

This **document** is the European Union's (EU) proposal for the EU-Australia FTA. It has been tabled for discussion with Australia. The actual text in the final agreement will be a result of negotiations between the EU and Australia.

DISCLAIMER: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.

CHAPTER [XX]

ANTICOMPETITIVE CONDUCT, MERGER CONTROL AND SUBSIDIES

ARTICLE X.1

Competition principles

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

ARTICLE X.2

Competitive neutrality

The Parties shall apply the rules referred to in this Chapter to all enterprises, public or private.

SECTION A

ANTICOMPETITIVE CONDUCT AND MERGER CONTROL

ARTICLE X.3

Legislative framework

Without prejudice

Each Party shall adopt or maintain competition law which applies to all enterprises in all sectors of the economy¹ and addresses, in an effective manner, all of the following practices:

- (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 would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

ARTICLE X.4

Services of general economic interest

The Parties shall ensure that enterprises entrusted with the operation of services of general economic interest shall be subject to the rules referred to in this Section, in so far as the application of such rules does not obstruct the performance, in law or in fact, of particular tasks that are assigned to these enterprises. Assigned tasks shall be transparent and any limitation to or deviation from the application of the rules in this Section shall not go beyond what is strictly necessary to achieve the assigned tasks.

ARTICLE X.5

Implementation

1. Each Party shall (establish and) maintain an operationally independent authority which is responsible for and appropriately equipped with the powers and resources necessary

¹ For greater certainty, pursuant to Article 42 of the Treaty on the Functioning of the European Union, competition rules in the EU apply to the agricultural sector in accordance with Regulation (EU) No 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).

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to ensure the full application and the effective enforcement of the competition law referred to in Article X.3.

2. Each Party shall apply its competition law in a transparent manner, respecting the principles of procedural fairness, including the rights of defence of the enterprises concerned, in particular the right to be heard and the right to judicial review.

ARTICLE X.6

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy and enforcement.
2. To facilitate such cooperation, the Parties' competition authorities may exchange information, subject to the confidentiality rules as foreseen in the Parties' respective laws and regulations.
3. The competition authorities of the Parties shall endeavour to coordinate, where possible and appropriate, their enforcement activities relating to the same or related conduct or cases.

ARTICLE X.7

Non-application of dispute settlement

The provisions of this Section shall not be subject to dispute settlement under Chapter x.

SECTION B
SUBSIDIES

ARTICLE X.8

Definition and scope

1. For the purposes of this Section, a subsidy means a measure, which fulfils the conditions set out in paragraph 1.1 of Article 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

[placeholder for a possible proposal on "public body"]

2. A subsidy is subject to this Section only if it is specific within the meaning of Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article X.12 is deemed to be specific.
3. The Parties shall ensure that subsidies to enterprises entrusted with the operation of services of general economic interest shall be subject to the rules in this Section, in so far as the application of those rules does not obstruct the performance, in law or in fact, of the particular tasks that are assigned to these enterprises. Assigned tasks shall be transparent and any limitation to or deviation from the application of the rules in this Section shall not go beyond what is strictly necessary to achieve the assigned tasks.
4. Article X.11 does not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.

² This Article does not prejudice the outcome of any 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 update this Agreement in this respect.

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5. Article X.11 and X.12 do not apply to the audio-visual sector.

ARTICLE X.9

Relationship with the WTO

Nothing in this Section shall affect the rights and obligations of either Party under the SCM Agreement, the Agreement on Agriculture, Article XVI of GATT 1994 and Article XV of GATS.

[NB: this provision should be removed during negotiations, if there is a similar provision in an horizontal part of the agreement covering this Chapter.]

ARTICLE X.10

Transparency

1. Each Party shall make transparent the following with respect to a subsidy granted or maintained within its territory:
 - (a) the legal basis and purpose of the subsidy;
 - (b) the form of the subsidy;
 - (c) the amount of the subsidy or the amount budgeted for the subsidy; and
 - (d) if possible, the name of the recipient of the subsidy.

4. A Party shall meet the requirement of paragraph 1 through:
 - (a) notification under Article 25 of the SCM Agreement, which is provided at least every two years;
 - (b) notification under Article 18 of the Agreement on Agriculture; or,

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- (c) publication by the Party or on its behalf on a publicly accessible website by 31 December of the calendar year subsequent to the year in which the subsidy was granted or maintained.

ARTICLE X.11

Consultations

1. If a Party considers that a subsidy is negatively affecting or is likely to negatively affect its trade or investment liberalisation interests, it may express its concern in writing to the other Party and request further information on the matter.
2. The request shall include an explanation of how the subsidy is negatively affecting or is likely to negatively affect the requesting Party's interests. The requesting Party may seek the following information about the subsidy:
 - (a) the legal basis and policy objective or purpose of the subsidy;
 - (b) the form of the subsidy;
 - (c) the dates and duration of the subsidy and any other time limits attached to it;
 - (d) the eligibility requirements of the subsidy;
 - (e) the total amount or the annual amount budgeted for the subsidy;
 - (f) if possible, the name of the recipient of the subsidy; and
 - (g) any other information permitting an assessment of the negative effects of the subsidy.
3. The requested information shall be provided in writing no later than 60 days after the date of receipt of the request. In the event that any requested information is not provided by the requested Party, that Party shall explain the absence of such information in its written response.
4. After having received the requested information, the requesting Party may request consultations on the matter. Consultations between the Parties to discuss the concerns raised shall be held within 60 days of the request for consultations.

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5. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

ARTICLE X.12

Prohibited subsidies

1. The following subsidies shall be prohibited for the purposes of this Agreement:
 - (a) subsidies whereby a government guarantees debts or liabilities of certain enterprises without any limitation as to the amount of those debts and liabilities or the duration of such guarantee; and
 - (b) subsidies to insolvent or ailing enterprises
 - (i) if there is no credible restructuring plan based on realistic assumptions with the view to ensure the return to long-term viability of the insolvent or ailing enterprise within a reasonable time period; or
 - (ii) if the enterprise does not contribute to the costs of restructuring. Small and medium sized enterprises are not obliged to contribute to the restructuring.
2. Point (b) of paragraph 1 does not apply to subsidies provided to enterprises as temporary liquidity support in the form of loan guarantees or loans during the period which is necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to merely keep the enterprise in business.
3. Subsidies to ensure the orderly market exit of a company are not prohibited.
5. This Article does not apply to subsidies, the cumulative amounts or budgets of which are less than 200 000 euro per enterprise over a period of three consecutive years.

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ARTICLE X.13

Use of subsidies

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