

CHAPTER THIRTEEN

COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Article 1301: Objectives

Recognizing that conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies and cooperating in matters covered by this Chapter will help secure the benefits of this Agreement.

Article 1302: Competition Law and Policy

- Each Party shall maintain its independence in developing and enforcing its competition law.
- Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to such conduct.
- The measures each Party adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures shall be consistent with principles of transparency, non-discrimination and procedural fairness. Exclusions from these measures shall be transparent. Each Party shall make available to the other Party public information concerning exclusions provided under its competition laws.

第十三章

竞争政策、垄断与国有企业

第1301条：目标

认识到本章所涉行为可能限制双边贸易和投资，缔约方认为禁止此类行为、实施经济上合理的竞争政策以及在本章涵盖事项上开展合作，将有助于确保本协定的效益。

第1302条：竞争法与政策

- 每一方应保持其在制定和执行竞争法方面的独立性。
- 每一方应采取或维持措施以禁止反竞争商业行为，并对此类行为采取适当行动。
- 每一方为禁止反竞争商业行为而采取或维持的措施，以及根据这些措施采取的执法行动，应符合透明度、非歧视和程序公平原则。此类措施的豁免应保持透明。每一方应向另一方提供其竞争法下所规定豁免的公开信息。

4. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.

5. Peru may implement its obligations under this Article through the Andean Community competition laws or an Andean Community enforcement authority.

Article 1303: Consultations

Subject to the independence of each Party to develop, maintain and enforce its competition policy and legislation, the Parties, on request of a Party, shall enter into consultations to foster understanding between them, or to address a specific matter under this Chapter. The requesting Party shall indicate in its request how the matter affects trade or investment between the Parties. The other Party shall give full and sympathetic consideration to the concerns of the requesting Party.

Article 1304: Cooperation

Each Party recognizes the importance of cooperation and coordination between their competition authorities to further effective competition law enforcement in the free trade area. In this regard, the Parties, through their respective competition authorities, shall negotiate a cooperation instrument that may address among other matters, notification, consultation, positive and negative comity, technical assistance and exchange of information.

4. 每一方应定期评估其自身的豁免，以确定这些豁免是否为实现其首要政策目标所必需。

5. 秘鲁可通过安第斯共同体竞争法或安第斯共同体执法机构履行本条项下义务。

第1303条：磋商

在尊重每一方制定、维护和执行其竞争政策及立法的独立性的前提下，应一缔约方请求，缔约方应进行磋商以增进彼此理解，或处理本章项下的具体事项。请求方应在请求中说明该事项如何影响缔约方之间的贸易或投资。另一方应充分并体谅地考虑请求方的关切。

第1304条：合作

每一方认识到其竞争管理机构之间的合作与协调对于进一步推动自由贸易区内有效竞争法执法的重要性。为此，缔约方应通过各自的竞争管理机构谈判一项合作文件，该文件可涉及通知、磋商、积极和消极礼让、技术援助及信息交流等事项。

Article 1305: Designated Monopolies

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly and the designation may affect the interests of the other Party, the designating Party shall, whenever possible, provide prior written notification to the other Party of the designation.

3. Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates, or has designated prior to the date of entry into force of this Agreement:
 - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever 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;

 - (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraphs (c) or (d);

 - (c) provides non-discriminatory treatment to covered investments, to goods of the other Party and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

第1305条：指定垄断

1. 本协议任何条款不得解释为阻止缔约方指定垄断。

2. 如一缔约方拟指定垄断且该指定可能影响另一缔约方利益，指定方应尽可能在指定前向另一缔约方提供事先书面通知。

3. 每一方应确保其在本协定生效日期后指定的任何私营垄断及在本协定生效日期前或之后指定的任何政府垄断：
 - (a) 在该垄断行使缔约方授予其与垄断商品或服务相关的任何监管、行政或其他政府权限（如授予进出口许可证、批准商业交易或实施配额、费用或其他收费的权力）时，以不违反该缔约方在本协定项下义务的方式行事；

 - (b) 在相关市场中购买或销售垄断商品或服务时，仅依据商业考虑行事，包括价格、质量、可用性、适销性、运输及其他购买或销售条款和条件，除非为遵守其指定条款中与(c)或(d)项不相抵触的部分；

 - (c) 在相关市场中购买或销售垄断商品或服务时，向涵盖的投资、另一缔约方的商品及另一缔约方的服务供应商提供非歧视性待遇；且

- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiaries or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

4. Paragraph 3 does not apply to procurement by a government of goods or services or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

Article 1306: State Enterprises

- 1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
- 2. Each Party shall ensure, that any state enterprise that it establishes or maintains, acts in a manner that is not inconsistent with the Party’s obligations under Chapters Eight (Investment) and Eleven (Financial Services) wherever such enterprise exercises any 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 any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments.

- (d) 不利用其垄断地位在其领土内的非垄断市场，通过直接或间接方式（包括与其母公司、子公司或其他共同持股企业的交易）从事对涵盖的投资产生不利影响的反竞争行为。

4. 第3款不适用于政府为政府目的而非为商业销售或转售、或为用于生产或供应商业销售或转售的商品或服务而进行的商品或服务或其任何组合的采购。

第1306条：国有企业

- 1. 本协定不得解释为阻止缔约方设立或维持国有企业。
- 2. 每一方应确保其设立或维持的任何国有企业在行使该缔约方授予的任何监管、行政或其他政府权限（如征用、授予许可证、批准商业交易或实施配额、费用或其他收费的权力）时，以不违反该缔约方在第八章（投资）和第十一章（金融服务）项下义务的方式行事。
- 3. 每一方应确保其维持或建立的任何国有企业在向涵盖投资销售其商品或服务时给予非歧视性待遇。

Article 1307: Dispute Settlement

1. No Party may have recourse to dispute settlement under Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter except for those matters referred to in Articles 1305 and 1306.
2. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph 1(b) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(b) of Article 820 (Investment - Claim by an Investor of a Party on behalf of an Enterprise) only for matters arising under subparagraph 3(a) of Article 1305 or paragraph 2 of Article 1306.
3. Where an investor of a Party considers that a designated monopoly or state enterprise of the other Party has acted in a manner inconsistent with that other Party’s obligations under Chapter Eleven (Financial Services), the investor may have recourse to investor-state dispute settlement only for a breach of an obligation listed in subparagraph 2(b) of Article 1101 (Financial Services - Scope of Application) of that Chapter.

Article 1308: Definitions

For purposes of this Chapter:

covered investment means “covered investment” as defined in Article 847 (Investment - Definitions);

designate means to establish, authorize, 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;

第1307条：争端解决

1. 任何缔约方不得就本章产生的任何事项诉诸第二十一章（争端解决）下的争端解决，但第1305条和第1306条所述事项除外。
2. 就本章而言，投资者仅可就第1305条第3款(a)项或第1306条第2款所涉事项，依据第819条（投资—缔约方投资者代表其自身提出的索赔）第1款(b)项或第820条（投资—缔约方投资者代表企业提出的索赔）第1款(b)项，诉诸投资者-国家争端解决机制。
3. 如一缔约方投资者认为另一缔约方的指定垄断或国有企业行为不符合该另一缔约方在第十一章（金融服务）项下的义务，则该投资者仅可针对该章第1101条（金融服务—适用范围）第2款(b)项所列义务的违反，诉诸投资者-国家争端解决机制。

第1308条：定义

就本章而言：

涵盖投资 指第847条（投资—定义）中定义的“涵盖投资”；

指定指在本协定生效日期后，设立、授权或扩大垄断范围以涵盖更多商品或服务；

designated monopoly means an entity, including a consortium or government agency, that in any 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;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by a national government 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;

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

state enterprise means, except as set out in Annex 1308, an enterprise owned, or controlled through ownership interests, by a Party.

指定垄断指在缔约方领土内任何相关市场中被指定为某种商品或服务的唯一提供者或购买者的实体（包括财团或政府机构），但不包括仅因授予排他性知识产权而获得授权的实体；

政府垄断指由国家政府或另一此类垄断通过所有权权益拥有或控制的垄断；

符合商业考虑指与相关商业部门或行业中私营企业的正常商业惯例相一致；

市场指商品或服务的地理和商业市场；

非歧视性待遇指本协定相关规定中规定的国民待遇和最惠国待遇中的较优者；

国有企业 指除附件1308所列情况外，由缔约方通过所有权权益拥有或控制的企业。

Annex 1308

Country-Specific Definitions of State Enterprises

For purposes of paragraph 3 of Article 1306, "state enterprise" means, with respect to Canada, a Crown corporation within the meaning of the *Financial Administration Act* (R.S., 1985, c. F-11) (Canada), a Crown corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law.

附件1308

国家特定的国有企业定义

就第1306条第3款而言，“国有企业”对加拿大而言，指《财务管理法》（1985年修订版，第F-11章）（加拿大）所定义的皇家公司、任何可比省级法律所定义的皇家公司，或根据其他适用省级法律成立的等效实体。