

Chapter Fifteen

Competition Policy, Monopolies and State Enterprises

Article 1501: Competition Law

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct, and shall take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes 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.

3. No Party may have recourse to dispute settlement under this Agreement for any matter regarding this Article.

Article 1502: Monopolies and State Enterprises

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

2. Where a Party intends to designate a monopoly, and the designation may affect the interests of persons of another Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement, in the sense of Annex 2004.

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any 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 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) except to comply with any terms of its designation 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 market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;

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

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiary, or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of another Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

4. Paragraph 3 shall not apply to the procurement by governmental agencies of a good or service for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or provisions of services for commercial sale.

Article 1503: State Enterprises

1. Nothing in this Agreement shall prevent a Party from maintaining or establishing a state enterprise.

2. Each Party, shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapter Eleven (Investment) 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 nondiscriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of another Party.

Article 1504: Working Group on Trade and Competition

The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years after the date of entry into force of the Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

Article 1505: Definitions

For purposes of this Chapter:

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

designate means to establish, designate or 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;

discriminatory provision includes treating a parent, subsidiary, or other enterprise with common ownership more favorably than an unaffiliated enterprise, or treating one class of enterprises more favorably than another, in like circumstances;

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

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

monopoly means an entity, including any 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 any entity that has been granted an exclusive intellectual property right solely by reason of such grant;

non-discriminatory treatment means the better of national or most-favored-nation treatment, and

state enterprise means, except as set out in Annex 1505.1, an enterprise owned, or controlled through ownership interests, by a Party.

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ANNEX 1505.1

State Enterprises

For purposes of Article 1503(3), "state enterprise" means, with respect to Canada, a Crown Corporation within the meaning of the Financial Administration Act (Canada) or a Crown corporation within the meaning of any comparable provincial legislation or that is incorporated under other applicable provincial legislation.