

CHAPTER ELEVEN

COMPETITION

SECTION A COMPETITION

ARTICLE 11.1: PRINCIPLES

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties undertake to apply their respective competition laws so as to prevent the benefits of the trade liberalisation process in goods, services and establishment from being removed or eliminated by anti-competitive business conduct or anti-competitive transactions.

2. The Parties shall maintain in their respective territories comprehensive competition laws which effectively address restrictive agreements, concerted practices¹ and abuse of dominance by one or more enterprises, and which provide effective control of concentrations between enterprises.

3. The Parties agree that the following activities restricting competition are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between them:

- (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 in the territory of either Party as a whole or in a substantial part thereof;
- (b) any abuse by one or more enterprises of a dominant position in the territory of either Party as a whole or in a substantial part thereof; or
- (c) concentrations between enterprises, 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.

ARTICLE 11.2: DEFINITIONS

For the purposes of this Section, **competition laws** means:

- (a) for the European Community, Articles 81, 82 and 86 of *the Treaty establishing the European Community*, *Council Regulation (EC) No 139/2004* on the

¹ The application of this Article to concerted practices is determined by each Party's competition laws.

control of concentrations between undertakings, and their implementing regulations and amendments;

- (b) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations and amendments; and
- (c) any changes that instruments set out in this Article may undergo after the entry into force of this Agreement.

ARTICLE 11.3: IMPLEMENTATION

1. The Parties shall maintain an authority or authorities responsible for, and appropriately equipped for, the implementation of the competition laws set out in Article 11.2.
2. The Parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the parties concerned.
3. Upon request of a Party, the other Party shall make available to the requesting Party public information concerning its competition law enforcement activities and legislation related to the obligations covered by this Section.

ARTICLE 11.4: PUBLIC ENTERPRISES AND ENTERPRISES ENTRUSTED WITH SPECIAL RIGHTS² OR EXCLUSIVE RIGHTS

1. With respect to public enterprises and enterprises entrusted with special rights or exclusive rights:
 - (a) neither Party shall adopt or maintain any measure contrary to the principles contained in Article 11.1; and
 - (b) the Parties shall ensure that such enterprises are subject to the competition laws set out in Article 11.2,

in so far as the application of these principles and competition laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

2. Nothing in paragraph 1 shall be construed to prevent a Party from establishing or maintaining a public enterprise, entrusting enterprises with special or exclusive rights or maintaining such rights.

ARTICLE 11.5: STATE MONOPOLIES

² Special rights are granted by a Party when it designates or limits to two or more the number of enterprises authorised to provide goods or services, other than according to objective, proportional and non-discriminatory criteria, or confers on enterprises legal or regulatory advantages which substantially affect the ability of any other enterprise to provide the same goods or services.

1. Each Party shall adjust state monopolies of a commercial character so as to ensure that any discriminatory measure³ regarding the conditions under which goods are procured and marketed does not exist between natural or legal persons of the Parties.
2. Nothing in paragraph 1 shall be construed to prevent a Party from establishing or maintaining a state monopoly.
3. This Article is without prejudice to the rights and obligations set out under Chapter Nine (Government Procurement).

ARTICLE 11.6: CO-OPERATION

1. The Parties recognise the importance of co-operation and co-ordination between their respective competition authorities to further enhance effective competition law enforcement and to fulfil the objectives of this Agreement through the promotion of competition and the curtailment of anti-competitive business conduct or anti-competitive transactions.
2. The Parties shall co-operate in relation to their respective enforcement policies and in the enforcement of their respective competition laws, including through enforcement co-operation, notification, consultation and exchange of non-confidential information based on the *Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities* signed on 23 May 2009.

ARTICLE 11.7: CONSULTATION

1. In the absence of more specific rules in the agreement referred to in Article 11.6.2, a Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party, to foster mutual understanding or to address specific matters that arise under this Section. In its request, the other Party shall indicate, if relevant, how the matter affects trade between the Parties.
2. The Parties shall promptly discuss, at the request of a Party, any questions arising from the interpretation or application of this Section.
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 11.8: DISPUTE SETTLEMENT

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Section.

SECTION B SUBSIDIES

³ **Discriminatory measure** means a measure which does not comply with national treatment, as set out in the relevant provisions of this Agreement, including the terms and conditions set out in the relevant Annexes thereto.

ARTICLE 11.9: PRINCIPLES

The Parties agree to use their best endeavours to remedy or remove through the application of their competition laws or otherwise, distortions of competition caused by subsidies in so far as they affect international trade, and to prevent the occurrence of such situations.

ARTICLE 11.10: DEFINITIONS OF A SUBSIDY AND SPECIFICITY

1. A **subsidy** is a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement.
2. A subsidy is specific if it falls within the meaning of Article 2 of the SCM Agreement. A subsidy shall be subject to this Section only if it is specific within the meaning of Article 2 of the SCM Agreement.

ARTICLE 11.11: PROHIBITED SUBSIDIES^{4,5}

The following subsidies shall be deemed to be specific under the conditions of Article 2 of the SCM Agreement and shall be prohibited for the purposes of this Agreement in so far as they adversely affect international trade of the Parties⁶:

- (a) subsidies granted under any legal arrangement whereby a government or any public body is responsible for covering debts or liabilities of certain enterprises within the meaning of Article 2.1 of the SCM Agreement 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) subsidies (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices or tax exemptions) to insolvent or ailing enterprises, without a credible restructuring plan based on realistic assumptions with a view to ensuring the return of the insolvent or ailing enterprise within a reasonable period of time to long-term viability and without the enterprise significantly contributing itself to the costs of restructuring. This does not prevent the Parties from providing subsidies by way of temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely keep an ailing enterprise in business for the time necessary to work out a restructuring or liquidation plan.

⁴ The Parties hereby agree that this Article applies to subsidies received only after the date when this Agreement enters into force.

⁵ For the purposes of this Agreement, subsidies for small- and medium-sized enterprises granted in accordance with objective criteria or conditions as provided for in Article 2.1 (b) and footnote 2 attached thereto of the SCM Agreement shall not be subject to this Article.

⁶ International trade of the Parties comprises both domestic and exports markets.

This subparagraph does not apply to subsidies granted as compensation for carrying out public service obligations and to the coal industry.

ARTICLE 11.12: TRANSPARENCY

1. Each Party shall ensure transparency in the area of subsidies. To this end, each Party shall report annually to the other Party on the total amount, types and the sectoral distribution of subsidies which are specific and may affect international trade. Reporting should contain information concerning the objective, form, the amount or budget and where possible the recipient of the subsidy granted by a government or any public body.

2. Such report is deemed to have been provided if it is sent to the other Party, or if the relevant information is made available on a publicly accessible Internet website, by 31 December of the subsequent calendar year.

3. Upon request by a Party, the other Party shall provide further information on any subsidy schemes and particular individual cases of subsidy which is specific. The Parties shall exchange this information, taking into account the limitations imposed by the requirements of professional and business secrecy.

ARTICLE 11.13: RELATION WITH THE WTO AGREEMENT

The provisions in this Section are without prejudice to the rights of a Party in accordance with the relevant provisions of the WTO Agreement to apply trade remedies or to take dispute settlement or other appropriate action against a subsidy granted by the other Party.

ARTICLE 11.14: MONITORING AND REVIEW

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.

ARTICLE 11.15: SCOPE

1. The provisions of Articles 11.9 through 11.14 shall apply to subsidies for goods with the exception of fisheries subsidies, subsidies related to products covered by Annex 1 of the Agreement on Agriculture and other subsidies covered by the Agreement on Agriculture.

2. The Parties shall use their best endeavors to develop rules applicable to subsidies to services, taking into account developments at the multilateral level, and to exchange information upon the request of either Party. The Parties agree to hold the first exchange of views on subsidies to services within three years after the entry into force of this Agreement.