

## **Non-Market Policies and Practices**

## NON-MARKET POLICIES AND PRACTICES

### Preamble

*Affirming* that both Parties maintain market-oriented economic systems, which promote fair competition as well as the interests of workers, businesses, and consumers, both in their own markets and in global markets;

*Affirming* that the Parties share the view that for the international trading system to function properly, economies participating in that system must maintain market-oriented economic systems and adopt and pursue market-oriented policies and practices that promote fair competition, a level playing field, and equitable and reciprocal treatment;

*Recognizing* that non-market policies and practices, particularly those employed by a non-Party operating a non-market economic system, unfairly harm workers, businesses, and consumers in territories in which the government maintains market-oriented economic systems and adopt and pursue market-oriented policies and practices, including those in the Parties;

*Recognizing* that non-market policies and practices distort trade, investment, and competition and can lead to severe, persistent, and anti-competitive non-market excess capacity, including an undue concentration of production, in targeted sectors, including globally;

*Recognizing* that the harmful effects of non-market policies and practices undermine relations between economies and global security and stability; and

*Recognizing* that non-market policies and practices, including in pursuit of non-market industrial targeting, have been used by a non-Party operating a non-market economic system to create dependencies that increase the vulnerability to economic coercion of other economies maintaining market-oriented economic systems,

the Parties hereby agree as follows:

### Article X.1: Shared Values

1. The Parties affirm that the Parties maintain market-oriented economic systems and pursue market-oriented policies and practices, which promote fair competition as well as the interests of workers, businesses, and consumers, both in their own markets and in global markets.

2. The Parties recognize that non-market policies and practices – particularly those employed by a non-Party operating a non-market economic system – harm workers, businesses, and consumers in economies that maintain market-oriented economic systems and adopt and pursue market-oriented policies and practices; distort trade, investment, and competition; and undermine global security and stability, including by creating dependencies that increase the

vulnerability to economic coercion of economies maintaining market-oriented economic systems.

3. The Parties affirm that non-market policies and practices of concern include:
  - (a) adopting and pursuing a non-market industrial plan that targets a specific industry for domestic or global market dominance by domestic enterprises;
  - (b) directing or pressuring public enterprises engaged in commercial activities or private enterprises to achieve capacity, production, or export levels or market share targets in accordance with a non-market industrial plan;
  - (c) creating or maintaining non-market excess capacity in industrial sectors through public enterprises or private enterprises;
  - (d) directing, pressuring, or otherwise interfering with commercial decision making by public enterprises or private enterprises;
  - (e) placing public officials or officials of the governing political party in private enterprises to monitor, direct, pressure, or otherwise influence commercial decision making;
  - (f) deploying subsidies in pursuit of non-market industrial policy objectives, including via policy banks, state-owned commercial banks, and government investment or guidance funds;
  - (g) promoting and sustaining domestic companies as national champions through financial support and regulatory and other preferences;
  - (h) providing special preferences and competitive advantages to public enterprises engaged in commercial activities;
  - (i) directing or allowing public authorities to exercise their authority in a discriminatory manner, including by treating domestic enterprises more favorably than foreign or foreign-invested enterprises;
  - (j) using selective or arbitrary application or enforcement of competition law to achieve industrial policy objectives;
  - (k) failing to maintain laws and regulations governing insolvency and bankruptcy, or preventing or otherwise interfering with the restructuring according to those laws and regulations, of insolvent or bankrupt enterprises, including through liquidation, in pursuit of the objectives of an industrial plan;
  - (l) measures that require or pressure the transfer or disclosure of technology, intellectual property (including trade secrets), or confidential business information such that the transfer or disclosure is not consistent with principles

of fair competition, including measures that direct or support the theft of technology, intellectual property (including trade secrets), or confidential business information in furtherance of non-market industrial targeting;<sup>1</sup>

- (m) engaging in economic coercion, whether through public authorities, public enterprises engaged in commercial activities, or private enterprises;
- (n) directing the judiciary to render decisions that serve industrial policy objectives;
- (o) pursuing unique national standards when international standards already exist in order to leverage the economic power of the domestic market to promote or compel the adoption of those standards in global markets;
- (p) failing to respect labor rights, including by failing to adopt, maintain, and effectively enforce labor laws that protect those rights,<sup>2</sup> which can artificially lower costs for domestic enterprises;<sup>3</sup>
- (q) lack of effective enforcement of environmental laws and regulations, which can artificially lower costs for domestic enterprises;<sup>4</sup>
- (r) failing to publish final central level and regional level laws, regulations, and other measures that provide subsidies or other financial support to enterprises;
- (s) failing to publish all central level and regional level laws, regulations, and other measures that impact the rights and obligations of persons; and
- (t) preventing free access to and sharing of relevant information on which to base commercial decisions.

4. The Parties affirm the importance of the right and ability of each Party to regulate in the public interest, promoting the welfare of workers, businesses, and consumers and helping to establish a level playing field for all market participants. The Parties also affirm their right

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<sup>1</sup> This subparagraph is without prejudice to the rights, obligations, and flexibilities that WTO Members have under the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), including those reaffirmed by the 2001 Declaration on the TRIPS Agreement and Public Health.

<sup>2</sup> For purposes of this definition, labor rights means: the rights as stated in the International Labor Organization's *Declaration on Fundamental Principles and Rights at Work*, as adopted in 1998 and amended in 2022; acceptable conditions of work with respect to minimum wages and hours of work; and the right to be free from discrimination or retaliation for participating in investigations or other proceedings related to the enforcement of labor laws or otherwise reporting in good faith to a competent authority facts concerning possible violations of labor laws.

<sup>3</sup> Nothing in this subparagraph shall be construed to affect any rights or obligations under Chapter X (Labor) or to confer any new rights or impose any new obligations with respect to Chapter X (Labor).

<sup>4</sup> Nothing in this subparagraph shall be construed to affect any rights or obligations under Chapter X (Environment) or to confer any new rights or impose any new obligations with respect to Chapter X (Environment).

to pursue policies or practices for purposes of health, safety, labor, environmental, sustainability, or national security objectives.

### **Article X.2: Deterring and Countering Non-Market Policies and Practices**

1. Each Party shall adopt or maintain domestic measures that deter or counter non-market policies and practices pursued by a non-Party operating a non-market economic system, including their negative effects.

2. The Parties shall regularly consult on effective ways, including joint or coordinated actions, to deter and counter such non-market policies and practices pursued by the non-Party operating a non-market economic system.

3. The Parties shall identify priority sectors; share publicly available data pertaining to those sectors, or non-public data to the extent permissible under the laws of each Party; develop a shared understanding of conditions in those sectors; and develop coordinated action to increase resilience and reduce vulnerabilities and dependencies in supply chains so as to enhance their economic security.

4. The Parties shall endeavor to work together, and in concert with non-Parties operating market-oriented economic systems, to identify, prevent, deter, and counter the non-market policies and practices pursued by a non-Party operating a non-market economic system. These efforts may include the use of existing trade tools or the development of new trade tools as needed, as well as bilateral, regional, or multilateral cooperation, including in WTO committees and in WTO disputes. In support of these efforts, the Parties shall provide for the sharing of information, data, and analysis concerning relevant non-market policies and practices.

### **Article X.3: Non-Market Industrial Targeting**

1. The Parties share serious concerns with non-market industrial targeting, which undermines fair, competitive, market-oriented economic conditions and harms their workers, businesses, and consumers.

2. Each Party shall adopt or maintain measures that deter or counter non-market industrial targeting, including non-market industrial targeting pursued by a non-Party operating a non-market economic system, and its negative effects.

3. In furtherance of the Parties' obligations under Article X.3.3, the Parties shall identify priority industries negatively impacted by, or likely to be negatively impacted by, non-market industrial targeting and shall share publicly available data pertaining to those industries, or non-public data to the extent permissible under the laws of each Party. The Parties shall also seek to develop a shared understanding of conditions in those industries and to develop joint or coordinated actions to increase resilience and to reduce vulnerabilities and dependencies in relevant supply chains in order to enhance the economic security of the Parties.

4. The Parties shall regularly consult on these and other effective ways to work together, and with non-Parties that maintain market-oriented economic systems, to deter and counter non-market industrial targeting pursued by a non-Party operating a non-market economic system and its negative effects, including through the use of existing trade tools and the development of new trade tools as needed.

#### **Article X.4: Non-Market Excess Capacity**

1. The Parties share serious concerns with non-market excess capacity, which undermines fair, competitive, market-oriented economic conditions, and harms their workers, businesses, consumers, and the environment, including by generating excessive greenhouse gas emissions through unnecessary production.

2. The Parties also share serious concerns with the policies and practices of a non-Party operating a non-market economic system that create or maintain non-market excess capacity through the establishment or expansion of production capacity in other territories.

3. Each Party shall adopt or maintain measures that are effective in addressing non-market excess capacity, including non-market excess capacity pursued by a non-Party operating a non-market economic system, and its negative effects.

4. In furtherance of the Parties' obligations under Article X.3.3, the Parties shall identify particular sectors of concern and explore effective ways to work together, and with other non-Parties that maintain market-oriented economic systems, to address non-market excess capacity in those sectors, including through the use of existing trade tools and the development of new trade tools as needed.

#### **Article X.5: Technology Transfer<sup>5</sup>**

1. The Parties affirm that technology transfer that is voluntary and on mutually agreed terms can promote fair competition and can be mutually beneficial for growth and development.

2. The Parties share serious concerns with measures that require or pressure the transfer or disclosure of technology, intellectual property (including trade secrets), or confidential business information such that the transfer or disclosure is not consistent with principles of fair competition, including because such measures hurt the interests of all economies by distorting investment decisions and trade flows and by harming their workers, businesses, innovators, and consumers.

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<sup>5</sup> This Article is without prejudice to the rights, obligations, and flexibilities that WTO Members have under the provisions of the TRIPS Agreement, including those reaffirmed by the 2001 Declaration on the TRIPS Agreement and Public Health.

3. Technology transfer policies and practices of concern include the following activities, including in cases where the transfer of technology, intellectual property (including trade secrets), or confidential business information is not accomplished:

- (a) unauthorized intrusion into, or unauthorized misappropriation from, computer networks or physical facilities to access foreign enterprises' technology, intellectual property (including trade secrets), or confidential business information, that is undertaken by a government or by entities that are owned, controlled, guided, or directed by a government, for the purpose of providing or securing a competitive commercial advantage;
- (b) the acquisition of foreign technologies on non-market-oriented terms by a government or by entities that are owned, controlled, guided, or directed by a government;
- (c) requiring or pressuring, formally or informally, foreign persons to transfer technology to domestic persons as a condition for, *inter alia*:
  - (i) approving any administrative or licensing requirements;
  - (ii) operating in the domestic market, or otherwise having access to the domestic market, including through joint venture requirements or limitations on equity ownership by foreign enterprises; or
  - (iii) receiving or continuing to receive any advantages conferred by a government;
- (d) requiring or pressuring, formally or informally, foreign persons to use or favor technology that is owned by or licensed to domestic persons as a condition for, *inter alia*:
  - (i) approving any administrative or licensing requirements;
  - (ii) operating in the domestic market, or otherwise having access to the domestic market; or
  - (iii) receiving or continuing to receive any advantages conferred by a government;
- (e) supporting or directing the outbound foreign direct investment activities of domestic enterprises or individuals aimed at acquiring foreign companies and assets to obtain foreign technology with respect to sectors and industries targeted by its industrial plans; and
- (f) requiring or pressuring, formally or informally, foreign persons to disclose technology, intellectual property (including trade secrets), or confidential business information not necessary to show conformity with relevant

administrative or regulatory requirements or not needed for law enforcement purposes.

4. Each Party shall adopt or maintain measures that are effective in addressing the policies and practices referred to in paragraph 3 as carried out by third parties, including by a non-Party operating a non-market economic system that seeks to require or pressure the transfer of foreign technologies to its territory for the purpose of providing or securing a competitive commercial advantage for domestic enterprises.

5. The Parties shall regularly consult on effective ways to work together, and with non-Parties that maintain market-oriented economic systems, to deter and counter the policies and practices referred to in paragraph 3, including through the use of existing trade tools and the development of new trade tools as needed.

#### **Article X.6: Economic Coercion**

1. The Parties share serious concerns with economic coercion, which seeks to exploit economic vulnerabilities and dependencies to undermine fair, competitive, market-oriented economic conditions and harms their workers, businesses, and consumers. The Parties also recognize that economic coercion may be disguised as a legitimate regulatory or public policy measure unrelated to the strategic objective that it is intended to advance and economic coercion may be pursued indirectly through government entrustment or direction given to public enterprises or private enterprises.

2. Each Party shall endeavor to adopt or maintain measures that are effective in deterring and countering economic coercion, including economic coercion pursued by a non-Party operating a non-market economic system.

3. The Parties shall regularly consult on effective ways to work together, and with non-Parties operating market-oriented economic systems, to deter and counter the use of economic coercion, particularly by a non-Party operating a non-market economic system, including through the use of existing trade tools and the development of new trade tools as needed.

#### **Article X.7: Unfair Trade Practices by Non-Market Economies**

1. The Parties recognize the importance of maintaining and applying special antidumping methodologies to counter dumping by WTO Members whose economies have been determined by other WTO Members to be non-market economies for purposes of their trade remedy laws, as permitted by the GATT 1994 and the Antidumping Agreement.

2. The Parties shall work together, and with other WTO Members, to enforce the existing obligations of such non-market economies to notify their subsidies, and to explore the development of new, more effective ways to ensure the transparency of the subsidy practices of those non-market economies.



3. The Parties shall regularly consult and share information on the subsidy practices of such non-market economies.

#### **Article X.8: Certain Non-Market Economy Trade Agreements**

1. For the purposes of this Article:

**non-market economy** is an economy that, on the date of signature of this Agreement, a Party has determined to be a non-market economy for purposes of their trade remedy laws.

**free trade agreement** means, for goods, an agreement pursuant to Article XXIV of GATT 1994 and, for services, an agreement pursuant to Article V of GATS.

2. Each Party expresses its intention not to enter into a free trade agreement with a non-market economy. In the event that a Party changes its intention and decides to commence or resume the negotiation of a free trade agreement with a non-market economy, it shall inform the other Party of its intention to commence or resume such free trade agreement negotiation at least three months prior to its commencement or resumption.

3. Upon request of the other Party, a Party intending to commence or resume the negotiation of a free trade agreement with a non-market economy shall provide as much information as possible regarding the objectives for that negotiation.

4. As early as possible, and no later than 30 days before the date of signature, a Party intending to sign a free trade agreement with a non-market economy shall provide the other Party with an opportunity to review the full text of the free trade agreement, including any annexes and side instruments, in order for the Party to be able to review the free trade agreement and assess its potential impact on this Agreement. If the other Party requests that the text be treated as confidential, the Party shall maintain the confidentiality of the text.

5. For the avoidance of doubt, entry by a Party into a free trade agreement with a non-market economy will allow the other Party to terminate this Agreement under Article 8.7 (Termination).

#### **Article X.9: Accountability**

1. In the event that there is concern that a Party no longer intends, or is able, to maintain a market-oriented economic system, or has failed to uphold its commitments pursuant to this Chapter, the other Party may request in writing consultations with the Party.

2. If a Party considers that the other Party has failed to maintain a market-oriented economic system, or has failed to uphold its commitments pursuant to this Chapter, the Party may terminate this Agreement, such termination taking effect immediately after delivery of written notice to the other Party.

## Article X.10: Definitions

For the purposes of this Chapter:

**Antidumping Agreement** means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

**economic coercion** means the use, or threatened use, of measures affecting trade and investment in an abusive, arbitrary, or pretextual manner to pressure, induce, or influence a foreign government into taking, or not taking, a legitimate decision or action in order to achieve a strategic political or policy objective. For greater certainty, economic coercion does not include measures that are adopted and maintained in a transparent manner, in good faith, and for the purpose of a legitimate public policy objective, including health and safety regulations, environmental regulations, trade remedies, national security measures and sanctions, and measures to protect the integrity and stability of financial systems and financial institutions from abuse;

**market-oriented economic conditions** means conditions characterized by fair, competitive, market-oriented outcomes, such as those conditions prevailing in liberal democracies. The following elements indicate that such conditions exist:

- (a) an effective framework supporting and facilitating fair competition and market-based outcomes is maintained, including effective laws governing competition, labor, environment, corporations, bankruptcy, and private property;
- (b) persons may make their own commercial, investment, and resource allocation decisions freely and in response to market signals;
- (c) private property rights are respected, including the right to own land;
- (d) labor rights are respected, including the rights of workers to freely determine their individual and collective labor relationships;
- (e) persons are able to freely access and share relevant information on which to base their commercial decisions;
- (f) enterprises are subject to internationally recognized accounting standards, including independent accounting;
- (g) all laws, regulations, and other measures that impact the rights and obligations of persons are published;
- (h) persons may enforce their rights through independent legal processes, such as an independent judicial system; and

- (h) regulatory authorities operate, and all laws, regulations, and other measures affecting trade or investment are applied and administered, in a fair, transparent, impartial, and reasonable manner;

**market-oriented economic system** means an economic system in which the decisions regarding investment, production, and distribution are principally determined by the price signals created by the forces of supply and demand, and in which the government routinely pursues policies and practices that give rise to market-oriented economic conditions;

**non-market excess capacity** means capacity that is created or maintained in a manner that deviates from market-oriented behavior, or that is the result of non-market policies or practices or of measures or decisions of non-market oriented actors;

**non-market industrial targeting** means the adoption and pursuit of a non-market industrial plan that targets a specific industry for domestic or global market dominance or that establishes capacity, production, export level, or market share targets for domestic enterprises to achieve;

**non-market policies and practices** means interventions by a government that undermine market-oriented economic conditions so as to advantage domestic enterprises or disadvantage foreign enterprises;<sup>6</sup>

**non-market economic system** means an economic system in which a government routinely intervenes in the market in ways that undermine fair, market-oriented decisions or outcomes by providing advantages to domestic enterprises or by creating disadvantages for foreign enterprises, including through the use of non-market policies and practices, in order to promote the domination of domestic enterprises in the domestic market or in global markets; and

**public enterprise** means an enterprise that is principally engaged in commercial activities, and in which a government:<sup>7</sup>

- (a) directly or indirectly<sup>8</sup> owns more than 50 percent of the share capital;
- (b) controls, through direct or indirect ownership interests, the exercise of more than 50 percent of the voting rights;
- (c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body; or

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<sup>6</sup> For greater certainty, non-market policies and practices do not include policies and practices undertaken to restore or create market-oriented economic conditions.

<sup>7</sup> For greater certainty, a government may include a political party organization, or members thereof assigned by the political party organization to work for or be imbedded in an enterprise, in an economy that maintains a *de jure* or *de facto* one-party state.

<sup>8</sup> For the purposes of this definition, the term “indirectly” refers to situations in which a government owns or controls an enterprise through one or more public enterprises of the government. The term “indirectly” also includes a circumstance where, in aggregate, the government controls an enterprise even if that ownership is through multiple ownership chains or through various subsidiaries.

(d) holds the power to control<sup>9</sup> the enterprise;<sup>10</sup>

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<sup>9</sup> For greater certainty, a government does not hold the power to control an enterprise by virtue of its regulatory authority over the enterprise.

<sup>10</sup> For the purposes of this paragraph, a government holds the power to control the enterprise if it can determine, direct, or initiate important matters affecting the enterprise, excluding minority shareholder protections. In determining whether a government has this power, all relevant legal and factual elements shall be taken into account on a case-by-case basis. Those elements may include the power to determine, direct, or initiate commercial operations, including major expenditures or investments; issuances of equity or significant debt offerings; or the restructuring, merger, or dissolution of the enterprise. Covenants relating to a loan or a similar financing arrangement by a government to an enterprise, regardless of whether accompanied by the creation of a secured interest over securities or other assets of the enterprise in favor of the government, do not, by themselves, confer control.