

Transatlantic Trade and Investment Partnership (TTIP)

Chapter []

Consolidated Proposed SOE Text

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[EU: Chapter on Initial Provisions and Definitions

Unless otherwise specified in this Agreement, each Party shall ensure that a person {definition of 'person' must include state enterprises, enterprises granted special or exclusive rights or privileges} that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government, such as the power to grant import or export licenses or licenses for other economic activities, approve commercial transactions or impose quotas, fees or other charges, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.]

[EU: Article 1: Definitions

For the purposes of this Chapter, the following definitions shall apply:

"State enterprise" means any enterprise involved in a commercial activity over which a Party at central or sub-central level exercises or has the possibility of exercising decisive influence directly or indirectly by virtue of its ownership of it, its financial participation therein, through rules or practices concerning the functioning of the enterprise, or by any other means relevant to establishing such decisive influence. Decisive influence on the part of a Party shall be presumed when it, directly or indirectly: (i) holds the majority of the enterprise's capital; or (ii) holds the majority of the votes attached to the shares issued by the enterprise; or (iii) can appoint more than half of the members of the enterprise's administrative, managerial or supervisory body.

"Enterprise granted special or exclusive rights or privileges" means any enterprise, public or private, involved in a commercial activity that has been granted by a Party, at central or sub-central level, in law or in fact, exclusive or special rights or privileges. Such rights or privileges may include the right to act as a distributor, a network provider or another intermediary for the purchase or sale of a good or the provision or receipt of a service. Enterprises granted exclusive rights covers monopolies involved in a commercial activity.

A "monopoly" means an entity involved in a commercial activity, including a consortium or government agency that, in a relevant market in the territory of a Party, is designed at central or sub-central level as the sole supplier 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 such grant.

"Special rights" means rights granted by a Party at central or sub-central level to a limited number of enterprises within a given geographical area or a product or service 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 the same product or service market under substantially equivalent conditions. The granting of a license 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.

"Non-discriminatory treatment" means national treatment or most-favored-nation treatment as set out in this Agreement, whichever is the better.

"In accordance with commercial considerations" means consistent with the customary business practices of a privately held enterprise operating according to market economy principles in international trade.

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"Designate" means to establish or authorize a monopoly, or to expand the scope of a monopoly, whether in law or in fact.]

[US: Article 1: Definitions

Arrangement means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Cooperation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original Members to the Arrangement that were members as of January 1, 1979;

commercial activities means activities the end result of which is the production of a good or supply of a service which will be sold to a consumer, including a state enterprise, state-owned enterprise, or designated monopoly, in the relevant market in quantities and at prices determined by the enterprise and that are undertaken with an expectation of gain or profit;¹

commercial considerations means factors such as price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that influence the commercial decisions of an enterprise in the relevant business or industry;

control person {...};

designate means, whether formally or in effect, to establish, name, or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

designated monopoly means a monopoly that a Party designates or has designated;

government monopoly means a monopoly that is owned or controlled by a Party or by another government monopoly;

injury means material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of a domestic industry;

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

monopoly means an entity or a group of entities that, in any relevant market in the territory of a Party, is the exclusive 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 such grant;

non-commercial assistance² means the provision of:

1 [US: For greater certainty, this excludes activities undertaken by an enterprise which operates on a:
(a) not-for-profit basis; or
(b) cost recovery basis.]

2 [US: For greater certainty, non-commercial assistance does not include intra-group transactions within a corporate group including state-owned enterprises, e.g. between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal accounting standards or business practices would require that the corporate entity prepare consolidated net financial statements of these intra-group transactions.]

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- (a) grant or debt forgiveness;
- (b) a loan, equity infusion or capital, loan guarantee, or other type of financing or loan satisfaction on terms more favorable than those commercially available to that enterprise; or
- (c) a good or service, other than general infrastructure, on terms more favorable than those commercially available to that enterprise;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party.

state-owned enterprise means an enterprise that is principally engaged in commercial activities; and:

- (a) is owned, or controlled through ownership interests, by a Party's central government; or
- (b) in which a Party's central government appoints or has the power to appoint the majority of members of the board of directors or any equivalent management
- (c) is controlled by a Party's central government through a control person or control persons.]

[EU: Article 2: Scope

1. The Parties confirm their rights and obligations under Article XVII, paragraphs 1 through 3, of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as under Article VIII of GATS, paragraphs 1, 2 and 5, which are hereby incorporated into and made part of this Agreement and shall apply.
2. This Chapter does not apply to 'covered procurement' by a Party or its procuring entities within the meaning of Article II of (Chapter XX – Public procurement).
3. {Placeholder: reference to the non-application of SOE disciplines to sectors not covered in the Parties schedules of specific commitments}]

[EU: Article 3: Additional Provisions on Scope

1. Without prejudice to the Parties' rights and obligations under this Chapter, nothing in this Chapter prevents the Parties from establishing or maintaining state enterprises or designating or maintaining monopolies or from granting enterprises special or exclusive rights or privileges.
2. Where an enterprise falls within the scope of application of this Chapter, the Parties shall not require or encourage such an enterprise to act in a manner inconsistent with this Agreement.]

[US: Article 2: Scope

1. This Chapter applies with respect to the activities of state-owned enterprises, state enterprises and

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designated monopolies that affect trade or investment between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

- (a) a central bank or monetary authority of a Party;
- (b) a financial regulatory body or a resolution authority³ of a Party;
- (c) a financial institution or other entity owned or controlled by a Party that is established or operated temporarily solely for resolution purposes;⁴
- (d) government procurement; or
- (e) regulatory or supervisory activities of any non-governmental entity, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, pursuant to direction or delegated authority of the Party.

3. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from:

- (a) establishing or maintaining a state enterprise or state-owned enterprise, or
- (b) designating a monopoly.]

[US: Article 3: Delegated Authority

Each Party shall ensure that when its state-owned enterprises, state enterprises, and designated monopolies exercise any regulatory, administrative, or other governmental authority⁵ which the Party has directed or delegated to such an entity to carry out, such entity shall act in a manner that is not inconsistent with that Party's obligations under this Agreement.]

[US: Article 4: Non-Discriminatory Treatment and Commercial Activities

1. Each Party shall ensure that its state-owned enterprises and designated monopolies, when engaging in commercial activities:

- (a) act in accordance with commercial considerations in their purchases or sales of goods or services, except, in the case of a designated monopoly, to fulfill any terms of its designation that are not inconsistent with paragraph 1 (b) and paragraph 3; and

3 [US: "Resolution authority" shall have the meaning given to it in Section 2.1 of the Financial Stability Board's ('FSB') Key Attributes of Effective Resolution Regimes for Financial Institutions, as published by the FSB in October 2011.]

4 [US: "Resolution purposes" shall be construed in accordance with the meaning given to the term "resolution" in Paragraph 21 of the Basel Committee on Banking Supervision's ("BCBS") Report and Recommendations of the Cross-border Bank Resolution Group, as published by the BCBS in March 2010.]

5 [US: Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.]

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(b) accord to enterprises that are covered investments, goods of the other Party, and services suppliers of the other Party, treatment no less favorable than they accord to, respectively, like enterprises that are investments of the Party's investors, like goods of the Party, and like service suppliers of the Party, with respect to their purchases or sales of goods or services.

2. Paragraph 1 does not preclude a state-owned enterprise or designated monopoly from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

(b) refusing to purchase or supply goods or services,

provided that such different terms or conditions or refusal are undertaken in accordance with commercial considerations and paragraph 1 (b).

3. Each Party shall ensure that any designated monopoly that it establishes or maintains does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities that the Party or the designated monopoly owns or controls, anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments or trade between the Parties.]

[EU: Article 4: Non-Discrimination]

Each Party shall ensure in its territory that any enterprise satisfying the conditions set out in 1 (b) accords non-discriminatory treatment to a covered investment, to a good of the other Party and/or to a service or a service supplier of the other Party in its purchase or sale of a good or a service.]

[EU: Article 5: Commercial considerations]

Except to fulfill the purpose⁶ for which special or exclusive rights or privileges have been granted, or in the case of a state enterprise to fulfill its public mandate, and provided that the enterprise's conduct in fulfilling that purpose or mandate is consistent with the provisions in 4 and the Chapter on Competition, each Party shall ensure that any enterprise referred to in 1(a) and 1(b) acts in accordance with commercial considerations in the relevant territory in its purchases and sales of goods, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, as well as in its purchases or supply of services, including when these goods or services are supplied to or by an investment of an investor of the other Party.]

[EU: Article 6: Pricing]

For greater clarity, charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as supply and demand conditions, is not in itself inconsistent with 4 and 5.]

6 [EU: such as a public service obligation]

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[US: Article 5: Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against a foreign state-owned enterprise based on a commercial activity carried on its territory, except where a Party does not provide jurisdiction over similar claims against enterprises that are not state-owned enterprises.
2. Each Party shall ensure that any body that it establishes or maintains, and that regulates a state-owned enterprise or designated monopoly, acts impartially with respect to all enterprises that it regulates, including enterprises that are not state-owned enterprises.]

[EU: State enterprises and enterprises granted special or exclusive rights or privileges

1. In the case of state enterprises and enterprises granted special or exclusive rights or privileges, the Parties shall neither enact nor maintain in force any measure contrary to the competition legislation referred to {in Article 2 and Article 3(2) of the Competition Chapter}.
2. Enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the competition legislation referred to {in Article 2 and Article 3(2) of the Competition Chapter} in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question. Trade and investment must not be affected to such an extent as would be contrary to the objectives of this Agreement.]

[US: Article 6: Adverse Effects

1. No Party shall cause adverse effects to the interests of the other Party through the use of non-commercial assistance that the Party provides, either directly or indirectly to any of its state-owned enterprises, where the Party explicitly limits access to the non-commercial assistance to its state-owned enterprises, provides non-commercial assistance which is predominantly used by its state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to its state-owned enterprises, or otherwise favors its state-owned enterprises in the provision of non-commercial assistance.
2. Each Party shall ensure that no state enterprise or state-owned enterprise that it establishes or maintains causes adverse effects to the interests of the other Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises, where the Party explicitly limits access to the non-commercial assistance provided by the state enterprise or state-owned enterprise to its state-owned enterprises, or where the state enterprise or state-owned enterprise provides non-commercial assistance which is predominately used by the Party's state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to the Party's state-owned enterprises, or otherwise favors the Party's state-owned enterprises in the provision of non-commercial assistance.
3. Adverse effects cannot be established on the basis of any act, omission, or factual situation, to the extent that act, omission, or factual situation took place before the date of entry into force of this Agreement.
4. For the purpose of paragraphs 1-3, adverse effects are effects that arise from the provision of a

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good or service by a Party's state-owned enterprise which has benefited from non-commercial assistance and:

- (a) displace or impede from the Party's market imports of a like product⁷ that is an originating good of the other Party, or sales of a like product that is a good produced by an enterprise that is a covered investment;
- (b) consist of a significant price undercutting by a product of the Party's state-owned enterprise compared with the price in the same market of a like product that is an originating good of the other Party or a like product that is a good produced by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market;
- (c) displace or impede from the Party's market a like service supplied by a service supplier of the other Party, or a like service supplied by an enterprise that is a covered investment, or
- (d) consist of a significant price undercutting by a service supplied by the Party's state-owned enterprise as compared with the price in the same market of a like service supplied by a service supplier of the other Party, or by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market.

5. For the purposes of subparagraphs (a) and (c) of paragraph 4, the displacing or impeding of a product or service includes any case in which there has been a significant change in relative share of the market to the disadvantage of the like product of the other Party or of a covered investment, or to the disadvantage of a like service supplied by a service supplier of the other Party or by a covered investment.

6. A significant change in relative shares of the market shall include any of the following situations:

- (a) there is a significant increase in the market share of the product or service of the Party's state-owned enterprise;
- (b) the market share of the product or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or
- (c) the market share of the product or service of the Party's state-owned enterprise declines, but by a significantly lower amount or at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

Where the change manifests itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product or service, which shall be at least one year unless exceptional circumstances apply.

7. For purposes of subparagraphs (b) and (d) of paragraph 4, significant price undercutting shall

⁷ [US: For greater certainty, for the purpose of this Chapter, the term "product" does not include financial instruments, including money.]

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include demonstration through a comparison of prices at the same level of trade and at comparable times within the same market as follows:

- (a) the prices of a product of the Party's state-owned enterprise benefiting from non-commercial assistance with the prices of a like product of the other Party or an enterprise that is covered investment; or
- (b) the prices of a service of the Party's state-owned enterprise benefiting from non-commercial assistance with the prices of a like service supplied by a service supplier of the other Party or an enterprise that is a covered investment.

Due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of the price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

[US: Article 7: Injury

No Party shall cause injury to a domestic industry of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises in the territory of the other Party in circumstances where the Party explicitly limits access to the non-commercial assistance to its state-owned enterprises, provides non-commercial assistance which is predominantly used by its state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to its state-owned enterprises, or otherwise favors its state-owned enterprises in the provision of non-commercial assistance, and where:

- (a) the state-owned enterprise produces and sells a good in the territory of the other Party:
and
- (b) a like good is produced and sold by a domestic industry of the other Party.]

[EU: Article 7: Transparency & Corporate Governance

1. The Parties shall ensure that enterprises referred to in 1(a) and 1(b) shall observe high standards of transparency and corporate governance in accordance with the OECD Guidelines on corporate governance of state owned enterprises {exact reference}.

2. A Party which has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise or enterprises referred to in 1(a) and 1(b) of the other Party may request that Party to supply information about the operations of its enterprise related to the carrying out of the provisions of this Agreement.

3. Each Party shall, at the request of the other Party, make available information concerning specific enterprises referred to in 1(a) and 1(b) and which do not qualify as small and medium-sized enterprises as defined in the European Union law and {limitation for the other Party}. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include indicators that the enterprise is engaging in practices that hinder trade or investment between the Parties.

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The information may include:

- (a) the organizational structure of the enterprise, the composition of its board of directors or of an equivalent structure of any other executive organ exercising direct or indirect influence through an affiliated or related entity in such an enterprise; and cross holdings and other links with different enterprises or groups of enterprises referred to in 1(a) and 1(b);
 - (b) the ownership and the voting structure of the enterprise, indicating the percentage of shares and percentage of voting rights that a Party and/or an enterprise referred to in 1(a) and 1(b) cumulatively own;
 - (c) a description of any special shares or special voting or other rights that a Party and/or an enterprise referred to in 1(a) and 1(b) hold, where such rights differ from the rights attached to the general common shares of such entity;
 - (d) the name and title(s) of any government official of a Party serving as an officer or member of the board of directors or of an equivalent structure or of any other executive organ exercising direct or indirect influence through an affiliated or related entity in the enterprise;
 - (e) details of the government departments or public bodies which monitor the enterprise and any reporting requirements;
 - (f) the role of the government or any public bodies in the appointment, dismissal or remuneration of managers; and
 - (g) annual revenue or total assets, or both; and
 - (h) exemptions, non-conforming measures, immunities and any other measures derogating from the application of a Party's laws or regulations or granting favorable treatment by a Party.
4. The provisions of paragraphs 2 and 3 shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.
5. Each Party shall ensure that any regulatory body responsible for regulating any of the enterprises referred to in 1(a) and 1(b) is independent from, and not accountable to, any of the enterprises referred to in 1(a) and 1(b).
6. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner at all levels of government, be it central or local, and their application to enterprises referred to in Article 1(a) and 1(b). Exemptions must be limited and transparent.
7. The provisions of Article 7 apply to enterprises operating in all sectors.]

[US: Article 8: Transparency

1. Each Party shall provide to the other Party a list of its state-owned enterprises within 180 days of the date of entry into force of this Agreement, and thereafter shall provide an updated list annually.

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2. Where a Party designates a monopoly, or expands the scope of an existing designated monopoly, it shall promptly notify the other Party of the designation or expansion of scope and the conditions under which the monopoly shall operate.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly:

(a) the percentage of shares that the Party, its state-owned enterprises, state enterprises, or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold in the entity;

(b) a description of any special shares, or special voting or other rights, that the Party, its state-owned enterprises, or designated monopolies hold, to the extent different from the rights attached to the general common shares of such entity;

(c) the government titles, or former government titles, and decision-making ability of any official serving as a board member, officer, director, manager, or other control person of such entity;

(d) the entity's annual revenue and total assets over the most recent three year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's law; and

(f) any additional information regarding the entity which is publicly available, including annual financial reports and third-party audits, and which is sought in the written request.

4. On the written request of another Party, a Party shall promptly provide the following information concerning assistance received by any of its state-owned enterprises;

(a) any financing or re-financing that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including the amount of such financing and the terms on which it was provided;

(b) any loan guarantee that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including fees associated with the guarantee and any other conditions associated with the guarantee;

(c) any forgiveness of debt or other financial liability that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise;

(d) any goods or services that the Party, or another one of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, and the conditions associated with such provision; and

(e) any export credit that the Party, or one of the Party's state-owned enterprises, has

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provided in support of the export of a good or service from one of the Party's state-owned enterprises, including the amount of such export credits, and the terms and conditions on which it was provided.

5. Each Party shall include in any written request under paragraphs 3 and 4 an explanation of how the activities of the state-owned enterprise may be affecting trade or investment between the Parties.]

[US: Article 9: Committee on State-Owned Enterprises and Designated Monopolies

1. The Parties hereby establish a Committee on State-Owned Enterprises and Designated Monopolies, comprised of officials from each Party.

2. The Committee shall meet within one year of the date of entry into force of the Agreement, and at least annually thereafter, unless the Parties decide otherwise.

3. The Committee shall:

(a) review and consider the operation and implementation of this Chapter;

(b) discuss, at a Party's request, the activities of any state-owned enterprise or designated monopoly of a Party specified in the request with a view to identifying any distortion of trade or investment between the Parties that may result from those activities;

(c) consider, at a Party's request, notifications under Article 8 (Transparency);

(d) develop cooperative efforts, as appropriate, to promote the principles underlying the obligations contained in this Chapter and to contribute to the development of similar obligations in regional and multilateral institutions in which the Parties participate; and

(e) undertake such other activities as the Committee may decide.

4. Prior to each Committee meeting, each party shall invite, as appropriate, input from the public on matters related to state-owned enterprises or designated monopolies that may affect developing its meeting agenda.]

[US: Article 10: Exceptions

1. Nothing in the Articles 4 (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and Administrative Bodies), 6 (Adverse Effects), or 7 (Injury) shall be construed to:

(a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise for which a Party has taken measures on a temporary basis in response to a national or global economic emergency

2. Articles 4(1)(a) (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and

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Administrative Bodies), 6 (Adverse Effects), 7 (Injury), 8 (Transparency), 9 (Committee), and 11 (Dispute Settlement) shall not apply where the state-owned enterprise is:

(a) established or maintained by a Party solely to provide essential services to the general public in its territory; or

(b) subject to government mandates defining its public service function, such as universal service obligations, or requirements to provide services at below market rates or on a cost recovery basis which are not imposed on similarly situated private companies.

3. Articles 4 (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and Administrative Bodies), 6 (Adverse Effects), and 7 (Injury) shall not apply to a state-owned enterprise or designated monopoly that finances housing, including insurance or guarantees of residential loans or mortgage securities, except where such a state-owned enterprise or designated monopoly shall accord treatment to covered investments no less favorable than the treatment it accords to like enterprises which are investments of the Party's investors.

4. With respect to a state-owned enterprise of a Party that provides export credits, Articles 3 (Delegated Authority), 4 (Non-Discriminatory Treatment and Commercial Activities), 5 (Courts and Administrative Bodies), 6 (Adverse Effects), and 7 (Injury) shall not apply to:

(i) the provision of export credits that fall within the scope of the Arrangement and are offered on terms consistent with the Arrangement, regardless of whether the Party is a Participant to the Arrangement; and

(ii) the provision of short-term insurance, guarantee, or other financing with a repayment term of less than two years, provided that the state-owned enterprise charges premium rates or interest rates that are adequate to cover the long-term operating costs and losses of the program, determined on a net present value basis, under which the insurance, guarantee, or other financing is provided.]

[US: Article 11: Dispute Settlement

Any recourse to dispute settlement pursuant to Chapter {X} (Dispute Settlement) for any matter arising under this Chapter shall be subject to Annex X-A of this Chapter.]

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[US: ANNEX X-A

PROCESS FOR DEVELOPING INFORMATION CONCERNING STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

1. Where a panel has been established pursuant to Chapter {X} (Dispute Settlement) to examine a matter arising under this Chapter, the panel shall administer the process set out in paragraphs 2 through 4 aimed at developing information relevant to the claim, including data regarding the volume and value of relevant purchases or sales by the state-owned enterprise or designated monopoly in question, and information about that entity's relevant purchasing, sales, and contracting procedures.⁸ The process shall include procedures aimed at protecting information that is by nature confidential or which a disputing Party provides on a confidential basis.
2. The complaining Party may present written questions to the other Party within 60 days of the date on which the panel is established. The responding Party shall provide its responses to the questions to the complaining Party and the panel within 60 days from the date it receives the questions.
3. The complaining Party shall have 60 days from the date it receives the responses to its questions to review them and provide any additional questions related to the responses to the responding Party. The responding Party shall have 45 days from the date it receives the additional questions to provide its responses to the additional questions to the complaining Party and the panel.
4. If the complaining Party considers that the responding Party has failed to cooperate in the process, the complaining Party shall inform the panel and the responding Party in writing no later than 30 days from the date responses to the complaining Party are due, and provide the basis for this view. The panel shall afford the responding Party an opportunity to reply to this view in writing.
5. The panel may seek additional information from a disputing Party that was not provided to the panel through the information development process carried out under this Annex, where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non-cooperation in the information gathering process.]

8 [US: The presentation of written questions and responses pursuant to paragraph 2 and 3 may commence prior to the date a panel is composed. Upon its composition, the complaining Party shall provide any questions it presented to the responding Party, and the responding Party shall provide any responses it provided to the complaining Party, to the panel.]