

CHAPTER 10

COMPETITION POLICY

SECTION A

ANTI-COMPETITIVE CONDUCT

ARTICLE 10.1

Principles

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

ARTICLE 10.2

Legislative Framework

1. Each Party shall adopt or maintain comprehensive legislation on competition that proscribes anti-competitive conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.
2. The competition law of the Parties shall, in their respective territories, effectively address:
 - (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 concentrations between enterprises which would significantly impede effective competition.

ARTICLE 10.3

Implementation

1. Each Party shall maintain its autonomy in developing and enforcing its competition law.

2. Each Party shall maintain authorities, which are responsible for the full application and the effective enforcement of its competition law, are appropriately equipped and have the powers necessary for fulfilling their responsibilities.
3. All enterprises, private or public, shall be subject to the competition law referred to in Article 10.2 (Legislative Framework).
4. Each Party shall apply its competition law in a transparent and non-discriminatory manner, including to private and public enterprises, respecting the principles of procedural fairness and rights of defence of the enterprises concerned.
5. The application of competition law shall 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 shall be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

SECTION B

SUBSIDIES

ARTICLE 10.4

Principles

1. The Parties agree that a Party may grant subsidies when they are necessary to achieve a public policy objective. The Parties acknowledge that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. In principle, a Party should not grant subsidies to enterprises providing goods or services if they negatively affect, or are likely to affect, competition and trade.

2. An illustrative list of public policy objectives for which a Party may grant subsidies, 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 granted.¹

ARTICLE 10.5

Definition and Scope

1. For the purposes of this Section, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement irrespective of whether it is granted to an enterprise manufacturing goods or supplying services.²

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

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.

2. This Section applies only to subsidies which are specific in accordance with Article 2 of the SCM Agreement. Subsidies to individual consumers or general measures, including subsidies or measures intended to achieve social policy objectives, are not considered as specific.
3. This Section applies to specific subsidies to all enterprises, including public and private enterprises.
4. The application of this Section shall not obstruct the performance, in law or in fact, of the particular tasks of public interest, including public service obligations, assigned to the enterprises concerned. Exemptions should be limited to tasks of public interest, proportionate to the public policy objectives assigned to those enterprises, and transparent.
5. This Section does not apply to non-economic activities.
6. Paragraph 1 of Article 10.9 (Specific Subsidies Subject to Conditions) does not apply to fisheries subsidies and subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture.
7. This Section applies only to specific subsidies of which the amount per beneficiary over a period of three years is above 300 000 special drawing rights.¹

¹ For greater certainty, the notification obligation does not require the notifying Party to provide the name of the beneficiary of the subsidy.

8. With regard to subsidies to enterprises supplying services, Article 10.7 (Transparency) and Article 10.9 (Specific Subsidies Subject to Conditions) apply only to the following services sectors: telecommunications, banking, insurance, transport including maritime transport, energy, computer services, architecture and engineering, and construction and environmental services, subject to the reservations provided for in Chapter 8 (Liberalisation of Investment, Trade in Services and E-Commerce).

9. This Section does not apply to sectors or sub-sectors which the Parties have not listed in Chapter 8 (Liberalisation of Investment, Trade in Services and E-Commerce).

10. Article 10.9 (Specific Subsidies Subject to Conditions) does not apply to subsidies formally agreed or granted before or within five years after the entry into force of this Agreement.

ARTICLE 10.6

Relationship with the WTO

This Section applies without prejudice to the rights and obligations of each Party under Article VI of GATT 1994, the SCM Agreement and the Agreement on Agriculture.

ARTICLE 10.7

Transparency

1. Each Party shall ensure transparency in the area of specific subsidies. To that end, each Party shall notify the other Party every four years the legal basis, form, amount or budget, and if possible, the recipient of a specific subsidy.¹

2. The notification obligation referred to in paragraph 1 is deemed to have been fulfilled if the Party makes the relevant information available on a publicly accessible website, as from 31 December of the calendar year which follows the year when the subsidy had been granted. The first notification shall be made available no later than four years after the date of entry into force of this Agreement.

¹ For greater certainty, the notification obligation does not require the notifying Party to provide the name of the beneficiary of the subsidy.

ARTICLE 10.8

Consultations

1. If a Party considers that a specific subsidy granted by the other Party, which is not covered by Article 10.9 (Specific Subsidies Subject to Conditions), negatively affects or may negatively affect its trade or investment interests, that 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 this request. The consultations should, in particular, aim at identifying whether:

- (a) the specific subsidy was only granted to achieve a public policy objective;
- (b) the amount of the subsidy in question is limited to the minimum needed to achieve this objective;
- (c) the subsidy creates an incentive; and
- (d) the negative effect on trade and investment of the requesting Party is limited.

2. In order to facilitate the consultations, the requested Party shall provide information on the specific subsidy in question within 90 days of the date of receipt 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 its trade or investment interests, the requested Party shall use its best endeavours to eliminate or minimise these negative effects caused by the subsidy in question.

ARTICLE 10.9

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 for covering 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 that 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, and tax exemptions, with a duration of more than one 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 to long-term viability within a reasonable time and with the enterprise itself contributing to the costs of restructuring.¹

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

2. Paragraph 1 does not apply to specific subsidies for which the Party granting the subsidy has demonstrated, upon a written request of the other Party, that the subsidy in question does neither affect nor is likely to affect trade or investment of the other Party.

3. Paragraph 1 does not apply to specific subsidies that are granted to remedy a serious disturbance in the economy of a Party. A disturbance in the economy of a Party shall be 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.

ARTICLE 10.10

Review

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 shall, in particular, review the inclusion of additional services sectors under the scope of this Section in Article 10.5 (Definitions and Scope).

SECTION C

DEFINITIONS AND COMMON PRINCIPLES

ARTICLE 10.11

Definitions

For the purposes of this Chapter:

- (a) "public policy objective" means the general goal to deliver an outcome in the overall public benefit; and
- (b) "tasks of public interest" means specific activities which deliver 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.

ARTICLE 10.12

Confidentiality

1. When exchanging information under this Chapter, the Parties shall take into account the limitations imposed by their respective legislation concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.

2. Any information communicated under this Agreement shall be treated by the receiving Party as confidential unless the other Party has authorised the disclosure or made that information available to the general public.

ARTICLE 10.13

Dispute Settlement

No Party shall have recourse to dispute settlement under this Agreement for any matter arising under Section A (Anti-Competitive Conduct) and Article 10.8 (Consultations).

ARTICLE 10.14

Cooperation

In order to fulfil the objectives of this Chapter 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.