

CHAPTER FIFTEEN

COMPETITION POLICY,
MONOPOLIES AND STATE ENTERPRISES

第十五章

竞争政策,
垄断和国有企业

Article 15.1: Competition Law and Policy

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognising that such measures will enhance the fulfilment of the objectives of this Agreement. To this end, the Parties shall consult from time to time on the effectiveness of measures undertaken by each Party.
2. Each Party recognises that the measures it adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures shall be consistent with the principles of transparency, non-discrimination, and procedural fairness. Exclusions from these measures shall be transparent. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.
3. The Parties recognise the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation, and exchange of information relating to the enforcement of competition laws and policies in the free trade area.
4. No recourse may be had to any form of dispute settlement under this Agreement for any matter arising under this Article.

第十五条第1款：竞争法与政策

1. 每一方应采取或维持禁止反竞争行为的措施，并对此采取适当行动，认识到此类措施将有助于实现本协议的目标。为此，各方应就每一方所采取措施的有效性进行定期磋商。
2. 每一方承认，其采取或维持的禁止反竞争行为的措施以及其根据这些措施采取的执法行动应与透明度、非歧视和程序公平的原则相一致。排除这些措施的透明度应得到保障。每一方应定期评估其自身的排除情况，以确定其是否必要以实现其首要政策目标。
3. 各方承认其当局之间合作与协调的重要性，以进一步在自由贸易区有效执行竞争法。各方应在竞争法执行政策问题上进行合作，包括相互法律援助、通知、磋商和信息交换，这些都与在自由贸易区执行竞争法律和政策有关。
4. 任何一方不得根据本协议就本条项下事项寻求任何形式的争端解决。

Article 15.2: Monopolies¹

1. This Agreement is not to be construed to prevent a Party from maintaining or designating a monopoly.
2. If a Party intends to designate a monopoly and the designation may affect the interests of a person of the other Party, the designating Party shall, whenever possible, provide prior notification, in writing, of the designation to the other Party.
3. Each Party shall ensure, through regulatory control, administrative supervision, or the application of other measures, that a privately-owned monopoly that it designates or a government monopoly that it maintains or designates:

- (a) acts in a manner that is not inconsistent with the Party’s obligations under this Agreement whenever 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;

¹ For the purposes of this Article and Article 15.3, “maintain” means designated prior to the date of entry into force of this Agreement and existing on that date.

第15.2条：垄断¹

1. 本协议不得解释为禁止一方维持或指定垄断。
2. 如果一方打算指定垄断，且指定可能影响另一方当事人的利益，指定方应尽可能以书面形式事先通知另一方当事人该指定。
3. 各方应通过监管控制、行政管理或采取其他措施，确保其指定的私营垄断或其维持或指定的政府垄断：

- (a) 在该垄断行使与垄断商品或服务相关的、一方转让给它的任何监管、行政或其他政府权力时，例如授予进出口许可证、批准商业交易或征收配额、费用或其他收费的权力，该方的行为均不应与该协议项下该方的义务相抵触；

¹ 根据本条和第15.3条的目的，“维持”是指在本协定生效之前指定的，并在该日期存在的。

- (b) except to comply with terms of its designation² that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market³, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale⁴;
- (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service providers of the other Party when it purchases or sells the monopoly good or service in the relevant market⁵; and
- (d) does not use its monopoly position to engage, directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolised market in its territory, if such practices adversely affect a covered investment.

4. Paragraph 3 does not apply to government procurement.

Article 15.3: State Enterprises

- 1. This Agreement is not to be construed to prevent a Party from maintaining or establishing a state enterprise.

² For greater certainty, terms of designation may be amended.

³ For greater certainty, this provision applies 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.

⁴ This provision is not to be construed to prevent a designated monopoly from supplying the monopoly good or service in accordance with specified rates approved, or other terms or conditions established, by a regulatory authority of a Party, provided that such rates or other terms or conditions are not inconsistent with subparagraph (c) or (d).

⁵ For greater certainty, this provision applies to the sale of the monopoly good or service in the case of a designated monopoly supplier and to the purchase of the monopoly good or service in the case of a designated monopoly buyer.

(b) 除遵守与第(c)项或第(d)项不一致的指定² 条款外，该方在相关市场³, 购买或销售垄断商品或服务时，仅应根据商业考虑行事，包括关于价格、质量、可用性、市场性、运输以及购买或销售的其他条款和条件⁴；

(c) 对受保护的投资、他方提供的商品和服务提供非歧视待遇，当其在相关市场购买或销售垄断商品或服务时⁵；以及

(d) 不得利用其垄断地位，直接或间接地，包括通过与其母公司、子公司或其他具有共同所有权的企业的交易，在其领土内非垄断市场中从事反竞争行为，如果此类行为对受保护的投资产生不利影响。

4. 第3段不适用于政府采购。

第15.3条：国有企业

- 1. 本协议不得解释为禁止一方维持或设立国有企业。

² 为明确起见，指定条款可进行修改。³ 为明确起见，本条款适用于指定垄断供应商销售指定垄断商品或服务的情况，以及适用于指定垄断购买者购买指定垄断商品或服务的情况。⁴ 本条款不得解释为禁止指定垄断者根据一方监管机构批准的指定费率或其他条款或条件供应垄断商品或服务，前提是此类费率或条款或条件与第(c)项或第(d)项不符。⁵ 为明确起见，本条款适用于指定垄断供应商销售垄断商品或服务的情况，以及适用于指定垄断购买者购买垄断商品或服务的情况。

2. Each Party shall ensure, through regulatory control, administrative supervision, or the application of other measures, that a state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party’s obligations under this Agreement whenever such enterprise exercises 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.

3. Each Party shall ensure that a state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments.

Article 15.4: Differences in Pricing

Articles 15.2 and 15.3 are not to be construed to prevent a monopoly or state enterprise from charging different prices in different markets, or within the same market, if such differences are based on normal commercial considerations, such as taking account of supply and demand conditions.

Article 15.5: Definitions

For the purposes of this Chapter:

delegated means transferring to the monopoly or state enterprise, or authorising the exercise by the monopoly or state enterprise of, governmental authority through a legislative grant, a government order, a directive, or other act;

designate means to establish, designate or authorise, or to expand the scope of, a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

2. 每一方应通过监管控制、行政管理或采取其他措施，确保其维持或设立的国有企业，在行使该方授予它的监管、行政或其他政府权力时，例如征收权力、发放许可证、批准商业交易或征收配额、费用或其他收费，其行为不与本协议项下该方的义务相抵触。

3. 每一方应确保其维持或设立的国有企业在与受保护的投资销售其货物或服务时，给予非歧视待遇。

第十五条第4条： 价格差异

第十五条第2条和第3条不得解释为禁止垄断或国有企业在不同市场或同一市场内收取不同价格，如果这些差异基于正常商业考虑，例如考虑供求条件。

第十五条第5条： 定义

本章规定如下：

转让是指通过立法授予、政府命令、指令或其他行为将政府权力转让给垄断或国有企业，或授权垄断或国有企业行使政府权力；

指定是指在本协定生效日期之后设立、指定或授权，或扩大垄断范围以覆盖额外的商品或服务；

government procurement means procurement by governmental agencies of goods or services, or a combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production of goods or the provision of services for commercial sale or resale;

government monopoly means a monopoly that is owned or controlled through ownership interests by the national government of a Party, or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business sector or industry;

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

monopoly means an entity, including a consortium or government agency, that in a 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 such grant;

non-discriminatory treatment means the better of national treatment or most-favoured-nation treatment, as set out in the relevant provisions of this Agreement, including the terms and conditions set out in the relevant Annexes thereto; and

state enterprise means, except as set out in Annex 15-A, an enterprise owned or controlled through ownership interests, by a Party.

政府采购是指政府机构为政府目的采购商品或服务，或两者的组合，而非以商业销售或转售为目的，或以用于商业销售或转售的商品或服务生产或提供为目的；

政府垄断是指由一方国家政府通过所有权利益拥有或控制的垄断，或由另一家此类垄断拥有或控制；

根据商业考虑是指与相关业务部门或行业中的私营企业正常商业惯例一致；

市场是指商品或服务的地理和商业市场；

垄断是指在一个方的领土内的相关市场中，被指定为商品或服务的唯一提供者或购买者的实体，包括联合体或政府机构，但不包括仅因此类授予而获得独家知识产权的实体；

非歧视待遇是指根据本协定相关条款规定的，较优的国民待遇或最惠国待遇，包括相关附件中规定的条款和条件；国有企业的定义是指，除附件15-A另有规定外，由一方通过所有权利益拥有或控制的实体。

Annex 15-A

Country-Specific Definitions of State Enterprise

For the purposes of Article 15.3.3, “state enterprise” means:

- (a) for Canada, a Crown corporation within the meaning of the *Financial Administration Act*, a Crown corporation within the meaning of any comparable provincial law, or an equivalent entity that is incorporated under other applicable provincial law; and
- (b) for Korea, a public corporation and a quasi-governmental entity within the meaning of the *Act on the Management of Non-Departmental Public Entities*.

附件15-A

国家特定国有企业定义

根据第15.3.3条的规定，“国有企业”是指：

- (a) 对于加拿大，根据《财政管理法》定义的王国公司、根据任何可比省级法律定义的王国公司，或根据其他适用省级法律注册的等效实体；以及
- (b) 对于韩国，根据《非部门公共机构管理法》定义的公共公司和半官方实体。