, each Party shall adjust state monopolies of a commercial character to ensure no discrimination is exercised by such monopolies regarding the conditions under which goods and services are procured from and marketed to natural or legal persons of the other Party.

SECTION C

SUBSIDIES

ARTICLE 11.5

Definition and Scope

1. For the purposes of this Agreement, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement, *mutatis mutandis*, irrespective of whether the subsidy is granted in relation to the production of goods or of services.¹

¹ This paragraph does not prejudice the outcome of future discussions in the WTO on the definition of subsidies for services. The Parties shall give positive consideration to the adoption of a possible decision by the Trade Committee to update this Agreement to reflect the agreement reached at the WTO on the definition of subsidies for services.

2. Subsidies shall be subject to this Chapter only if they are specific, within the meaning of Article 2 of the SCM Agreement. Any subsidy falling under Article 11.7 (Prohibited Subsidies) shall be deemed to be specific.
3. Articles 11.7 (Prohibited Subsidies), 11.8 (Other Subsidies) and 11.10 (Review Clause) and Annex 11-A shall not apply to fisheries subsidies, subsidies related to products covered by Annex 1 of the Agreement on Agriculture and other subsidies covered by the Agreement on Agriculture.

ARTICLE 11.6

Relationship with the WTO

The provisions in this Section are without prejudice to the rights and obligations of a Party under the WTO Agreement, in particular to apply trade remedies or to engage in dispute settlement proceedings or other appropriate action against a subsidy granted by the other Party.

ARTICLE 11.7

Prohibited Subsidies

1. With respect to subsidies related to trade in goods, the Parties affirm their rights and obligations under Article 3 of the SCM Agreement, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The following subsidies related to trade in goods and services shall be prohibited unless the subsidising Party upon the request of the other Party has demonstrated that the subsidy in question does not affect trade of the other Party nor will be likely to do so:
 - (a) any legal arrangements whereby a government or any public body is responsible for covering debts or liabilities of certain undertakings without any limitation in law or in fact as to the amount of those debts and liabilities or the duration of such responsibility; and
 - (b) any support to insolvent or ailing undertakings in whatever form (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) without a credible restructuring plan, based on realistic assumptions, with a view to ensuring the return of the ailing undertaking to long-term viability within a reasonable time, and without the undertaking itself significantly contributing to the costs of restructuring.¹

3. Subparagraphs 2(a) and 2(b) do not prevent a Party from providing subsidies to remedy a serious disturbance in its economy. A serious disturbance in the economy of a Party means an exceptional, temporary and significant crisis which affects the whole economy of the Party rather than a specific region or economic sector of that Party.

4. Subparagraph 2(b) does not apply to subsidies granted as compensation for carrying out public service obligations nor to subsidies to the coal industry.

¹ This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely to keep an ailing undertaking in business for the time necessary to work out a restructuring or liquidation plan.

ARTICLE 11.8

Other Subsidies

1. The Parties agree to use their best endeavours to apply their competition law or other laws to remedy or remove distortions of competition caused by other specific subsidies related to trade in goods and services which are not covered by Article 11.7 (Prohibited Subsidies), insofar as they affect or are likely to affect trade of either Party, and also to prevent the occurrence of such situations. Annex 11-A contains guidance in particular on the types of subsidies which do not produce these effects.
2. The Parties agree to exchange information at the request of either Party and hold a first dialogue within two years of the entry into force of this Agreement with a view to developing rules applicable to other subsidies, taking into account developments at multilateral level. To that end, the Parties may take a decision in the Trade Committee.

ARTICLE 11.9

Transparency

1. Each Party shall ensure transparency in the area of subsidies that relate to trade in goods or to the supply of services. To that end, each Party shall report every two years to the other Party on the legal basis, the form, and to the extent possible, the amount or budget, and the recipients of subsidies granted by its government or any public body.

2. Such report shall be deemed to have been provided if the relevant information was made available by the Parties, or on their behalf, on a publicly accessible website by June of the second calendar year after the subsidies were granted.

ARTICLE 11.10

Review Clause

The Parties shall keep under constant review the matters to which reference is made in this Section. Each Party may refer such matters to the Trade Committee. The Parties agree to review progress in implementing this Section every two years after the entry into force of this Agreement, unless both Parties agree otherwise.

SECTION D

GENERAL MATTERS

ARTICLE 11.11

Cooperation and Coordination in Law Enforcement

The Parties recognise the importance of cooperation and coordination to further enhance effective law enforcement. Their respective authorities shall endeavour to coordinate and cooperate in the enforcement of their respective laws to fulfil the objective of this Agreement of free and undistorted competition in their trade relations.

ARTICLE 11.12

Confidentiality

1. When a Party communicates information under this Agreement, that Party shall ensure the protection of business secrets and other confidential information.
2. When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of that communicated information.

ARTICLE 11.13

Consultation

1. To foster mutual understanding between the Parties or to address specific matters that arise under Section A (Anti-Competitive Conduct and Mergers), Section B (Public Undertakings, Undertakings Entrusted with Special or Exclusive Rights and State Monopolies) or Section D (General Matters), each Party upon the request of the other Party, shall enter into consultations regarding representations made by the other Party. In its requests, the Party shall indicate, if relevant, how the matter affects trade between the Parties.

2. The Parties shall promptly discuss, upon the request of a Party, any questions arising from the interpretation or application of Section A (Anti-Competitive Conduct and Mergers), Section B (Public Undertakings, Undertakings Entrusted with Special or Exclusive Rights and State Monopolies) or Section D (General Matters).
3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential information to the other Party.

ARTICLE 11.14

Dispute Settlement and Mediation Mechanism

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) and Chapter Fifteen (Mediation Mechanism) for any matter arising under this Chapter except for Article 11.7 (Prohibited Subsidies).