6. Chapter Eleven (Competition) is hereby replaced with the following:

"CHAPTER ELEVEN

LEVEL PLAYING FIELD AND CONSUMER PROTECTION

SECTION A

COMPETITION AND CONSUMER PROTECTION

ARTICLE 11.1

Competition Law and Authorities

1. Each Party shall maintain national competition law in their respective territories which:

(a) proscribes anti-competitive agreements between enterprises, including cartel agreements;

(b) proscribes anti-competitive practices by enterprises that have a dominant position; and

(c) addresses mergers that have substantial anti-competitive effects.

2. Each Party shall apply its national competition law to all commercial activities in its territory regardless of an enterprise's nationality or governmental ownership. This does not preclude a Party from applying its national competition law to commercial activities outside its borders that may have anti-competitive effects within its jurisdiction.

3. Each Party may provide for certain exemptions from the application of its national competition law, provided that those exemptions are transparent, set out in law, and are based on public policy grounds.

4. Each Party shall maintain an operationally independent national competition authority responsible for the enforcement of its national competition law.

5. Each Party shall enforce its national competition law in a manner that does not discriminate on the basis of nationality or governmental ownership.

ARTICLE 11.2

Procedural Fairness

1. Each Party shall ensure that before it imposes a sanction or remedy against a person under its national competition law, it affords that person:

(a) information about the national competition authority's competition concerns;

(b) a reasonable opportunity to be legally represented; and

(c) a reasonable opportunity to be heard and present evidence in that person's defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy.

2. Each Party shall maintain written procedures pursuant to which its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.

3. Each Party shall maintain rules of procedure and evidence that apply to proceedings conducted under its national competition law and to the determination of sanctions and remedies thereunder.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy under that Party's national competition law with the opportunity to seek review of the sanction or remedy in a court or other independent tribunal established under that Party's law.

5. Each Party shall ensure that any public notice confirming or revealing the existence of a pending or ongoing investigation avoids any statement that a person has in fact violated the Party's competition law. This does not preclude the issuing of provisional, reasoned objections by the Party's national competition authorities.

6. Each Party shall ensure that, where information that is protected as confidential or privileged in accordance with its law is obtained by its national competition authorities during an investigation, such confidentiality or privilege is preserved, subject to applicable legal exceptions.

7. Each Party shall ensure that its national competition authorities afford a person under investigation conducted under that Party's national competition law reasonable opportunity to consult with those national competition authorities with respect to significant legal, factual, or procedural issues that arise during the investigation.

8. Each Party shall ensure that all final decisions in civil or administrative matters made under its competition law are in writing and that those decisions set out the findings of fact and conclusions of law on which they are based. Each Party shall make public those final decisions, with the exception of any confidential material contained therein.

ARTICLE 11.3

Private Rights of Action

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary, or other remedies, from a court or other

independent tribunal for injury to that person's business or property caused by a violation of competition law.

2. Recognising that a private right of action is an important supplement to the public enforcement of competition law, each Party shall maintain measures that provide a private right of action under its competition law, both independently and following a finding of violation by a national competition authority.

3. Each Party shall ensure that a right provided pursuant to paragraph 2 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

4. A Party may establish reasonable criteria for the exercise of any right it creates or maintains in accordance with this Article.

ARTICLE 11.4

Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement for enhancing consumer welfare in the territories of the Parties.

2. Each Party shall maintain consumer protection laws and regulations that proscribe misleading, deceptive, fraudulent, or unfair commercial practices that cause harm, or potential harm, to consumers. Such practices include:

(a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity, or origin of goods or services;

(b) advertising goods or services for supply without intention to supply;

(c) charging consumers for goods or services for supply without intention to supply; or

(d) charging or debiting consumers' financial, telephone, or other accounts without authorisation.

3. Each Party shall maintain laws and regulations that provide consumers with statutory rights in relation to goods and services supplied to them, which at a minimum allow for remedies when:

(a) goods are of unacceptable quality or are defective;

(b) goods are not as described;

(c) goods are not fit for their represented purpose; or

(d) services are not performed with reasonable care or skill.

4. The Parties recognise the importance of improving awareness of and providing access to consumer redress mechanisms, including for consumers of a Party transacting with suppliers of the other Party.

5. The Parties further recognise the benefits of dispute resolution mechanisms in facilitating the resolution of disputes between consumers and suppliers, including alternative dispute resolution mechanisms.

ARTICLE 11.5

Transparency

1. The Parties recognise the value of making their competition and consumer protection law and enforcement policy as transparent as possible.

2. Each Party shall make public or require the following to be made public, including on an official website:

(a) its competition laws and regulations;

(b) exemptions and immunities to its competition law;

(c) guidelines and any rules issued in relation to the administration and enforcement of its competition law, but shall not be required to make public its internal operating procedures; and

(d) information on the protections it provides consumers, including for consumers engaged in online commercial activities. This information shall include how consumers can pursue remedies and how enterprises can comply with any legal requirements.

3. Each Party shall encourage enterprises to publish their policies and procedures related to consumer protection.

SECTION B

STATE ENTERPRISES

ARTICLE 11.6

Scope

1. This Section does not apply to:

(a) government procurement;

(b) measures in respect of state enterprises, enterprises granted special rights or privileges, or designated monopolies, that are taken on a temporary basis in response to a national or global economic emergency[1];

(c) any service supplied in the exercise of governmental authority;

(d) a state enterprise, an enterprise granted special rights or privileges, or a designated monopoly, if, in any one of the three previous consecutive fiscal years, the annual revenue from the commercial activities of the enterprise or monopoly concerned was less than 200 million special drawing rights;

(e) the regulatory or supervisory activities, or monetary and related credit policy and exchange rate policy, of a central bank or monetary authority of a Party;

(f) the regulatory or supervisory activities of a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial services suppliers; or

(g) activities undertaken by a Party or one of its state enterprises for the purposes of the resolution of a failing or failed financial services supplier or any other failing or failed enterprise principally engaged in the supply of financial services.

ARTICLE 11.7

Definitions

For the purposes of this Section:

commercial activities means activities undertaken with an orientation towards profit-making[2] and the end result of which is the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise;

commercial considerations means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately-owned enterprise in the relevant business or industry;

designate means to establish or authorise a monopoly or to expand the scope of a monopoly to cover an additional good or service;

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[1] For greater certainty, an emergency shall be understood as one that affects the whole economy of a Party.

[2] For greater certainty, activities undertaken by an enterprise which operates on a non-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.

designated monopoly means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party[3];

market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;

non-discriminatory treatment means national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement;

special rights or privileges means rights or privileges granted by a Party to a limited number of enterprises, within a given geographical area or product market, the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same geographical area or product market in like circumstances, but the granting of a license or a permit to a limited number of enterprises in allocating a scarce resource through objective, proportional, and non-discriminatory criteria is not in and of itself a special right or privilege; and

state enterprise means an enterprise that is principally engaged in commercial activities in which a Party:

(a) directly owns more than 50 per cent of the share capital;

(b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or

(c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

ARTICLE 11.8

Designated Monopolies

1. Each Party shall ensure that any designated monopoly:

[3] For greater certainty, ownership, or control through ownership interests, may be direct or indirect.

(a) acts in a manner that is not inconsistent with that Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market[4], except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);

(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anti-competitive practices in a non-monopolised market in its territory that adversely affect covered investments.

2. Nothing in paragraph 1 shall be construed to prevent a Party from establishing or maintaining a designated monopoly.

ARTICLE 11.9

State Enterprises

1. Each Party shall ensure that any state enterprise that it establishes or maintains:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and

(b) accords non-discriminatory treatment in the sale of its goods or services to a covered investment.

2. With respect to state enterprises and enterprises granted special rights and privileges:

(a) a Party shall not adopt or maintain any measure contrary to the principles contained in Article 11.1; and

(b) a Party shall ensure that such enterprises are subject to its competition law;

[4] For greater certainty, "purchase or sale of the monopoly good or service in the relevant market" in Article 11.8 refers to the sale of the designated monopoly good or service in the case of a designated monopoly supplier and to the purchase of the designated monopoly good or service in the case of a designated monopoly buyer.

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

3. Nothing in paragraph 2 prevents a Party from establishing or maintaining a state enterprise, entrusting enterprises with special or exclusive rights, or maintaining such rights.

ARTICLE 11.10

Differences in Pricing

Articles 11.8 and 11.9 shall not prevent a monopoly or state enterprise from charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions.

ARTICLE 11.11

Regulatory Framework

1. The Parties respect and make best use of relevant international standards including, *inter alia*, the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.

2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains is independent from, and not accountable to, any of the enterprises regulated by that body, and acts impartially[5] in like circumstances with respect to all enterprises regulated by that body, including state enterprises, enterprises granted special rights or privileges, and designated monopolies.

3. Each Party shall apply its law to state enterprises, enterprises granted special rights or privileges, and designated monopolies consistently and in a manner that does not discriminate on the basis of nationality or governmental ownership.

4. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory[6]. This shall not be construed to require a Party to provide jurisdiction over those claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

[5] For greater certainty, the impartiality with which the regulatory body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body.

[6] This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

ARTICLE 11.12

Transparency

In the context of a notification submitted by a Party pursuant to Article XVII: 4(a) of GATT 1994, when faced with a request for additional information on the effect of state enterprises on bilateral trade between the Parties, the notifying Party shall, subject to Article XVII: 4(d) of GATT 1994 regarding confidential information, use its best efforts to ensure maximum possible transparency in its response to the request in order to provide information relevant to determining whether its state enterprise of the Party complies with the relevant obligations of this Agreement.

ARTICLE 11.13

Review Clause

The Parties shall keep under review the matters to which reference is made in this Section. The Parties agree to review progress in implementing this Section every five years, unless both Parties agree otherwise.

SECTION C

SUBSIDIES

ARTICLE 11.14

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 11.15

Scope

1. The provisions of this Section 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. A subsidy shall be subject to this Section only if it is specific in accordance with Article 11.16 or is deemed to be specific in accordance with Article 11.17.

3. The Parties shall use their best endeavours 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.

ARTICLE 11.16

Definitions

1. A **subsidy** means a measure which fulfills the conditions set out in Article 1.1 of the SCM Agreement.

2. A subsidy is specific if it falls within the scope of Article 2 of the SCM Agreement.

ARTICLE 11.17

Prohibited Subsidies[7, 8]

The following subsidies shall be deemed to be specific and shall be prohibited for the purposes of this Agreement in so far as they adversely affect international trade between the Parties:[9]

(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 for the purpose of rescuing or restructuring such 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. This subparagraph does not apply to subsidies granted as compensation for carrying out public service obligations and the coal industry.

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

[8] 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.

[9] International trade between the Parties comprises both domestic and exports markets.

ARTICLE 11.18

Transparency

1. Every two years each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within that Party's territory:

(a) the legal basis;

(b) the objective of the subsidy;

(c) the form of the subsidy;

(d) the amount of the subsidy or the amount budgeted for the subsidy; and

(e) the sectorial distribution of the subsidy.

2. Such notification is deemed to have been provided if it is sent to the other Party, or if the information stipulated in paragraph 1 is published on a publicly available website.

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

ARTICLE 11.19

Relation to 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 11.20

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, established under Article 15.1 (Trade Committee). The Parties agree to review progress in implementing this Section every two years, unless both Parties agree otherwise.

SECTION D

CROSS-CUTTING AND COMMON PROVISIONS

ARTICLE 11.21

Cooperation

1. The Parties recognise the importance of cooperation and coordination between their respective competition and consumer protection authorities to foster effective competition and consumer protection law enforcement in the territories of the Parties. To this end, the Parties may cooperate, through their competition and consumer protection authorities, on issues relating to the enforcement of competition and consumer protection law. Such cooperation may include:

(a) notification by a Party to the other Party of its activities relating to enforcement of competition and consumer protection law that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;

(b) exchange of information between the Parties to foster understanding or to facilitate effective enforcement of competition and consumer protection law; and

(c) coordination of enforcement actions or investigations that raise the same or related concerns relating to the enforcement of competition and consumer protection law.

2. The Parties recognise that it is in their common interest to work together on technical cooperation activities to strengthen competition and consumer protection policy development and the enforcement of competition and consumer protection law. Technical cooperation activities may include:

(a) the exchange of information on the development and implementation of competition and consumer protection policy and law;

(b) the sharing of studies, reviews and research relating to competition and consumer protection law and policy; and

(c) the exchange of officials of policy agencies or competition and consumer protection authorities to deepen cooperation and knowledge sharing.

3. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organisations in the area of competition and consumer protection policy, including the Competition and Consumer Policy committees of the OECD, the International Competition Network, and the International Consumer Protection and Enforcement Network.

4. Any cooperation and coordination under paragraphs 1 and 2 shall be undertaken only to the extent that it is compatible with each Party's law and important interests and within the Parties' available resources.

5. The Parties recognise the importance of strengthening cooperation with a view to further improving corporate governance, efficient management, and functioning of their respective state enterprises.

ARTICLE 11.22

Consultation

1. In order to foster understanding between the Parties in relation to matters concerning competition, consumer protection, state enterprises, enterprises granted special rights or privileges, and designated monopolies, or to address specific matters that arise under Sections A or B, a Party shall enter into consultations upon request of the other Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party and shall, upon the request of that Party, promptly discuss any question arising from the interpretation or application of this Section.

3. To facilitate discussion on the matter that is the subject of the consultation, each Party shall endeavour to provide the other Party with relevant non-confidential, non-privileged information.

4. For greater certainty, consultations under this Article do not constitute consultations under Chapter Fourteen (Dispute Settlement).

ARTICLE 11.23

Non-Application of Dispute Settlement

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

(a) Section A;

(b) Section B, except for Article 11.12; or

(c) Article 11.21 and 11.22. "