CHAPTER 17

STATE-OWNED ENTERPRISES,
ENTERPRISES GRANTED EXCLUSIVE OR SPECIAL PRIVILEGES

ARTICLE 17.1

Definitions

For the purposes of this Chapter, the following definition apply:

(a) "commercial activities" means activities undertaken by an enterprise with a view to making a profit, the end result of which is the production of a good or supply of a service which will be sold in the relevant market in quantities and at prices determined by the enterprise[1];

(b) "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 operating according to market-economy principles in the relevant business or industry;

(c) "enterprise granted exclusive or special privileges" means an enterprise, public or private, including a subsidiary, to which a Party has granted, formally or in effect, exclusive or special privileges;

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

(d) "exclusive or special privileges" means rights or privileges granted by a Party to a sole enterprise or to a limited number of enterprises authorised to supply a good or a service, that are not granted according to objective, proportional and non-discriminatory criteria, taking into account the specific sectoral regulation under which the granting of the right or privilege has taken place, thereby substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions[1];

(e) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in Article I:3(c) of GATS and, where applicable, Articles 1 (b), (c) and (d) of the Annex on Financial Services to GATS; and

(f) "state-owned enterprise" means an enterprise owned or controlled by a Party[2].

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[1] For greater certainty, the granting of a licence to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself an exclusive or special privilege.

[2] For the purposes of this definition, the term "owned or controlled" refers to situations in which a Party owns more than 50 % of the share capital or controls the exercise of more than 50 % of the voting rights, or otherwise exercises an equivalent degree of control over the enterprise according to the governance rules of that enterprise.

ARTICLE 17.2

Scope

1. This Chapter applies to state-owned enterprises and to enterprises engaged in commercial activities to which a Party has granted, formally or in effect, exclusive or special privileges. If an enterprise combines commercial and non-commercial activities, only the commercial activities of that enterprise are covered by this Chapter.

2. This Chapter does not apply to the procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production or the supply of a good or service for commercial sale, irrespective of whether that procurement is a "covered procurement" within the meaning of Article 12.3.

3. This Chapter does not apply to a service supplied in the exercise of governmental authority.

4. This Chapter does not apply to state-owned enterprises or to enterprises granted exclusive or special privileges, if in any one of the 3 (three) previous consecutive fiscal years the annual revenue derived from the commercial activities covered by this Chapter of the enterprise concerned was less than 200 (two hundred) million special drawing rights.

5. This Chapter does not apply to the commercial activities of state-owned enterprises and enterprises granted exclusive or special privileges with respect to sectors or subsectors for which specific commitments are not made pursuant to Appendices 17-A-1 and 17-A-2 or to sectors or subsectors for which specific commitments are made subject to limitations pursuant to Appendices 17-A-1 and 17-A-2, to the extent of those limitations and subject to the terms and conditions set out therein.

6. This Chapter does not apply to state-owned enterprises in the defence sector.

7. This Chapter does not apply to state-owned enterprises or enterprises granted exclusive or special privileges referred to in Appendices 17-A-1 and 17-A-2. Article 17.4 does not apply to state-owned enterprises listed in Appendix 17-A-1.

ARTICLE 17.3

General provisions

1. Each Party affirms its rights and obligations under Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as under Article VIII of GATS.

2. Nothing in this Chapter prevents a Party from establishing or maintaining state-owned enterprises, designating or maintaining monopolies, or granting enterprises exclusive or special privileges.

ARTICLE 17.4

Commercial considerations

1. Each Party shall ensure that its state-owned enterprises and enterprises granted exclusive or special privileges, when engaging in commercial activities in the territory of a Party, act in accordance with commercial considerations in their purchases or sales of goods or services, except to fulfil their public mandate or purpose[1] as provided for in a Party's law.

2. Paragraph 1 does not preclude these enterprises from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price, if such different terms or conditions are made in accordance with commercial considerations; or

(b) refusing to purchase or supply goods or services, if such refusal is made in accordance with commercial considerations.

[1] For greater certainty, the concept of "public mandate or purpose" includes, among others, the activities of national banks regarding the purchase of goods and services under federal procurement laws, and lending policies in support of affordable housing, exports or imports, micro, small and medium-sized enterprises and farmers or any tasks assigned by a Party to its state-owned enterprises and enterprises granted exclusive or special privileges by a Party. The concept of "public mandate or purpose" also includes activities carried out by a public entity or trust relating to social security or public retirement plans.

ARTICLE 17.5

Transparency

1. A Party which has reason to believe that its interests are being adversely affected by the commercial activities of a state-owned enterprise or of an enterprise granted exclusive or special privileges of the other Party may request the other Party to provide information in writing about the commercial activities of that enterprise which are subject to the provisions of this Chapter. The requested Party shall, to the extent possible, provide an answer in a timely manner.

2. Requests for information referred to in paragraph 1 shall indicate the enterprise, the goods services and markets concerned and indicate the interests under this Chapter that the requesting Party believes to be adversely affected.

ARTICLE 17.6

Cooperation

The Parties shall cooperate by:

(a) exploring the possibility to make additional commitments on state-owned enterprises and enterprises granted exclusive or special privileges; and

(b) exchanging experiences in the development of best practices on the corporate governance of state-owned enterprises.

ARTICLE 17.7

Amendment of Annex 17-A

Annex 17-A shall be subject to review by the Trade Council 5 (five) years after the date of entry into force of this Agreement with a view to exploring the possibility of making additional commitments. The Trade Council may adopt a decision to amend Annex 17-A as appropriate.

CHAPTER 18

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 18.1

Objectives and scope

1. The objective of this Chapter is to enhance the integration of sustainable development in the Parties' trade and investment relationship, notably by establishing principles and actions concerning labour[1] and environmental aspects of sustainable development of specific relevance in a trade and investment context.

[1] For the purposes of this Chapter, the term "labour" means the strategic objectives of the International Labour Organization under the Decent Work Agenda, which is expressed in the ILO Declaration on Social Justice for a Fair Globalization.