

CHAPTER 13

第十三章

STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS
OR PRIVILEGES AND DESIGNATED MONOPOLIES

国有企业、获得特殊权利或特权的 enterprises 和指定垄断

ARTICLE 13.1

第十三条

Definitions

定义

For the purposes of this Chapter:

本章中,

- (a) "Arrangement" means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organisation for Economic Co-operation and Development (hereinafter referred to as "OECD") or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;
- (b) "commercial activities" means activities which an enterprise undertakes with an orientation towards profit-making¹ and which result in the production of a good or the supply of a service, which will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise;
- (c) "commercial considerations" means considerations of 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;
- (d) "designate a monopoly" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(a) "安排"是指经济合作与发展组织（以下简称“经济合作与发展组织”）框架内开发的官方支持出口信贷安排，或一个继任企业，无论是在经济合作与发展组织框架内还是框架外开发，该企业已被至少12个1979年1月1日为安排参与者的原始世界贸易组织成员所采纳；

(b) "商业活动"是指企业以盈利为导向所从事的活动¹，并且这些活动将导致商品生产或服务供应，这些商品或服务将在相关市场上以企业确定的数量和价格出售给消费者；

(c) "商业考虑"是指价格、质量、可用性、市场性、运输以及其他购买或销售条款和条件，或通常在根据市场经济原则在相关业务或行业运营的私营企业商业决策中考虑的其他因素；

(d) "指定垄断"是指建立或授权垄断，或扩大垄断范围以涵盖额外的商品或服务；

¹ For greater certainty, activities undertaken by an enterprise which operates on a non-profit basis or a cost-recovery basis are not activities undertaken with an orientation towards profit-making.

¹ 为更明确起见 企业以非盈利基础或成本回收基础运营所从事的活动不是以盈利为导向的活动。

- (e) "designated monopoly" means an entity, including a consortium or a government agency, that in a relevant market in the territory of a Party is designated 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;

- (f) "enterprise granted special rights or privileges" means an enterprise, public or private, including its subsidiaries, to which a Party has granted special rights or privileges; special rights or privileges are granted by a Party where it designates a limited number of enterprises authorised to supply a good or service, other than according to objective, proportional and non-discriminatory criteria, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

- (g) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in GATS and, if applicable, in the Annex on Financial Services to GATS; and

- (h) "state-owned enterprise" means an enterprise that is principally engaged in commercial activities in which a Party:
 - (i) directly owns more than 50 per cent of the share capital;
 - (ii) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights;
 - (iii) holds the power to appoint a majority of members of the board of directors or any other equivalent management body; or
 - (iv) has the power to legally direct the actions of the enterprise or otherwise exercises an equivalent degree of control in accordance with its laws and regulations.

- (e) "指定垄断"是指在一个缔约方领土内的相关市场中，被指定为商品或服务的唯一供应商或购买者的实体，包括联合体或政府机构，但不包括仅因该授权而获得专属知识产权的实体；

- (f) "获得特殊权利或特权的企业"是指一方授予其特殊权利或特权的企业，包括其子公司，无论该企业是公共的还是私营的；当一方指定有限数量的企业授权供应商品或服务，而非根据客观、比例和非歧视性标准，实质性影响任何其他企业在相同地理区域以实质上相当的条件供应相同商品或服务的能力时，该方授予特殊权利或特权；

- (g) "行使政府职能提供的服务"是指根据服务贸易总协定定义的行使政府职能提供的服务，以及如果适用，根据GATS金融服务附件定义的行使政府职能提供的服务；和

- (h) "国有企业"是指主要从事商业活动的企业，其中一方：
 - (i) 直接拥有超过50%的股本； (ii) 通过所有权利益控制超过50%的表决权行使； (iii) 拥有任命董事会多数成员或任何其他同等管理机构的权力；或 (iv) 拥有合法指导企业行为的权力，或根据其法律和法规以其他方式行使相当程度的控制权。

Scope

- 1. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, engaged in commercial activities. Where they engage both in commercial and non-commercial activities, only the commercial activities are covered by this Chapter.
- 2. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies at all levels of government.
- 3. This Chapter does not apply to situations where state-owned enterprises, enterprises granted special rights or privileges or designated monopolies act as procuring entities covered either under each Party's annexes to Appendix I to the GPA or under Part 2 of Annex 10 conducting procurement for governmental purposes and not with a view to commercial resale or with a view to use in the production of a good or in the supply of a service for commercial sale.
- 4. This Chapter does not apply to any service supplied in the exercise of governmental authority.
- 5. This Chapter does not apply to a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, if in any one of the three previous consecutive fiscal years the annual revenue derived from the commercial activities of the enterprise or monopoly concerned was less than 200 million SDR.
- 6. Article 13.5 does not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate, if that supply of financial services:
 - (a) supports exports or imports, provided that those services are:
 - (i) not intended to displace commercial financing; or
 - (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

范围

- 1. 本章适用于从事商业活动的国有企业、获得特殊权利或特权的 enterprises 和指定垄断企业。如果它们同时从事商业和非商业活动，则只有商业活动受本章管辖。
- 2. 本章适用于各级政府的国有企业、获得特殊权利或特权的企业以及指定垄断。
- 3. 本章不适用于国有企业、获得特殊权利或特权的企业或指定垄断作为采购实体的情况，这些采购实体要么根据每一方关于GPA附录I的附件，要么根据附件10第2部分的规定，为政府目的进行采购，且并非旨在商业转售，或旨在为商业销售而用于商品生产或服务供应。
- 4. 本章不适用于行使政府职能提供的服务。
- 5. 如果在任何三个连续的财政年度中，企业或垄断的相关商业活动产生的年度收入低于2亿特别提款权，则本章不适用于国有企业、获得特殊权利或特权的企业或指定垄断。
- 6. 第13.5条不适用于国有企业根据政府授权提供金融服务的情况，如果该金融服务：
 - (a) 支持出口或进口，前提是该服务：
 - (i) 不旨在取代商业融资；或 (ii) 以不低于在商业市场上可以获得的可比金融服务条款提供；

- (b) supports private investment outside the territory of the Party, provided that these services are:
 - (i) not intended to displace commercial financing; or
 - (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or
- (c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

7. Article 13.5 does not apply to the sectors set out in paragraph 2 of Article 8.6.
8. Article 13.5 does not apply to the extent that a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly of a Party makes purchases and sales of a good or a service pursuant to:
- (a) any existing non-conforming measure in accordance with paragraph 1 of Article 8.12 and paragraph 1 of Article 8.18 that the Party maintains, continues, renews, amends or modifies as set out in its Schedule in Annex I to Annex 8-B; or
 - (b) any non-conforming measure by a Party in accordance with paragraph 2 of Article 8.12 and paragraph 2 of Article 8.18 with respect to sectors, sub-sectors, or activities as set out in its Schedule in Annex II to Annex 8-B.

ARTICLE 13.3

Relation to the WTO Agreement

The Parties affirm their rights and obligations under paragraphs 1 to 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of GATS.

- (b) 支持一方领土以外的私人投资，前提是这些服务是：
 - (i) 不旨在取代商业融资；或
 - (ii) 以不低于在商业市场上可以获得的可比金融服务的条件提供；或
 - (c) 以与安排一致的条件提供，前提是其属于安排的范围。
7. 第13.5条不适用于第8条第2段中列出的行业。6.
8. 第13.5条不适用于一方国有企业、获得特殊权利或特权的企业或指定垄断在以下情况下进行的商品或服务的购买和销售：
- (a) 任何根据第8.12条第1段和第8.18条第1段的规定由一方维持、继续、更新、修改或修改的现有不符合规定的措施，如其在附件1至附件8-B的附件中规定的；或
 - (b) 一方根据第8.12条第2款和第8.18条第2款的规定，在附件8-B附件II中规定的部门、子部门或活动中采取的不符合规定的措施。

第13.3条

与WTO协定的关系

各方重申其根据1994年关税及贸易总协定第十七条第1至3段、关于解释1994年关税及贸易总协定第十七条的谅解以及服务贸易总协定第八条第1、2和5段所享有的权利和义务。

ARTICLE 13.4

General provisions

- 1. Without prejudice to the rights and obligations of each Party under this Chapter, nothing in this Chapter prevents a Party from establishing or maintaining a state-owned enterprise, granting an enterprise special rights or privileges or designating a monopoly.
- 2. Neither Party shall require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Chapter.

ARTICLE 13.5

Non-discriminatory treatment and commercial considerations

- 1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:
 - (a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (b) or (c);
 - (b) in its purchase of a good or service:
 - (i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and
 - (ii) accords to a good or service supplied by a covered enterprise as defined in subparagraph (c) of Article 8.2 treatment no less favourable than it accords to a like good or a like service supplied by enterprises of entrepreneurs of the Party in the relevant market in the Party; and

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一般规定

- 1.在不影响每一方根据本章享有的权利和履行义务的情况下，本章的规定不得阻止一方建立或维持国有企业、授予企业特殊权利或特权或指定垄断。
- 2. 双方不得要求或鼓励国有企业、获得特殊权利或特权的企业或指定垄断采取与本章不一致的行为。

第13.5条

非歧视待遇和商业考虑

- 1. 各方应确保其国有企业、获得特殊权利或特权的企业和指定垄断在从事商业活动时：
 - (a) 在其购买或销售商品或服务时，根据商业考虑行事，但须遵守其公共服务任务中任何与第 (b) 款或第 (c) 款不一致的条款；
 - (b) 在其购买商品或服务时：
 - (i) 对另一方企业提供商品或服务给予不低于其对本方企业提供同类商品或同类服务的待遇；并
 - (ii) 对根据第8.2条第(c)款定义的受保护企业提供的商品或服务给予不低于其给予该方企业家在相关市场中提供的同类商品或同类服务的待遇；以及

- (c) in its sale of a good or service:
 - (i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and
 - (ii) accords to a covered enterprise as defined in subparagraph (c) of Article 8.2 treatment no less favourable than it accords to enterprises of entrepreneurs of the Party in the relevant market in the Party.¹

2. Subparagraphs 1(b) and (c) do not preclude a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly from:

- (a) purchasing or selling goods or services on different terms or conditions, including those relating to price, provided that such different terms or conditions are made in accordance with commercial considerations; or
- (b) refusing to purchase or sell goods or services, provided that such refusal is made in accordance with commercial considerations.

¹ For greater certainty, this paragraph shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly as a means of its equity participation in another enterprise.

- (c) 在其销售商品或服务时:
 - (i) 对另一方的企业给予不低于其对该方企业所给予的待遇；以及
 - (ii) 对第8.2条第(c)款中定义的受保护企业给予不低于其对该方相关市场中的该方企业所给予的待遇。¹

2. 第1(b)款和第(c)款不妨碍国有企业、获得特殊权利或特权的企业或指定垄断企业：

- (a) 以不同条款或条件购买或销售货物或服务，包括与价格相关的条款或条件，前提是这些不同的条款或条件是根据商业考虑制定的；或
- (b) 拒绝购买或销售商品或服务，但此类拒绝必须符合商业考虑。

¹ 为明确起见，本款不得适用于国有企业、获得特殊权利或特权的企业或指定垄断企业作为其参与另一企业的股权参与手段而购买或销售股份、股票或其他形式股权的情况。

Regulatory framework

1. The Parties respect and make best use of relevant international standards including, *inter alia*, the OECD Guidelines on Corporate Governance of State-Owned Enterprises.
2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains is independent from, and not accountable to, any of the enterprises regulated by that body, and acts impartially¹ in like circumstances with respect to all enterprises regulated by that body, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies.²
3. Each Party shall apply its laws and regulations to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in a consistent and non-discriminatory manner.

Information exchange

1. Each Party shall provide to the other Party or otherwise make publicly available on an official website a list of its state-owned enterprises, except for those within the meaning of subparagraph (h)(iv) of Article 13.1, at the central level of government³, no later than six months after the date of entry into force of this Agreement, and thereafter shall update the list annually.

¹ For greater certainty, the impartiality with which the body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that body.

² For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to such a body in Chapter 8, the relevant provisions of Chapter 8 shall prevail.

³ In this paragraph, "central level of government" means:

(a) for the United Kingdom, the Government of the United Kingdom; and

(b) for Japan, the Government of Japan.

监管框架

1. 各方尊重并充分利用相关国际标准，包括<样式 id='1'>尤其是</样式>，OECD国有企业公司治理指南。
2. 每一方应确保该方建立或维持的任何监管机构或行使监管职能的任何其他机构独立于该机构监管的任何企业，并对该机构监管的企业负责，并在类似情况下对所有该机构监管的企业，包括国有企业、获得特殊权利或特权的企业和指定垄断企业，公正地行事¹。²
3. 每一方应以一致和非歧视的方式将其法律和法规适用于国有企业、获得特殊权利或特权的企业和指定垄断企业。

信息交换

1. 每一方应当向另一方提供，或以其他方式在其官方网站上公开其国有企业名单，除第13.1条第(h)(iv)款项下的企业外，在协定生效之日起六个月内，并在之后每年更新该名单。

¹ 为明确起见，该机构行使监管职能的公正性应参照该机构的普遍模式或惯例进行评估。² 为明确起见，对于第八章中，缔约方就此类机构达成具体义务的部门，应适用第八章的相关规定。³ 在本段中，“政府中央层面”是指：(a)对于英国，是指英国政府；以及(b)对于日本，是指日本政府。

2. Each Party shall promptly notify the other Party or otherwise make publicly available on an official website the designation of a monopoly and the terms of its designation.

3. A Party which has reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly (hereinafter referred to in this Article as "the entity") of the other Party may request the other Party in writing to provide information on the commercial activities of the entity related to the carrying out of the provisions of this Chapter in accordance with paragraph 4.

4. The requested Party shall provide the following information, provided that the request includes an explanation of how the activities of the entity may be affecting the interests of the requesting Party under this Chapter and indicates which of the following information shall be provided:

- (a) the organisational structure of the entity and its composition of the board of directors or of any other equivalent management body;
- (b) the percentage of shares that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the entity;
- (c) a description of any special shares or special voting or other rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, where such rights are different from those attached to the general common shares of the entity;
- (d) a description of the government departments or public bodies which regulate the entity, a description of the reporting requirements imposed on it by those departments or public bodies, and the rights and practices, where possible, of those departments or public bodies with respect to the appointment, dismissal or remuneration of senior executives and members of its board of directors or any other equivalent management body;

2. 每一方应当及时通知另一方，或以其他方式在其官方网站上公开垄断指定 及其指定条款。

3. 一方有理由相信其在本章项下的利益受到另一方拥有的国有企业、获得特殊权利或特权的企业或指定垄断（以下简称本条中为“该实体”）的商业活动的不利影响时，可以书面请求另一方提供关于该实体与执行本章规定相关的商业活动的信息，并按照第4段的规定执行。

4. 请求方应提供以下信息，前提是请求中包含关于该实体的活动如何影响请求方在本章项下的利益的说明，并指明应提供以下哪项信息：

- (a) 该实体的组织结构及其董事会或任何其他同等管理机构的组成；
- (b) 请求方、其国有企业、获得特殊权利或特权的企业或指定垄断累计拥有的该实体的股份比例，以及它们累计持有的表决权比例；
- (c) 对被请求方、其国有企业、获得特殊权利或特权的 enterprises 或指定垄断所持有的任何特别股、特别表决权或其他权利的描述，其中这些权利与该实体普通股所附带的权利不同；
- (d) 政府部门或公共机构监管该实体的描述，由这些部门或公共机构对其施加的报告要求的描述，以及在这些部门或公共机构可能的情况下，关于高级管理人员及其董事会成员或任何其他同等管理机构的任命、解雇或薪酬的权利和实践；

- (e) annual revenue and total assets of the entity over the most recent three-year period for which information is available;
- (f) any exemptions, immunities and related measures from which the entity benefits under the laws and regulations of the requested Party; and
- (g) any additional information regarding the entity that is publicly available, including annual financial reports and third party audits.

5. The requested Party shall endeavour to provide the information required pursuant to paragraph 4 no later than two months after the date of that request.

ARTICLE 13.8

General exceptions

For the purposes of this Chapter, Article XX of GATT 1994 and Article XIV of GATS are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

(e) 该实体在最近可获得信息的三年期间内的年度收入和总资产；

(f) 任何根据被请求方法律和法规，该实体所享受的豁免、豁免和相关措施；以及

(g) 任何关于该实体的公开可用附加信息，包括年度财务报告和第三方审计。

5. 被请求方应努力在收到该请求之日起两个月内提供第4段要求的资料。

第13.8条

一般例外

就本章而言，1994年关税及贸易总协定第XX条和《服务贸易总协定》第XIV条现被纳入本协定并构成本协定的一部分，作相应修改后。