

CHAPTER 17 STATE-OWNED ENTERPRISES

Article 17.1 Definitions

For the purposes of this Chapter:

“commercial activities” means activities which a juridical person undertakes with an orientation toward profit-making¹ and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the juridical person;

“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 in the relevant business or industry;

“market” means the geographical and commercial market for a good or service;

“state-owned enterprise” means a company that is engaged in commercial activities in which a Party directly owns a majority of the share capital²; and

“state trading enterprise” has the meaning given in paragraph 1 of the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994.

Article 17.2 Scope

1. This Chapter applies only to state-owned enterprises and state trading enterprises engaged in commercial activities. Where state-owned enterprises and state trading enterprises engage both in commercial activities and other activities, only the commercial activities are covered by this Chapter.
2. This Chapter applies only to state-owned enterprises and state trading enterprises at the central level of government.
3. This Chapter does not apply to government procurement.

¹ For greater certainty, activities undertaken by a juridical person that operates on a not-for-profit basis or on a cost-recovery basis, including a juridical person that undertakes activities that may result in incidental revenue in excess of costs, are not activities undertaken with an orientation toward profit-making.

² For the purposes of this Article, “a majority of the share capital” means, for the UK, “more than 50% of the share capital” and for India, “at least 51% of the paid-up share capital”.

4. This Chapter does not apply to measures taken in response to a national or global economic emergency³. Such measures shall be transparent and shall not go beyond their objective.
5. This Chapter shall not apply to any services supplied in the exercise of governmental authority. For the purposes of this paragraph, “a service supplied in the exercise of governmental authority” has the same meaning as in GATS.
6. This Chapter shall not apply to commercial activities of state-owned enterprises and state trading enterprises where those activities are pursuant to a specific mandate that is transparent, provided in the Party’s law, and based on public policy grounds⁴.
7. This Chapter shall not apply to activities of state-owned enterprises and state trading enterprises in atomic energy, defence, health, and space sectors.
8. This Chapter does not apply to:
 - (a) commercial banking and insurance operations;
 - (b) the regulatory or supervisory activities, or monetary and related credit policy and exchange rate policy, of a central bank or monetary authority of a Party;
 - (c) the regulatory or supervisory activities of a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial services suppliers; or
 - (d) activities undertaken by a Party or one of its state-owned enterprises for the purpose of the resolution of a failing or failed enterprise or branch principally engaged in the supply of financial services.
9. Article 17.6 (Commercial Considerations), Article 17.7 (Transparency) and Article 17.8 (Consultations) do not apply with respect to a state-owned enterprise or state trading enterprise if in each one of the three previous consecutive fiscal years, the annual turnover of the state-owned enterprise or state trading enterprise was less than 400 million Special Drawing Rights.
10. This Chapter does not apply to the activities of state-owned enterprises or state trading enterprises for the purpose of the adoption, enforcement or implementation of the privatisation, merger, restructuring, subsidiarisation or divestment of assets owned or controlled by the Government of India.

³ For greater certainty, an economic emergency shall be understood as one that affects the whole economy of a Party.

⁴ For the purposes of this paragraph, “public policy grounds” means grounds relating to national security, energy security, environment protection and sustainable development, social welfare, promotion of small businesses, and promotion of manufacturing and production of goods or services with a view to enhancing income and employment.

11. Article 17.6 (Commercial Considerations) does not apply to the extent that a Party's state-owned enterprise or state trading enterprise makes purchases or sales of goods or services:
- (a) in sectors or sub-sectors that are not included in that Party's Schedule in Annex 8B (Schedules of Specific Commitments) or Annex 9A (Schedules of Specific Commitments on Financial Services); or
 - (b) pursuant to a measure that is in accordance with any term, limitation, condition, or qualification to any commitment included in that Party's Schedule in Annex 8B (Schedules of Specific Commitments) or Annex 9A (Schedules of Specific Commitments on Financial Services).

Article 17.3 Principles

1. The Parties recognise that state-owned enterprises and state trading enterprises can serve public policy objectives, including economic and social development. The Parties acknowledge, however, that certain activities of state-owned enterprises and state trading enterprises, have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade.
2. The Parties recognise the importance of strengthening cooperation with a view to further improving corporate governance, efficient management, and functioning of their respective state-owned enterprises and state trading enterprises.
3. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state-owned enterprises or state trading enterprises.

Article 17.4 Relationship with WTO Agreement

The Parties affirm their rights and obligations under Article XVII of GATT 1994 and the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994.

Article 17.5 Legal and Regulatory Framework

1. Each Party shall apply its law to state-owned enterprises and state trading enterprises in a consistent and non-discriminatory manner. A Party may grant exemptions or immunities from its law to state-owned enterprises and state trading enterprises, provided they are transparent.
2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains acts impartially as

between, on the one hand, state-owned enterprises and state trading enterprises, and on the other hand, non-state-owned enterprises and non-state trading enterprises. The impartiality with which such body exercises its regulatory discretion is to be assessed by reference to a relevant pattern or practice of that body.

3. Where the Parties have agreed provisions in other Chapters that conflict with this Article, the relevant provisions of those Chapters shall prevail.

Article 17.6 **Commercial Considerations**

Each Party shall ensure that its state-owned enterprises and state trading enterprises act in accordance with commercial considerations in the purchase or sale of goods or services.

Article 17.7 **Transparency**

The Parties recognise the importance of transparency in fostering understanding and cooperation between the Parties. To that end, a Party may request in writing information that is publicly available relating to the other Party's state-owned enterprises and state trading enterprises. In its request, the requesting Party shall indicate its rationale for seeking the information. The requested Party shall use best endeavours to provide the information requested.

Article 17.8 **Consultations**

1. To address specific matters that may arise under this Chapter, a Party shall enter into consultations upon request by the other Party. In its request, the requesting Party shall indicate how the matter negatively affects trade between the Parties. The responding Party shall accord full and sympathetic consideration to the concerns of the requesting Party.
2. During the consultations, the requesting Party may seek additional information concerning a state-owned enterprise or state trading enterprise of the responding Party. That information may include:
 - (a) the percentage of shares that the Party or its state-owned enterprises cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;
 - (b) a description of any special shares or special voting or other rights that the Party or its state-owned enterprises hold, to the extent these rights are different from the rights attached to the general common shares of the entity;

- (c) 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;
 - (d) a description of the organisational structure of the entity and its composition of the board of directors or of any other equivalent body;
 - (e) annual revenue and total assets of the entity over the most recent three-year period for which information is available;
 - (f) information regarding the laws and regulations relating to the Party's state-owned enterprises and state trading enterprises; and
 - (g) any exemptions and immunities from which the entity benefits under the Party's laws and regulations.
3. The responding Party shall endeavour to provide the requested information in writing no later than 90 days after the receipt of the request. If any requested information cannot be provided, the responding Party shall explain the absence of that information in its written response.

Article 17.9 Cooperation

1. The Parties may engage in mutually agreed technical cooperation activities, including:
- (a) exchanging information regarding the Parties' experiences in improving the corporate governance and operation of their state-owned enterprises and state trading enterprises;
 - (b) cooperating on projects and programmes aimed at promoting the development and adoption of low-carbon, environmentally friendly and other climate-friendly technologies by their state-owned enterprises and state trading enterprises;
 - (c) sharing best practices on policy approaches to ensure a level playing field between state-owned enterprises, state trading enterprises and privately-owned juridical persons, including policies related to competitive neutrality; and
 - (d) organising international seminars, workshops, or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises and state trading enterprises.

Article 17.10
Confidentiality

Any information provided under this Chapter shall be subject to Article 28.6 (Confidentiality – General Provisions and Exceptions).

Article 17.11
Non-Application of Dispute Resolution

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.