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E-COMMERCE

CHAPTER X

ELECTRONIC COMMERCE

Article X-01: Objective, Scope and Coverage

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of WTO rules to electronic commerce. They agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce under the provisions of this [*Chapter/Sub-section*].

2. The Parties confirm that this Agreement applies to electronic commerce. In the event of an inconsistency between this [*Chapter/Sub-section*] and another [*Chapter/Sub-section*] of this Agreement, the other [*Chapter/Sub-section*] shall prevail to the extent of the inconsistency.

3. Nothing in this [*Chapter/Sub-section*] imposes obligations on a Party to allow a delivery transmitted by electronic means except in accordance with the obligations of that Party under the other [*Chapter/Sub-section*] of this Agreement.

Article X-02: Customs Duties on Electronic Deliveries

1. The Parties agree that a delivery transmitted by electronic means shall not be subject to customs duties, fees or charges.

2. For greater clarity, paragraph 1 does not prevent a Party from imposing internal taxes or other internal charges on a delivery transmitted by electronic means, provided that such taxes or charges are imposed in a manner consistent with the other [*Chapter/Sub-section*] of this Agreement.

Article X-03: Trust and Confidence in Electronic Commerce

Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce and, when doing so, shall take into due consideration international standards for data protection of relevant international organisations of which both Parties are a member.

Article X-04: General Provisions

Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

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- (a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- (b) interoperability, innovation and competition in facilitating electronic commerce;
- (c) facilitating the use of electronic commerce by small and medium sized enterprises.

Article X-05: Dialogue on E-Commerce

1. Recognising the global nature of electronic commerce, the Parties agree to maintain a dialogue on issues raised by electronic commerce, which will *inter alia* address:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services,
- (b) the liability of intermediary service providers with respect to the transmission, or storage of information,
- (c) the treatment of unsolicited electronic commercial communications,
- (d) the protection of personal information and the protection of consumers and businesses from fraudulent and deceptive commercial practices in the sphere of electronic commerce.

2. The dialogue in Paragraph 1 may take the form of exchange of information on the Parties' respective laws, regulations, and other measures on these issues, as well as sharing experiences on the implementation of such laws, regulations, and other measures.

3. Recognizing the global nature of electronic commerce, the Parties affirm the importance of actively participating in multilateral fora to promote the development of electronic commerce.

Article X-06: Definitions

For purposes of this Chapter:

delivery means a computer program, text, video, image, sound recording or other delivery that is digitally encoded; and

electronic commerce means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

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9. COMPETITION

Canada-European Union CETA Negotiations
As agreed on April 21, 2010

COMPETITION POLICY

Article X-01: Competition Policy

1. The Parties recognize the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalization.

2. Each Party shall take appropriate measures to proscribe anti-competitive business conduct, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement.

3. The Parties shall cooperate on matters relating to proscribing anti-competitive business conduct in the free trade area in accordance with the *Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws*, entered into force on 17 June 1999, or any successor *Agreement*.

4. The measures referred to in paragraph 2 shall be consistent with the principles of transparency, non-discrimination and procedural fairness. Exclusions from the application of competition law shall be transparent. Each Party shall make available to the other Party public information concerning such exclusions provided under its competition laws.

5. In this Article, “anti-competitive business conduct” means anti-competitive agreements, concerted practices or arrangements by competitors; anti-competitive practices by an enterprise that is dominant in a market; and mergers with substantial anti-competitive effects.

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[EU: Article X-02 Public enterprises, monopolies and enterprises entrusted with special or exclusive rights

Each Party shall ensure that public enterprises, monopolies and enterprises entrusted with special or exclusive rights are subject to their respective competition laws referred to above. The parties may not apply these laws in so far as their application obstructs the performance, in law or in fact, of the particular tasks assigned to the enterprises in question.]

Article X-03: Dispute Settlement

1. Neither Party may have recourse to state-to-state, investor-state, or any other dispute settlement procedure under this Agreement for any matter arising under this chapter.

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[Note: Once finalized, these definitions will need to be integrated in and made consistent with chapter on institutional provisions]

CHAPTER [XX]

Institutional, General and Final Provisions

EXCEPTIONS

Article X.01: Definitions

For purposes of this Chapter:

competition authority means:

- (a) for Canada, the Commissioner of Competition or a successor notified to the other Party through the Coordinators; and
- (b) for the European Union, the European Commission as to its responsibilities pursuant to the competition laws of the European Union or a successor notified to the other Party through the Coordinators.

information protected under its competition laws means:

- (a) for Canada, information within the scope of Section 29 of the *Competition Act*, R.S. 1985, c.34, or a successor provision; and
- (b) for the European Union, information within the scope of Article 28 of Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, or Article 17 of Council Regulation No 139/2004 on the control of concentrations between undertakings, or any successor provisions.

Article X.05: Disclosure of Information

...

- 2. In the course of a dispute settlement procedure under this Agreement
 - (a) a Party is not required to furnish or allow access to information protected under its competition laws; and
 - (b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

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(as shared in m.d.209/13)

With subsequent change of 1 October (deletion of reference to Art 6)

10. STATE ENTERPRISES, MONOPOLIES AND ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES

Chapter on Initial Provisions and Definitions

Article X

Unless otherwise specified in this Agreement, each Party shall ensure that a person that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

Chapter on State Enterprises, Monopolies and Enterprises granted Special Rights or Privileges

Article 1

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

- (a) "State Enterprise" means owned or controlled by a Party
- (b) "Monopoly" means an entity of a commercial character, including a consortium or government agency, that in a relevant market in the territory of a Party is designated 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.
- (c) "Covered entity" means:
 - i) a monopoly; or
 - ii) a supplier of a good or service if it is one of a small number of services or goods suppliers authorised or established, formally or in effect, by a Party and the Party substantially prevents competition among those suppliers in its territory; or
 - iii) any entity that has been formally or in effect granted by a Party, at central or sub-central level, any special rights or privileges, substantially affecting the ability of any other enterprise to provide the same good or service in the same geographical area

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under substantially equivalent conditions, and allowing it to escape, in whole or in part, competitive pressures or market constraints;¹ or

iv) a state enterprise.

- (d) "Designate" means to establish or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service.
- (e) "Non-discriminatory treatment" means the better of national treatment and most-favoured-nation treatment as set out in this Agreement.
- (f) "In accordance with commercial considerations" means consistent with customary business practices of a privately held enterprise in the relevant business or industry.

Article 2

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 and 2, which are hereby incorporated into and made part of this Agreement and shall apply.

2. This Chapter does not apply to procurement by a Party for goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods and services for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article II of (Chapter XX - Public procurement). *[to be checked against text of procurement chapter – link Investment and CBTS]*

3. This Chapter shall not apply to sectors set out in Article XX of CBTS and Article YY of the Investment chapter

4. Articles 4 and 5 of this Chapter do not apply to measures of a covered entity where a National Treatment or MFN reservation of a Party, as set out in that Party's schedule in Annex X, would be applicable if the same measures had been adopted or maintained by that Party.

Article 3

1. Without prejudice to the Parties' rights and obligations under this Agreement, nothing in this Chapter prevents Parties from designating or maintaining state enterprises or monopolies or from granting enterprises special rights or privileges.

2. In the case of enterprises covered by this Chapter the Parties shall not require or encourage these enterprises to act in a manner inconsistent with this Agreement.

¹ For greater certainty, 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.

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Article 4

Each Party shall ensure that a covered entity accords non-discriminatory treatment with regard to the purchase or sale of a good from or to the other Party in its territory, and to the provision or receipt of a service supplied to or by a service supplier of the other Party in its territory, including when these goods or services are supplied to or by an investment of an investor of the other Party.

Article 5

1. Except to fulfill the purpose² for which a monopoly has been created or for which special rights or privileges have been granted, or in the case of a state enterprise to fulfill its public mandate, and provided that the entity's conduct is consistent with the provisions in Article 4 of this Chapter and the (Chapter XX – Competition), each Party shall ensure that a covered entity 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.

2. A covered entity set out in Article 1(c)(ii) through (iv) acting in accordance with Article 5.1 shall be deemed to be in compliance with the obligations set out in Article 4.

² Such as public service obligations or regional development