

Competition Policy Chapter

SECTION I: ANTICOMPETITIVE CONDUCTS

ARTICLE 1

Principles

The Parties recognise the importance of undistorted competition in their trade and investment relations. The Parties acknowledge that anti-competitive conducts have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

ARTICLE 2

Legislative framework

- (1) The Parties shall adopt or maintain comprehensive competition legislation that proscribes anticompetitive conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.
- (2) The respective competition laws shall effectively address in their respective territories:
 - a) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,
 - b) abuses by one or more enterprises of a dominant position, and
 - c) concentrations between enterprises which would significantly impede effective competition.

ARTICLE 3

Implementation

- (1) The Parties shall maintain their autonomy in developing and enforcing their competition law.
- (2) The Parties shall maintain authorities responsible for, appropriately equipped for and with the powers necessary for the full application and the effective enforcement of their competition law.
- (3) All enterprises, private or public, shall be subject to the competition law referred to above in Article 2.

- (4) The Parties will apply their respective competition law in a transparent and non-discriminatory manner, including to private and public enterprises, respecting the principles of procedural fairness and rights of defense of the enterprises.
- (5) The application of the competition law should not obstruct the performance, in law or in fact, of the particular tasks of public interest assigned to the enterprises in question. Exemptions from the competition law of a Party should be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

ARTICLE 4

Dispute settlement

No Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Section.

SECTION II: SUBSIDIES

Article x.1 Principles

- (1) The Parties agree that subsidies can be granted by a Party when they are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. In principle, subsidies granted to enterprises providing goods or services should not be granted by a Party when they negatively affect, or are likely to affect, competition and trade.
- (2) An illustrative list of public policy objectives for which subsidies could be granted by a Party, subject to the conditions set out in this Section, includes the following:
 - (a) making good the damage caused by natural disasters or exceptional occurrences;
 - (b) promoting the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (c) remedying a serious disturbance in the economy of one of the Parties;
 - (d) facilitating the development of certain economic activities or of certain economic areas, including but not limited to, subsidies for clearly defined research, development and innovation purposes, subsidies for training or for the creation of employment, subsidies for environmental purposes, subsidies in favour of small and medium-sized enterprises as defined in the Parties' respective legislations; and
 - (e) promoting culture and heritage conservation.
- (3) Each Party shall ensure that enterprises use the specific subsidies provided by a Party only for the policy objective for which the specific subsidies have been granted¹.

Article x.2 Definition and scope

- (1) For the purposes of this Agreement, a subsidy is a measure which fulfils *mutatis mutandis* the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and

¹ For greater certainty, when a Party has set up the relevant legislative frameworks and administrative procedures to this effect, the obligation is considered to be fulfilled.

Countervailing Measures (ASCM) irrespective whether it is granted to an enterprise manufacturing goods or supplying services².

- (2) A subsidy shall be subject to this Section only if this subsidy is determined to be specific in accordance with the provisions of and within the meaning of Article 2 of the ASCM. Subsidies to individual consumers or general measures, including such subsidies or measures to achieve social policy objectives, are not considered as specific in the meaning of this Section.
- (3) Specific subsidies to all enterprises, including public and private enterprises, shall be subject to this Section.
- (4) The application of the rules in this Section must not obstruct the performance, in law or in fact, of the particular tasks of public interest, including public service obligations, assigned to the enterprises in question. Exemptions should be limited to tasks of public interest, proportionate to the public policy objectives assigned to them and transparent.
- (5) This Section shall not apply to non-economic activities.
- (6) Article x.6, paragraph 1 (specific subsidies subject to conditions) shall not apply to fisheries subsidies and subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.
- (7) This Section applies only to specific subsidies of which the amount per beneficiary over a period of 3 years is above 300.000 Special Drawing Rights³.
- (8) With regard to subsidies to services, Article x.4 (transparency) and Article x.6 (specific subsidies subject to conditions) apply only to the following services sectors: telecommunications, banking, insurance, transport including maritime, energy, computer services, architecture and engineering, and construction and environmental services, subject to the reservations taken in Chapter on Cross border Supply of services or the Chapter on Investment of this Agreement.
- (9) This Section shall not apply to sectors or sub-sectors which the Parties have not listed under the Chapter on Cross border Supply of services or the Chapter on Investment of this Agreement.
- (10) Article x.6 shall not apply to subsidies formally agreed or granted before or within 5 years after the entry into force of this Agreement.

² This Article does not prejudice the Parties' positions and the possible outcome of future discussions in the WTO on subsidies to services. Depending on the progress of those discussions at the WTO level, the Parties may adopt a decision by a relevant committee to update this Agreement in this respect.

³ For greater certainty, the notification obligation does not require the notifying Party to provide the name of the beneficiary of the subsidy.

Article x.3
Relationship with the WTO

The provisions in this Section shall be applied without prejudice to the rights and obligations of each Party under Article VI of GATT 1994, the SCM Agreement and the WTO Agreement on Agriculture.

Article x.4
Transparency

- (1) Each Party shall ensure transparency in the area of specific subsidies. To this end, each Party shall notify every four years the legal basis, form, amount or budget and where possible the recipient of the specific subsidy.
- (2) Such notification is deemed to have been fulfilled if the relevant information is made available by the Parties or on their behalf on a publicly accessible website, as from 31 December of the subsequent calendar year. The first notification shall be made available no later than 4 years after the entry into force of this agreement.

Article x.5
Consultations

- (1) If a Party considers that a specific subsidy granted by the other Party, which is not covered by Article x.6 of this Section, is negatively affecting, or may negatively affect the first Party's trade or investment interests, the first Party may express its concern in written form to the other Party and request consultations on the matter. The requested Party shall accord sympathetic consideration to such a request. The consultation should in particular aim at specifying whether the specific subsidy was only granted to achieve a public policy objective, the amount of the subsidy in question is limited to the minimum needed to achieve this objective, the subsidy has an incentive effect and the negative effect on trade and investment of the requesting Party is limited.
- (2) In order to facilitate the consultation, the requested Party shall provide information on the specific subsidy in question within no more than 90 days from the date of reception of the request. If the requesting Party, after receiving information on the subsidy in question, considers that the subsidy concerned by the consultations negatively affects or may negatively affect in a disproportionate manner the requesting Party's trade or investment interests, the requested Party will use its best endeavours to eliminate or minimise the negative effects on the requesting Party's trade and investment interests caused by the subsidy in question.

Article x.6
Specific subsidies subject to conditions

- (1) The Parties shall apply conditions to the following specific subsidies:

- (a) A legal arrangement whereby a government or any public body is responsible to cover debts or liabilities of certain enterprises is allowed provided that the coverage of the debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of such responsibility;
 - (b) Support to insolvent or ailing enterprises in various forms (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) with a duration above 1 year is allowed provided that a credible restructuring plan has been prepared which is based on realistic assumptions with a view to ensuring the return of the enterprise within a reasonable time to long-term viability and with the enterprise contributing itself to the costs of restructuring.⁴
- (2) Subparagraphs (a) and (b) above do not apply to specific subsidies of which the subsidising Party upon a written request of the other Party has demonstrated that the subsidy in question does not affect trade and investment of the other Party nor will be likely to do so.
- (3) Subparagraphs (a) and (b) above do not apply to specific subsidies that are granted to remedy a serious disturbance in the economy of one of the Parties. A disturbance in the economy of a Party is considered serious if it is exceptional, temporary and significant and affects the Member States or the whole economy of a Party rather than a specific region or economic sector of a Party or its Member State.

Article x.7 **Dispute settlement**

Article x.5 (consultations) of this Section shall not be subject to the dispute settlement provisions of this Agreement.

Article x.8 **Review clause**

The Parties shall review this Section no later than five years after the entry into force of this Agreement and at regular intervals thereafter. The Parties shall consult each other on the need to modify this Section in light of the experience gained and the development of any corresponding rules in the WTO. The Parties will, in particular, review the inclusion of additional services sectors under the scope of this Section under Article x.2 paragraph 8.

⁴ 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 keep the enterprise in business for the time necessary to work out a restructuring or liquidation plan.

Section xx: Definitions and common principles

ARTICLE xx.1

DEFINITIONS

- (1) "Tasks of public interest" means a specific activity which delivers outcomes in the overall public benefit that would not be supplied or would be supplied under different conditions in terms of accessibility, quality, safety, affordability or equal treatment by the market without public intervention.
- (2) "Public policy objective" means the general goal to deliver an outcome in the overall public benefit.

ARTICLE xx.2

CONFIDENTIALITY

- (1) When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and 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, maintain the confidentiality of the communicated information.

ARTICLE xx.3

COOPERATION

In order to fulfill the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development, including subsidy control, subject to the availability of funding under the Parties' cooperation instruments and programmes.