

This document contains an EU proposal for a Section A on Antitrust and Mergers and a Section B on Subsidies for the Competition Chapter in the Trade Part of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.

EU-Chile Free Trade Agreement

EU TEXTUAL PROPOSAL

COMPETITION CHAPTER

SECTION A

ANTITRUST AND MERGERS

And

SECTION B

SUBSIDIES

COMPETITION

Article X.1

Principles

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

SECTION A

ANTITRUST AND MERGERS

Article X.2

Legislative Framework

1. Each Party shall (adopt or) maintain a competition law which applies to all sectors of the economy¹ and addresses all of the following practices in an effective manner:
 - (a) horizontal and vertical 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 significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.
2. All enterprises, private or public, shall be subject to the competition law referred to in this Article. The application of the competition law should not obstruct the performance, in law or in fact, of particular tasks of public interest that may be assigned to the enterprises in question. Exemptions to the competition law of a Party should be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

¹ For greater certainty, competition rules in the EU apply to the agricultural sector in accordance with Regulation 1308/2013 of the European Parliament and Council establishing a common organisation of the markets in agricultural products and its subsequent amendments or replacements, if any (Official Journal L347/2013).

Article X.3

Implementation

1. Each Party shall (establish or) maintain an operationally independent authority responsible for, and appropriately equipped with the powers and resources necessary for the full application and the effective enforcement of the competition law referred to in Article X.2 (Legislative Framework).
2. The Parties shall apply their respective competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the enterprises concerned, irrespective of their nationality or ownership status.

Article X.4

Cooperation

1. In order to achieve the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy development and the investigation of antitrust and merger cases.
2. For this purpose, the competition authorities of the Parties will endeavour to coordinate, where this is possible and appropriate, their enforcement activities relating to the same or related cases.
3. To facilitate the cooperation referred to in paragraph 1, the Parties' competition authorities may exchange information.
4. In implementing the objectives of this Article, the competition authorities of the Parties may agree upon a separate framework on cooperation on anti-competitive activities.

Article X.5

Non-application of dispute settlement

The provisions of this Chapter shall not be subject to dispute settlement in accordance with Chapter [x. Dispute settlement]

SECTION B

SUBSIDIES

Article X.6

Principles

The Parties agree that subsidies can be granted when they are necessary to achieve public policy objectives. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade and investment liberalisation. Therefore, in principle, subsidies granted to enterprises providing goods or services should not be granted when they negatively affect, or are likely to affect, trade and investment.

Article X.7

Definition and scope

1. For the purposes of this Chapter, a subsidy means a measure which fulfils the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as “SCM Agreement”) irrespective of whether it is granted to an enterprise supplying goods or services.²
2. A subsidy is subject to this Chapter only if this subsidy is determined to be specific in accordance with Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article X.11 (Subsidies Subject to Conditions) is deemed to be specific.
3. Subsidies to all enterprises, including public and private enterprises, are subject to this Chapter. The application of the rules in this Section must not obstruct the performance, in law or in fact, of particular services of public interest that may be assigned to the enterprises in question. Exemptions should be limited to tasks of public interest, proportionate to public policy objectives assigned to them and transparent.
4. Article X.10 (Consultations) does not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.
5. Article X.10 (Consultations) and X.11 (Subsidies subject to conditions) do not apply to the audio-visual sector.

Article X.8

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

Relationship with the WTO

This Chapter applies without prejudice to the rights and obligations of a Party under Article XV GATS, Article XVI of GATT 1994, the SCM Agreement and the WTO Agreement on Agriculture.

Article X.9

Transparency

1. Each Party shall be transparent every two years on the legal basis, form, amount or budget and, where possible, the name of the recipient of the subsidy provided within the reporting period.
2. A subsidy is transparent in the meaning of this Article
 - (a) if the subsidy is notified under Article 25 of the SCM Agreement, provided that the notification contains all the information required under Paragraph 1; or
 - (b) if the information required under Paragraph 1 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 information shall be made available no later than two years after the entry into force of this Agreement.

Article X.10

Consultations

1. If a Party considers that a subsidy may negatively affect the first Party's interests, the first Party may express its concern in writing to the other Party and request consultations on the matter. The request shall include an explanation of how the subsidy has or could have a negative effect on the requesting Party's trade and investment interests. The requested Party shall accord full and sympathetic consideration to such a request.
2. During the consultations referred to in paragraph 1, the requested Party shall provide the following information about the subsidy:
 - (a) the legal basis and policy objective or purpose of the subsidy;
 - (b) form of the subsidy;
 - (c) dates and duration of the subsidy and any other time limits attached to it;
 - (d) eligibility requirements of the subsidy;

- (e) the total amount or the annual amount budgeted for the subsidy;
 - (f) where possible, the name of the recipient of the subsidy; and
 - (g) any other data permitting an assessment of the negative effects of the subsidy on trade and investment.
3. To facilitate the consultation, the requested Party shall provide information on the subsidy in question in writing within no more than 60 days from the date of reception of the request.
 4. If any relevant points in paragraph 2 have not been addressed in the written response, an explanation shall be provided in the written response itself.
 5. On the basis of the information provided, the Parties shall have consultations. Such consultations shall take place within 6 months following the date of the reception of the information.
 6. If the requesting Party, following these consultations, considers that the subsidy concerned has or may have a significant negative effect on its trade or investment interests, the requested Party will use its best endeavours to eliminate or minimise those negative effects.

Article X.11

Subsidies subject to conditions

The Parties shall apply conditions to the following subsidies, in so far as they negatively affect trade or investment of the other Party or are likely to do so:

- (a) subsidies or legal arrangements whereby a government, directly or indirectly, is responsible for guaranteeing debts or liabilities of certain enterprises are allowed on condition 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) subsidies to insolvent or ailing enterprises (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) with a duration above one year are allowed on condition that a credible restructuring plan has been prepared which is based on realistic assumptions with the view to ensuring the return of the insolvent or ailing enterprises within a reasonable time to long-term viability and with the enterprise contributing itself to the costs of restructuring.^{3,4}

³ 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 firm in business for the time necessary to adopt a restructuring or liquidation plan.

⁴ Small- and medium-sized enterprises are not required to contribute themselves to the costs of restructuring.

Article 12

Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the policy objective for which the subsidies have been granted.

Article X.13

Exclusion from dispute settlement

Chapter [x. Dispute settlement] does not apply to paragraph 4 of Article X.10.

SECTION C

GENERAL PROVISIONS

Article X.14

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 under this Agreement, the receiving Party shall maintain the confidentiality of the communicated information.

Article X.15

Review Clause

The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the [appropriate body established by the Agreement]. The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.