

## CHAPTER 17

### STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

#### Article 17.1: Definitions

For the purposes of this Chapter:

**Arrangement** means the *Arrangement on Officially Supported Export Credits*, developed within the framework of the Organization for Economic Co-operation and Development (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 January 1, 1979;

**commercial activities** means activities which an enterprise undertakes with an orientation toward profit-making<sup>1</sup> 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 enterprise;<sup>2</sup>

**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;

**designate** means to establish, designate or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

**designated monopoly** means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

**government monopoly** means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

**independent pension fund** means an enterprise that is owned, or controlled through ownership interests, by a Party that:

- (a) is engaged exclusively in the following activities:
  - (i) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any

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<sup>1</sup> For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.

<sup>2</sup> For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

## 第 17 章

### 国有企业和指定垄断

#### 第 17.1 条 定义

就本章而言：

**安排**指在经济合作与发展组织(OECD)框架内制定的《官方支持出口信贷安排》，或在 OECD 框架内或框架外制定的、已经至少 12 个在 1979 年 1 月 1 日时属该安排参加方的 WTO 创始成员通过的后继承诺；

**商业活动**指企业所从事的以营利<sup>1</sup>为导向的活动，通过此类活动所生产的货物或所提供的服务将按该企业确定的数量和价格在相关市场上向消费者进行销售；<sup>2</sup>

**商业考虑**指价格、质量、可获性、适销性、运输及其他购买或销售的条款和条件，或相关行业或产业的私营企业在商业决策中通常考虑的其他因素；

**指定**指建立、指定或授权垄断，或扩大垄断的范围以涵盖额外货物或服务；

**指定垄断**指在本协定生效之日后指定的私营垄断者和缔约方指定或已经指定的任何政府垄断者；

**政府垄断**指由缔约方或由另一政府垄断者拥有或通过所有者权益控制的垄断者；

**独立养老基金**指由缔约方拥有或通过所有者权益控制的下列企业：

(a) 专门从事下列活动：

(i) 管理养老金、退休、社会保障、残疾、死亡或职工福利或其中的任何组合或为上述各项

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<sup>1</sup> 为进一步明确，在非营利性基础上经营或收回成本基础上经营的一企业所从事的活动不属于以营利为导向的活动。

<sup>2</sup> 为进一步明确，对相关产品普遍适用的措施不得解释为一缔约方对一企业的价格、生产或供应决策的确定。

combination thereof solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; or

- (ii) investing the assets of these plans;
- (b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and
- (c) is free from investment direction from the government of the Party;<sup>3</sup>

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

**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 the grant;

**non-commercial assistance**<sup>4</sup> means assistance to a state-owned enterprise by virtue of that state-owned enterprise's government ownership or control, where:

- (a) "assistance" means:
  - (i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:
    - (A) grants or debt forgiveness;
    - (B) loans, loan guarantees or other types of financing on terms more favourable than those commercially available to that enterprise; or
    - (C) equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of private investors; or

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<sup>3</sup> Investment direction from the government of a Party: (a) does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of government officials on the enterprise's board of directors or investment panel.

<sup>4</sup> For greater certainty, non-commercial assistance does not include: (a) intra-group transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal business practices require reporting the financial position of the group excluding these intra-group transactions; (b) other transactions between state-owned enterprises that are consistent with the usual practices of privately owned enterprises in arm's length transactions; or (c) a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

提供计划，目的仅为使属该计划出资人的自然人及其受益人获益；或

- (ii) 对这些计划的资产进行投资；
- (b) 对(a)款(i)项中所指的自然人负有受信责任；以及
- (c) 不受缔约方政府投资指示的限制；<sup>3</sup>

**市场**指货物或服务的地理和商业市场；

**垄断**指在缔约方领土内的任何相关市场中被指定为货物或服务惟一提供者或购买者的实体，包括联合体或政府机构，但不包括完全因授予一事本身而被授予专有知识产权的实体；

**非商业援助**<sup>4</sup>指国有企业凭借其政府所有权或控制权而获得的援助，在此：

- (a) “援助”指：
  - (i) 资金的直接转移或潜在的资金或债务的直接转移，例如：
    - (A) 赠款或债务减免；
    - (B) 条件优于该企业商业可获提的条件的贷款、贷款担保或其他种类的融资；或
    - (C) 与私营投资者的投资惯例不一致的权益资本，包括提供风险资本的惯例；或

<sup>3</sup> 一缔约方政府的投资指示：(a)不包括与通常的投资惯例不相抵触的关于风险管理和资产配置的一般指导；及(b)不能仅通过企业董事会或投资委员会中包含政府官员加以证明。

<sup>4</sup> 为进一步明确，非商业援助不包括：(a)包括国有企业在内的企业集团内部交易，例如在集团母公司与子公司之间，或集团子公司之间，在正常商业惯例要求在报告集团财务状况时排除这些集团内部交易；(b)国有企业之间进行的与私营企业在公平交易中的惯例相一致的其他交易；或(c)一缔约方将自出资人处收取的用于养老金、退休、社会保障、残疾、死亡或职工福利计划或上述各项的任何组合的资金，代表出资人及其受益人转移至一独立的养老基金用于投资。

- (ii) goods or services other than general infrastructure on terms more favourable than those commercially available to that enterprise;
- (b) “by virtue of that state-owned enterprise’s government ownership or control”<sup>5</sup> means that the Party or any of the Party’s state enterprises or state-owned enterprises:
  - (i) explicitly limits access to the assistance to the Party’s state-owned enterprises;
  - (ii) provides assistance which is predominately used by the Party’s state-owned enterprises;
  - (iii) provides a disproportionately large amount of the assistance to the Party’s state-owned enterprises; or
  - (iv) otherwise favours the Party’s state-owned enterprises through the use of its discretion in the provision of assistance;

**public service mandate** means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory;<sup>6</sup>

**sovereign wealth fund** means an enterprise owned, or controlled through ownership interests, by a Party that:

- (a) serves solely as a special purpose investment fund or arrangement<sup>7</sup> for asset management, investment, and related activities, using financial assets of a Party; and
- (b) is a Member of the International Forum of Sovereign Wealth Funds or endorses the *Generally Accepted Principles and Practices* (“Santiago Principles”) issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed to by the Parties,

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<sup>5</sup> In determining whether the assistance is provided “by virtue of that state-owned enterprise’s government ownership or control”, account shall be taken of the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.

<sup>6</sup> For greater certainty, a service to the general public includes:

- (a) the distribution of goods; and
- (b) the supply of general infrastructure services.

<sup>7</sup> For greater certainty, the Parties understand that the word “arrangement” as an alternative to “fund” allows for a flexible interpretation of the legal arrangement through which the assets can be invested.

- (ii) 条件优于该企业商业可获得的条件的除一般基础设施外的货物或服务；
- (b) “国有企业凭借其政府所有权或控制权”<sup>5</sup>指该缔约方或该缔约方的任何国家企业或国有企业：
  - (i) 明确将获得援助的权利限定为该缔约方的国有企业；
  - (ii) 提供主要为该缔约方的国有企业使用的援助；
  - (iii) 向该缔约方的国有企业提供不成比例的大量援助；或
  - (iv) 在其他情况下，通过使用援助提供中的自由裁量权照顾该缔约方的国有企业；

**公共服务授权**指国有企业直接或间接在其领土内向公众提供服务所根据的政府授权；<sup>6</sup>

**主权财富基金**指由缔约方拥有或通过所有者权益控制的下列企业：

- (a) 仅作为使用缔约方的金融资产进行资产管理、投资及相关活动的具有特殊目的的投资基金或安排<sup>7</sup>；及
- (b) 属主权财富基金国际论坛的成员或接受由主权财富基金国际工作组于 2008 年 10 月发布的《公认原则与实践》(“圣地亚哥原则”)，或缔约方可能同意的其他此类原则和实践；

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<sup>5</sup> 在确定给予的帮助是否属“国有企业凭借其政府所有权或控制权”时，应考虑在该缔约方领土内经济活动的多样化程度，以及非商业援助计划已经运营的时间长度。

<sup>6</sup> 为进一步明确，对公众的服务包括：

- (a) 货物分销；及
- (b) 提供一般基础设施服务。

<sup>7</sup> 为进一步明确，缔约方理解作为“安排”一词作为“基金”的替代用词允许对资产可据以进行投资的法律安排作出灵活解释。

and includes any special purpose vehicles established solely for such activities described in subparagraph (a) wholly owned by the enterprise, or wholly owned by the Party but managed by the enterprise; and

**state-owned enterprise** means an enterprise that is principally engaged in commercial activities in which a Party:

- (a) directly owns more than 50 per cent of the share capital;
- (b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or
- (c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

## **Article 17.2: Scope<sup>8</sup>**

1. This Chapter shall apply with respect to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between Parties within the free trade area.<sup>9</sup>

2. Nothing in this Chapter shall prevent a central bank or monetary authority of a Party from performing regulatory or supervisory activities or conducting monetary and related credit policy and exchange rate policy.

3. Nothing in this Chapter shall prevent 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, from exercising regulatory or supervisory authority over financial services suppliers.

4. Nothing in this Chapter shall prevent a Party, or one of its state enterprises or state-owned enterprises from undertaking activities for the purpose of the resolution of a failing or failed financial institution or any other failing or failed enterprise principally engaged in the supply of financial services.

5. This Chapter shall not apply with respect to a sovereign wealth fund of a Party<sup>10</sup>, except:

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<sup>8</sup> For the purposes of this Chapter, the terms “financial service supplier”, “financial institution” and “financial services” have the same meaning as in Article 11.1 (Definitions).

<sup>9</sup> This Chapter also applies with respect to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-Party as provided in Article 17.7 (Adverse Effects).

<sup>10</sup> Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) with respect to enterprises owned or controlled by Khazanah Nasional Berhad for a period of two years following the entry into force of this Agreement for Malaysia, in light of ongoing development of state-owned enterprise reform legislation.

且包括该企业全资拥有的、或该缔约方全资拥有但由该企业管理的、仅为从事(a)项中所述活动而设立的任何特殊目的实体；以及

**国有企业**指主要从事商业活动的企业且缔约方在该企业中：

- (a) 直接拥有 50% 以上股份资本；
- (b) 通过所有者权益控制 50% 以上投票权的行使；或
- (c) 拥有任命董事会或其他同等管理机构过半数成员的权力。

## 第 17.2 条 范围<sup>8</sup>

1. 本章应适用于缔约方的国有企业和指定垄断对本自由贸易区内缔约方之间贸易或投资产生影响的活动。<sup>9</sup>
2. 本章中任何内容不阻止缔约方的中央银行或货币主管机关开展监管或监督活动或执行货币和相关信贷政策及汇率政策。
3. 本章中任何内容不阻止缔约方的金融监管机构，包括非政府机构，例如证券或期货交易所或市场、清算机构，或其他组织或协会，对金融服务提供者行使监管或监督权。
4. 本章中任何内容不阻止缔约方或该缔约方国家企业或国有企业为解散破产中或已破产的金融机构，或破产中或已破产的主要从事金融服务提供的任何其他企业所开展的活动。
5. 本章不适用于缔约方的主权财富基金<sup>10</sup>，但下列情况除外：

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<sup>8</sup> 就本章而言，“金融服务提供者”、“金融机构”和“金融服务”等的术语与第 11.1 条(定义)中的含义相同。

<sup>9</sup> 本章也适用于一缔约方的国有企业在非缔约方市场造成如第 17.7 条(不利影响)中所规定的不利影响的活动。

<sup>10</sup> 鉴于国有企业改革立法的持续进展，在本协定对马来西亚生效后的 2 年期限内，对于由马来西亚国库控股公司拥有或控制的企业马来西亚无需遵守第 28 章(争端解决)下的争端解决。



- (a) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through a sovereign wealth fund; and
  - (b) Article 17.6.2 (Non-commercial Assistance) shall apply with respect to a sovereign wealth fund's provision of non-commercial assistance.
- 6. This Chapter shall not apply with respect to:
  - (a) an independent pension fund of a Party; or
  - (b) an enterprise owned or controlled by an independent pension fund of a Party, except:
    - (i) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund; and
    - (ii) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.
- 7. This Chapter shall not apply to government procurement.
- 8. Nothing in this Chapter shall prevent a state-owned enterprise of a Party from providing goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions.
- 9. Nothing in this Chapter shall be construed to prevent a Party from:
  - (a) establishing or maintaining a state enterprise or a state-owned enterprise; or
  - (b) designating a monopoly.
- 10. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.6 (Non-commercial Assistance) and Article 17.10 (Transparency) shall not apply to any service supplied in the exercise of governmental authority.<sup>11</sup>
- 11. Article 17.4.1(b), Article 17.4.1(c), Article 17.4.2(b) and Article 17.4.2(c) (Non-discriminatory Treatment and Commercial Considerations) shall not apply to the extent that a Party's state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

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<sup>11</sup> For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in GATS, including the meaning in the Financial Services Annex where applicable.

- (a) 第 17.6.1 条和第 17.6.3 条(非商业援助)应适用于缔约方通过主权财富基金间接提供非商业援助的情况；及
  - (b) 第 17.6.2 条(非商业援助)应适用于主权财富基金提供非商业援助的情况。
6. 本章不适用于：
- (a) 缔约方的独立养老基金；或
  - (b) 缔约方的独立养老基金拥有或控制的企业，但下列情况除外：
    - (i) 第 17.6.1 条和第 17.6.3 条(非商业援助)应适用于缔约方直接或间接向独立养老基金拥有或控制的企业提供非商业援助的情况；及
    - (ii) 第 17.6.1 条和第 17.6.3 条(非商业援助)应适用于缔约方通过独立养老基金拥有或控制的企业间接提供非商业援助的情况。
7. 本章不得适用于政府采购。
8. 本章中任何内容不得阻止缔约方的国有企业为履行该缔约方政府职能专门向该缔约方提供货物或服务。
9. 本章中任何内容不得解释为阻止缔约方：
- (a) 建立或维持国家企业或国有企业；或
  - (b) 指定垄断者。
10. 第 17.4 条(非歧视待遇和商业考虑)、第 17.6 条(非商业援助)和第 17.10 条(透明度)不得适用于在行使政府职权时提供的任何服务。<sup>11</sup>
11. 第 17.4.1 条(b)项、第 17.4.1 条(c)项、第 17.4.2 条(b)项和第 17.4.2 条(c)项(非歧视待遇和商业考虑)不得适用于缔约方的国有企业或指定垄断根据下列规定购买和销售货物或服务的情况：

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<sup>11</sup> 就本款而言，“行使政府职权时提供的服务”与在 GATS 中的含义相同，包括在适用的情况下在《金融服务附件》中的含义。

- (a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article 9.12.1 (Non-Conforming Measures), Article 10.7.1 (Non-Conforming Measures) or Article 11.10.1 (Non-Conforming Measures), as set out in its Schedule to Annex I or in Section A of its Schedule to Annex III; or
- (b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 9.12.2 (Non-Conforming Measures), Article 10.7.2 (Non-Conforming Measures) or Article 11.10.2 (Non-Conforming Measures), as set out in its Schedule to Annex II or in Section B of its Schedule to Annex III.

### **Article 17.3: Delegated Authority**

Each Party shall ensure that when its state-owned enterprises, state enterprises and designated monopolies exercise any regulatory, administrative or other governmental authority that the Party has directed or delegated to such entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement.<sup>12</sup>

### **Article 17.4: Non-discriminatory Treatment and Commercial Considerations**

1. Each Party shall ensure that each of its state-owned enterprises, 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 (c)(ii);
- (b) in its purchase of a good or service:
  - (i) accords to a good or service supplied by an enterprise of another Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of any non-Party; and
  - (ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and
- (c) in its sale of a good or service:

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<sup>12</sup> Examples of regulatory, administrative or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

- (a) 该缔约方依照第 9.12.1 条(不符措施)、第 10.7.1 条(不符措施)或第 11.10.1 条(不符措施)维持、继续、更新或修正的任何现行不符措施，如其附件 1 减让表或附件 3 减让表 A 节中所列；或
- (b) 该缔约方依照第 9.12.2 条(不符措施)、第 10.7.2 条(不符措施)或第 11.10.2 条(不符措施)对部门、分部门或活动采取或维持的任何不符措施，如其附件 2 减让表或附件 3 减让表 B 节中所列。

### 第 17.3 条 授予职权

每一缔约方应保证，在其国有企业、国家企业和指定垄断行使该缔约方已指示或授予此类实体的任何监管、行政或其他政府职权时，这些实体以与该缔约方在本协定项下的义务不相抵触的方式行事。<sup>12</sup>

### 第 17.4 条 非歧视待遇和商业考虑

1. 每一缔约方应保证其每一国有企业在从事商业活动时：
  - (a) 在其购买或销售货物或服务时依照商业考虑行事，但履行与(c)项(ii)目不相抵触的其公共服务授权中任何条款的情况除外；
  - (b) 在其购买货物或服务时，
    - (i) 给予由另一缔约方企业提供的货物或服务的待遇，不低于其给予该缔约方、任何其他缔约方或任何非缔约方的企业所提供的同类货物或同类服务的待遇；及
    - (ii) 给予由属该缔约方领土内涵盖投资的企业提供的货物或服务的待遇，不低于其给予由属该缔约方、任何其他缔约方或任何非缔约方投资者的投资的企业在该缔约方领土内相关市场中所提供的同类货物或同类服务的待遇；以及
  - (c) 在其销售货物或服务时，

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<sup>12</sup> 监管、行政或其他政府职权的例子包括征用、发放许可、批准商业交易或施加配额、规费或其他费用的权力。

- (i) accords to an enterprise of another Party treatment no less favourable than it accords to enterprises of the Party, of any other Party or of any non-Party; and
- (ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party.<sup>13</sup>

2. Each Party shall ensure that each of its designated monopolies:

- (a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraph (b), (c) or (d);
- (b) in its purchase of the monopoly good or service:
  - (i) accords to a good or service supplied by an enterprise of another Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of any non-Party; and
  - (ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and
- (c) in its sale of the monopoly good or service:
  - (i) accords to an enterprise of another Party treatment no less favourable than it accords to enterprises of the Party, of any other Party or of any non-Party; and
  - (ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and
- (d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries or other entities the Party or the designated monopoly owns,

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<sup>13</sup> Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

- (i) 给予另一缔约方企业的待遇不低于其给予该缔约方、任何其他缔约方或任何非缔约方的企业的待遇；及
  - (ii) 给予属该缔约方领土内涵盖投资的企业企业的待遇，不低于其给予属该缔约方、任何其他缔约方或任何非缔约方投资者的投资的企业在该缔约方领土内相关市场中的待遇。<sup>13</sup>
- 2. 每一缔约方应保证其每一指定垄断：
  - (a) 在相关市场购买或销售垄断货物或服务时依照商业考虑行事，但为履行其所指定的与(b)项、(c)项或(d)项不相抵触的任何条件的情况除外；
  - (b) 在其购买垄断货物或服务时：
    - (i) 给予由另一缔约方企业提供的货物或服务的待遇，不低于其给予该缔约方、任何其他缔约方或任何非缔约方的企业所提供的同类货物或同类服务的待遇；及
    - (ii) 给予由属该缔约方领土内涵盖投资的企业所提供的货物或服务的待遇，不低于其给予由属该缔约方、任何其他缔约方或任何非缔约方投资者的投资的企业在该缔约方领土内相关市场中所提供的同类货物或同类服务的待遇；及
  - (c) 在销售垄断货物或服务时：
    - (i) 给予另一缔约方企业的待遇，不低于其给予该缔约方、任何其他缔约方或任何非缔约方的企业的待遇；及
    - (ii) 给予属该缔约方领土内涵盖投资的企业企业的待遇，不低于其给予属由该缔约方、任何其他缔约方或任何非缔约方投资者的投资的企业在该缔约方领土内相关市场中的待遇；以及
  - (d) 不使用其垄断地位在其领土内的非垄断市场上直接或间接从事，包括通过其与母公司、子公司或该缔

<sup>13</sup> 第 17.4.1 条(非歧视待遇和商业考虑)不得适用于一国有企业将购买或销售股份、股票或其他形式的权益作为对另一企业的权益参与方式的情况。

anticompetitive practices in a non-monopolised market in its territory that negatively affect trade or investment between the Parties.<sup>14</sup>

3. Paragraphs 1(b) and 1(c) and paragraphs 2(b) and 2(c) do not preclude a state-owned enterprise or designated monopoly from:

- (a) purchasing or selling goods or services on different terms or conditions including those relating to price; or
- (b) refusing to purchase or sell goods or services,

provided that such differential treatment or refusal is undertaken in accordance with commercial considerations.

### **Article 17.5: Courts and Administrative Bodies**

1. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory.<sup>15</sup> This shall not be construed to require a Party to provide jurisdiction over such claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.<sup>16</sup>

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<sup>14</sup> For greater certainty, a Party may comply with the requirements of this subparagraph through the enforcement or implementation of its generally applicable national competition laws and regulations, its economic regulatory laws and regulations, or other appropriate measures.

<sup>15</sup> This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

<sup>16</sup> For greater certainty, the impartiality with which an administrative body exercises its regulatory discretion is to be assessed by reference to a pattern or practice of that administrative body.

约方或指定垄断拥有的其他实体之间的交易从事，  
消极影响缔约方间的贸易或投资的反竞争行为。<sup>14</sup>

3. 第 1 款(b)项和第 1 款(c)项及第 2 款(b)项和第 2 款(c)项不  
阻止国有企业或指定垄断：

(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；或

(b) 拒绝购买或销售货物或服务，

只要该差别待遇或拒绝依照商业考虑采取。

### 第 17.5 条 法院和行政机构

1. 每一缔约方应给予其法院对于基于在其领土内开展的商业  
活动而针外国政府拥有或通过所有者权益控制的企业所提起的民  
事诉讼的管辖权。<sup>15</sup>在缔约方未给予其法院对于针对不属由外国  
政府拥有或通过所有者权益控制的企业所提起的类似权利请求的  
管辖权的情况下，此点不得解释为要求该缔约方给予对此类诉讼  
的管辖权。

2. 每一缔约方应保证，该缔约方建立或设立的监管国有企业的  
的任何行政机构以公正的方式对其所监管的企业，包括不属国有  
企业的企业，行使其监管自由裁量权。<sup>16</sup>

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<sup>14</sup> 为进一步明确，一缔约方可通过执行或实施其普遍适用的国家竞争法律法规、其经济监  
管法律法规或其他适当措施以遵守本项的要求。

<sup>15</sup> 本款不得解释为阻止一缔约方给予其法院如下管辖权：即针对一外国政府拥有或通过拥  
有者权益控制的一企业提起本款中所指权利请求以外的权利请求。

<sup>16</sup> 为进一步明确，对一行政机构行使监管自由裁量权的公正性进行评价应参照该行政机构  
的模式或实践。



## Article 17.6: Non-commercial Assistance

1. No Party shall cause<sup>17</sup> adverse effects to the interests of another Party through the use of non-commercial assistance that it provides, either directly or indirectly<sup>18</sup>, to any of its state-owned enterprises with respect to:

- (a) the production and sale of a good by the state-owned enterprise;
- (b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or
- (c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

2. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of another Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises with respect to:

- (a) the production and sale of a good by the state-owned enterprise;
- (b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or
- (c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

3. No Party shall cause injury to a domestic industry<sup>19</sup> of another Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of that other Party in circumstances where:

- (a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

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<sup>17</sup> For the purposes of paragraphs 1 and 2, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

<sup>18</sup> For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

<sup>19</sup> The term “domestic industry” refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

## 第 17.6 条 非商业援助

1. 任何缔约方不得通过使用其直接或间接<sup>18</sup>向其任何国有企业在下列方面提供的非商业援助，而对另一缔约方的利益造成<sup>17</sup>不利影响：

- (a) 该国有企业所从事的货物的生产和销售；
- (b) 该国有企业自该缔约方领土向另一缔约方领土提供服务；或
- (c) 通过属另一缔约方或任何其他缔约方领土内涵盖投资企业在该另一缔约方领土内提供服务。

2. 每一缔约方应保证，其国家企业和国有企业不得通过使用该国家企业或国有企业向其任何国有企业在下列方面提供的非商业援助而对另一缔约方的利益造成不利影响：

- (a) 该国有企业所从事的货物的生产和销售；
- (b) 该国有企业自该缔约方领土向另一缔约方领土提供服务；或
- (c) 通过属另一缔约方或任何其他缔约方领土内涵盖投资的企业在该另一缔约方领土内提供服务。

3. 任何缔约方不得在下列情况下，通过使用其直接或间接向属其他缔约方领土内涵盖投资的其任何国有企业所提供的非商业援助对该另一缔约方的国内产业<sup>19</sup>造成损害：

- (a) 该非商业援助针对该国有企业在另一缔约方领土内货物的生产和销售提供；及

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<sup>17</sup> 就第 1 款和第 2 款而言，必须证明所声称的不利影响是由非商业援助所造成的。因此，非商业援助必须与其他可能的因果因素一并审查，以保证适当的因果因素归因。

<sup>18</sup> 为进一步明确，间接提供包括缔约方委托或指示非国有企业提供非商业援助的情况。

<sup>19</sup> “国内产业”一词指同类货物的国内生产者全体，或指合计产量构成同类货物国内总产量主要部分的国内生产者，不包括属涵盖投资并已获得第 3 款中所指非商业援助的国有企业。

- (b) a like good is produced and sold in the territory of the other Party by the domestic industry of that other Party.<sup>20</sup>

4. A service supplied by a state-owned enterprise of a Party within that Party's territory shall be deemed not to cause adverse effects.<sup>21</sup>

#### **Article 17.7: Adverse Effects**

1. For the purposes of Article 17.6.1 and Article 17.6.2 (Non-commercial Assistance), adverse effects arise if the effect of the non-commercial assistance is:

- (a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from the Party's market imports of a like good of another Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;
- (b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from:
  - (i) the market of another Party sales of a like good produced by an enterprise that is a covered investment in the territory of that other Party, or imports of a like good of any other Party; or
  - (ii) the market of a non-Party imports of a like good of another Party;
- (c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:
  - (i) the market of a Party as compared with the price in the same market of imports of a like good of another Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression or lost sales in the same market; or
  - (ii) the market of a non-Party as compared with the price in the same market of imports of a like good of another Party, or significant price suppression, price depression or lost sales in the same market;

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<sup>20</sup> In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

<sup>21</sup> For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

- (b) 该另一缔约方的国内产业在该另一缔约方领土内生产和销售同类货物。<sup>20</sup>

4. 缔约方的国有企业在该缔约方领土内提供的服务应视为未造成不利影响。<sup>21</sup>

### 第 17.7 条 不利影响

1. 就第 17.6.1 条和第 17.6.2 条(非商业援助)而言, 如非商业援助属下列情况则产生不利影响:

- (a) 已获得非商业援助的缔约方的国有企业的货物生产和销售取代或阻碍该缔约方市场自另一缔约方进口同类货物或属该缔约方领土内涵盖投资的企业所生产的同类货物的销售;
- (b) 已获得非商业援助的缔约方的国有企业的货物的生产和销售:
  - (i) 自另一缔约方市场取代或阻碍属该另一缔约方领土内涵盖投资的企业所生产同类货物在该另一缔约方市场的销售, 或取代或阻碍任何其他缔约方同类货物的进口; 或
  - (ii) 自一非缔约方市场取代或阻碍另一缔约方一同类货物的进口;
- (c) 已获得非商业援助的缔约方的国有企业生产和在下列市场中销售的货物造成大幅削低价格:
  - (i) 缔约方的市场, 与在同一市场中缔约方同类货物进口的价格或属该缔约方领土内涵盖投资的企业生产的同类货物的价格相比较, 或在同一市场上造成大幅价格抑制、价格压低或销售损失; 或
  - (ii) 非缔约方的市场, 与同一市场中另一缔约方同类货物进口的价格相比较, 或在同一市场上造成大幅价格抑制、价格压低或销售损失;

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<sup>20</sup> 在对国内产业的建立造成实质阻碍的情况下, 各方理解国内产业可能尚未生产和销售同类货物。然而, 在这种情况下, 必须有证据证明潜在国内生产者已就开始生产和销售同类货物作出实质性承诺。

<sup>21</sup> 为进一步明确, 本款不得解释为适用于本身即为一种形式的非商业援助的服务。

- (d) that services supplied by a Party's state-owned enterprise that has received the non-commercial assistance displace or impede from the market of another Party a like service supplied by a service supplier of that other Party or any other Party; or
- (e) a significant price undercutting by a service supplied in the market of another Party by a Party's state-owned enterprise that has received the non-commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of that other Party or any other Party, or significant price suppression, price depression or lost sales in the same market.<sup>22</sup>

2. For the purposes of paragraphs 1(a), 1(b) and 1(d), the displacing or impeding of a good or service includes any case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" shall include any of the following situations:

- (a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;
- (b) the market share of the good or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or
- (c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

The change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, shall be at least one year.

3. For the purposes of paragraphs 1(c) and 1(e), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 shall be made at the same level of trade and at comparable times, and due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides:

- (a) before the signing of this Agreement; or

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<sup>22</sup> The purchase or sale of shares, stock or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not be construed to give rise to adverse effects as provided for in Article 17.7.1 (Adverse Effects).

- (d) 已获得非商业援助的一缔约方的国有企业所提供的服务自另一缔约方的市场取代或阻碍该另一缔约方或任何其他缔约方的服务提供者所提供的同类服务；或
- (e) 已获得非商业援助的一缔约方的国有企业在另一缔约方的市场中所提供的服务，与在同一市场中该另一缔约方或任何其他缔约方的服务提供者所提供的同类服务相比较，造成大幅价格削低，或在同一市场中造成大幅价格抑制、价格压低或销售损失。<sup>22</sup>

2. 就第 1 款(a)项、第 1 款(b)项和第 1 款(d)项而言，取代或阻碍货物或服务包括已被证明存在不利于同类货物或同类服务的相对市场份额显著变化的任何情况。“相对市场份额显著变化”应包括任何下列情况：

- (a) 该缔约方国有企业的货物或服务的市场份额显著增加；
- (b) 在该缔约方国有企业的货物或服务的市场份额保持不变情况下，如不存在非商业援助，则市场份额会大幅降低；或
- (c) 该缔约方国有企业的货物或服务的市场份额降低，但速度明显低于不存在非商业援助的情况。

该变化必须在可充分证明有关货物或服务的市场的明确发展趋势的一适当具有代表性的期限内显现，通常情况下应至少为 1 年。

3. 就第 1 款(c)项和第 1 款(e)项而言，价格削低应包括通过对该国有企业的货物或服务的价格与同类货物或服务的价格相比较所证明的此类价格削低的任何情况。

4. 第 3 款的价格比较应在同一贸易水平上和可比较的时间进行，同时适当考虑影响价格可比性的因素。如不可能进行交易的直接比较，则可在部分其他合理基础上证明存在价格削低，例如对于货物而言，对单价进行比较。

5. 缔约方在下列情况下提供的非商业援助应视为未造成不利影响：

- (a) 在本协定签署之前；或

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<sup>22</sup> 已获得非商业援助的国有企业购买或销售股份、股票或其他形式的权益，作为对另一企业的权益参与方式，不得解释为造成第 17.7.1 条(不利影响)中所规定的不利影响。

- (b) within three years after the signing of this Agreement, pursuant to a law that is enacted, or contractual obligation undertaken, prior to the signing of this Agreement,

shall be deemed not to cause adverse effects.

6. For the purposes of Article 17.6.1(b) and Article 17.6.2(b) (Non-commercial Assistance), the initial capitalisation of a state-owned enterprise, or the acquisition by a Party of a controlling interest in an enterprise, that is principally engaged in the supply of services within the territory of the Party, shall be deemed not to cause adverse effects.

### **Article 17.8: Injury**

1. For the purposes of Article 17.6.3 (Non-commercial Assistance), the term “injury” shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the domestic industry producing like goods.<sup>23</sup>

2. With regard to the volume of production by the covered investment that has received non-commercial assistance, consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government

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<sup>23</sup> The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel.

- (b) 在本协定签署后 3 年内，根据本协定签署前颁布的法律或承担的合同义务。

6. 就第 17.6.1 条(b)项和第 17.6.2 条(b)项(非商业援助)而言，对一国有企业的初始资本化，或一缔约方对在该缔约方领土内主要从事服务提供的一企业控股权益的收购不得视为造成不利影响。

## 第 17.8 条 损害

1. 就第 17.6.3 条(非商业援助)而言，“损害”一词应理解为对国内产业的实质损害、对国内产业实质损害威胁或对该产业建立的实质阻碍。对实质损害的确定应根据肯定性证据，并包含对相关因素进行的客观审查，包括已获得非商业援助的涵盖投资的产量、此种生产对国内产业生产和销售的同类货物价格的影响，以及此种生产对生产同类货物的国内产业的影响。<sup>23</sup>

2. 关于已获得非商业援助的涵盖投资的产量，应考虑产量的绝对数量或与被指控已发生损害的该缔约方领土内的生产或消费相比的相对数量是否大幅增加。对于涵盖投资的生产对价格的影响，应考虑与国内产业生产和销售的同类货物的价格相比，涵盖投资所生产的货物是否大幅削低价格，或涵盖投资的产生的影响在其他方面是否大幅压低价格或是否在很大程度上抑制在其他情况下本应发生的价格增加。这些因素中的一个或几个均未必能够给予决定性的指导。

3. 关于已获得非商业援助的涵盖投资所生产和销售的对国内产业影响的审查应包括对影响产业状况的所有相关经济因素和指标的评估，例如产量、销售量、市场份额、利润、生产力、投资收益或产能利用率的实际和潜在下降；影响国内价格的因素；对现金流动、库存、就业、工资、增长、筹措资金能力或投资能力的实际和潜在的消极影响，以及对于农业而言，则为是否增加政府支持计划的负担。该清单不是穷尽无遗的，这些因素中

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<sup>23</sup> 对非商业援助和损害的审查期限应合理设置，应尽可能在接近仲裁庭程序启动之日结束。



support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects<sup>24</sup> of the non-commercial assistance, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry shall be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors which may be relevant in this respect include, among other things, the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care. The change in circumstances which would create a situation in which non-commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors<sup>25</sup> and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

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<sup>24</sup> As set out in paragraphs 2 and 3.

<sup>25</sup> In making a determination regarding the existence of a threat of material injury, a panel pursuant to Chapter 28 (Dispute Settlement) should consider, among other things, such factors as: (a) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales; (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production; (d) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and (e) inventories of like goods.

的一个或几个均未必能够给予决定性的指导。

4. 必须证明涵盖投资所生产和销售的货物通过非商业援助的影响<sup>24</sup>正在造成本条范围内的损害。证明涵盖投资所生产和销售的货物与对国内产业损害之间的因果关系应以对所有相关证据进行的审查为根据。应审查除涵盖投资所生产的货物外的、同时正在损害国内产业的任何已知因素，且这些其他因素造成的损害不得归因于已获得非商业援助的涵盖投资所生产和销售的货物。在这方面可能相关的因素特别包括所涉市场其他同类货物的数量和价格、需求的减少或消费模式的变化，技术发展以及国内产业的出口实绩和生产率。

5. 对实质损害威胁的确定应根据事实，而不是仅根据指控、推测或极小的可能性，并应慎重考虑。对涵盖投资给予的非商业援助将造成损害发生的情况变化必须是能够明显预见且迫近的。在作出有关存在实质损害威胁的确定时，应考虑相关因素<sup>25</sup>并考虑被考虑因素作为整体能否得出如下结论：即更多的涵盖投资生产的货物是迫近的，且除非采取保护性行动，否则实质损害将会发生。

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<sup>24</sup> 如第 2 款和第 3 款中所列。

<sup>25</sup> 在作出存在实质损害威胁的确定时，根据第 28 章(争端解决)设立的专家组应特别考虑如下因素：(a)所涉非商业援助的性质和由此可能产生的贸易影响；(b)涵盖投资在国内市场销售的大幅增长率，表明销售实质增加的可能性；(c)涵盖投资可充分自由使用的、或即将实质增加的产能，表明该涵盖投资所生产货物实质增加的可能性，同时考虑吸收额外生产的出口市场的可获性；(d)涵盖投资所销售货物的价格是否将对同类货物的价格产生大幅抑制或压低效果；以及(e)同类货物的库存。

### **Article 17.9: Party-Specific Annexes**

1. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies that a Party lists in its Schedule to Annex IV in accordance with the terms of the Party's Schedule.
2. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.5 (Courts and Administrative Bodies), Article 17.6 (Non-commercial Assistance) and Article 17.10 (Transparency) shall not apply with respect to a Party's state-owned enterprises or designated monopolies as set out in Annex 17-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies).
3.
  - (a) In the case of Singapore, Annex 17-E (Singapore) shall apply.
  - (b) In the case of Malaysia, Annex 17-F (Malaysia) shall apply.

### **Article 17.10: Transparency**<sup>26, 27</sup>

1. Each Party shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement for that Party, and thereafter shall update the list annually.<sup>28, 29</sup>

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<sup>26</sup> This Article shall not apply to Brunei Darussalam with respect to the Entities listed in the entry at Annex IV – Brunei Darussalam - 4 that engage in the non-conforming activities described in that entry.

<sup>27</sup> This Article shall not apply to Viet Nam with respect to the Entities listed in:

- (a) the entry at Annex IV – Viet Nam – 8 that engage in the non-conforming activities described in that entry, until that entry ceases to have effect; and
- (b) the entry at Annex IV – Viet Nam – 10 that engage in the non-conforming activities described in that entry.

<sup>28</sup> For Brunei Darussalam, this paragraph shall not apply until five years from the date of entry into force of this Agreement for Brunei Darussalam. Separately, within three years after the date of entry into force of this Agreement, Brunei Darussalam shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises that have an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years, and shall thereafter update the list annually, until the obligation in this paragraph applies and replaces this obligation.

<sup>29</sup> For Viet Nam and Malaysia, this paragraph shall not apply until five years from the date of entry into force of this Agreement for Viet Nam and Malaysia, respectively. Separately, within six months after the date of entry into force of this Agreement for Viet Nam and Malaysia, respectively, each Party shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises that have an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years, and shall thereafter update the list annually, until the obligation in this paragraph applies and replaces this obligation.

## 第 17.9 条 缔约方特定附件

1. 第 17.4 条(非歧视待遇和商业考虑)和第 17.6 条(非商业援助)不得适用于缔约方依照该缔约方减让表条款列入附件 4 减让表中的国有企业或指定垄断的不符活动。
2. 第 17.4 条(非歧视待遇和商业考虑)、第 17.5 条(法院和行政机构)、第 17.6 条(非商业援助)和第 17.10 条(透明度)不得适用于附件 17-D(对次中央国有企业和指定垄断的适用)中所列缔约方的国有企业或指定垄断。
3. (a) 对于新加坡, 附件 17-E(新加坡)应适用。  
(c) 对于马来西亚, 附件 17-F(马来西亚)应适用。

## 第 17.10 条 透明度<sup>26,27</sup>

1. 每一缔约方应不迟于本协定对其生效之日后 6 个月, 向其他缔约方提供或通过其他方式在官方网站公开提供其国有企业名单, 且此后应每年更新。<sup>28,29</sup>

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<sup>26</sup> 本条不得适用于文莱达鲁萨兰国在文莱达鲁萨兰国附件 4 条目 4 中所列从事该条目中所述不符活动的实体。

<sup>27</sup> 本条不适用于越南在下列文件中所列实体:

- (a) 越南附件 4 条目 8, 从事该条目中所述不符活动, 直至该条目失效; 及
- (b) 越南附件 4 第条目 10, 从事该条目中所述不符活动。

<sup>28</sup> 对于文莱达鲁萨兰国, 本款自本协定对文莱达鲁萨兰国生效之日起 5 年内不得适用。同时, 在本协定生效之日后 3 年内, 文莱达鲁萨兰国应向其他缔约方提供或通过其他方式在官方网站公开提供其在前 3 年的任何一年中自其商业活动中获得年收入超过 5 亿特别提款权的国有企业名单, 且此后应每年更新, 直至本款中义务适用以替代这一义务。

<sup>29</sup> 对于越南和马来西亚, 本款自本协定分别对越南和马来西亚生效之日起 5 年内不适用。同时, 在本协定分别对越南和马来西亚生效之日后 6 个月内, 每一缔约方应分别向其他缔约方提供或通过其他方式在官方网站公开提供其在前 3 年的任何一年中自商业活动中获得年收入超过 5 亿特别提款权的国有企业名单, 且此后应每年更新, 直至本款中义务适用以替代这一义务。

2. Each Party shall promptly notify the other Parties or otherwise make publicly available on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation.<sup>30</sup>

3. On the written request of another Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting trade or investment between the Parties:

- (a) the percentage of shares that the Party, its state-owned enterprises or designated monopolies 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, its state-owned enterprises or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity;
- (c) the government titles of any government official serving as an officer or member of the entity's board of directors;
- (d) the entity's annual revenue and total assets over the most recent three year period for which information is available;
- (e) any exemptions and immunities from which the entity benefits under the Party's law; and
- (f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of another Party, a Party shall promptly provide, in writing, information regarding any policy or programme it has adopted or maintains that provides for non-commercial assistance, provided that the request includes an explanation of how the policy or programme affects or could affect trade or investment between the Parties.

5. When a Party provides a response pursuant to paragraph 4, the information it provides shall be sufficiently specific to enable the requesting Party to understand the operation of and evaluate the policy or programme and its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response it provides contains the following information:

- (a) the form of the non-commercial assistance provided under the policy or programme, for example, grant or loan;

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<sup>30</sup> Paragraphs 2, 3 and 4 shall not apply to Viet Nam with respect to the Entities listed in the entry at Annex IV – Viet Nam – 9 that engage in the non-conforming activities described in that entry.

2. 每一缔约方应迅速向其他缔约方通知或通过其他方式在官方网站公开提供对垄断的指定或对现有垄断范围的扩大及其指定所含条件。<sup>30</sup>

3. 经另一缔约方书面请求，一缔约方应迅速提供关于一国有企业或政府垄断的下列信息，只要该请求包括关于该实体的活动如何影响缔约方之间的贸易或投资的说明：

- (a) 该缔约方、其国有企业或指定垄断在该实体中累计拥有的股份比例，以及累计持有的投票权比例；
- (b) 对该缔约方、其国有企业或指定垄断持有的任何特殊股份或特别投票权或其他权利的说明，只要这些权利不同于该实体普通股份所附权利；
- (c) 在该实体董事会中任职或作为成员的任何政府官员的政府头衔；
- (d) 可获得信息的该实体最近 3 年年收入和总资产；
- (e) 根据该缔约方法律该实体所获益的任何免除和豁免；以及
- (f) 关于该实体的可公开获得和该书面请求所寻求的任何额外信息，包括年度财务报告和第三方审计情况。

4. 应另一缔约方书面请求，一缔约方应迅速书面提供关于其已采取或维持的提供非商业考虑援助的任何政策或计划的信息，只要该请求包括关于政策或计划如何影响或可能影响缔约方之间贸易或投资的说明。

5. 如缔约方根据第 4 款提供答复，则其提供的信息应足够具体，使提出请求的缔约方能够理解政策或计划的运营情况，并对政策或计划及其对缔约方之间贸易或投资的影响或潜在影响进行评估。对请求作出答复的缔约方应保证其提供的答复包含下列信息：

- (a) 该政策或计划下提供的非商业援助的形式，例如赠款或贷款；

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<sup>30</sup> 第 2 款、第 3 款和第 4 款不得适用于越南附件 4 条目 9 中所列从事该条目中所述不符活动的实体。

- (b) the names of the government agencies, state-owned enterprises, or state enterprises providing the non-commercial assistance and the names of the state-owned enterprises that have received or are eligible to receive the non-commercial assistance;
- (c) the legal basis and policy objective of the policy or programme providing for the non-commercial assistance;
- (d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases where this is not possible, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;
- (e) with respect to services, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;
- (f) with respect to policies or programmes providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;
- (g) with respect to policies or programmes providing for non-commercial assistance in the form of the provision of goods or services, the prices charged, if any;
- (h) with respect to policies or programmes providing for non-commercial assistance in the form of equity capital, the amount invested, the number and a description of the shares received, and any assessments that were conducted with respect to the underlying investment decision;
- (i) duration of the policy or programme or any other time-limits attached to it; and
- (j) statistical data permitting an assessment of the effects of the non-commercial assistance on trade or investment between the Parties.

6. If a Party considers that it has not adopted or does not maintain any policies or programmes referred to in paragraph 4, it shall so inform the requesting Party in writing.

7. If any relevant points in paragraph 5 have not been addressed in the written response, an explanation shall be provided in the written response itself.

8. The Parties recognise that the provision of information under paragraphs 5 and 7 does not prejudice the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.

- (b) 提供非商业援助的政府机关、国有企业或国家企业的名称，以及已获得或有资格获得非商业援助的国有企业的名称；
- (c) 提供非商业援助的政策或计划的法律根据和政策目标；
- (d) 对于货物，提供非商业援助的单位金额，如不可能，则提供非商业援助的总金额或年度预算金额，如可能，说明上一年的单位平均金额；
- (e) 对于服务，提供非商业援助的总金额或年度预算金额，如可能，说明上一年的总金额；
- (f) 对于以贷款或贷款担保形式提供非商业援助的政策或计划，提供贷款或贷款担保的金额、利率和收取的规费；
- (g) 对于以提供货物或服务的形式提供非商业援助的政策或计划，所收取的价格(如有)；
- (h) 对于以权益资本形式提供的非商业援助的政策或计划，提供投资的金额、所获股份的数量和说明，以及对潜在投资决策开展的任何评估；
- (i) 提供政策或计划的存续时间或所附任何其他时限；以及
- (j) 提供可用以对非商业援助对缔约方之间贸易或投资的影响进行评估的统计数据。

6. 如缔约方认为其尚未采取或并未维持第 4 款中所指的任何政策或计划，则其应按此书面通知提出请求的缔约方。

7. 如书面答复中未回应第 5 款中的任何相关点，则应在书面答复中作出说明。

8. 缔约方认识到，根据第 5 款和第 7 款提供信息并不预断本协议项下作为第 4 款下请求对象的援助的法律地位或该援助的影响。

9. 如缔约方根据本条下的请求提供书面信息并通知提出请求的缔约方其认为该信息属机密性质，则提出请求的缔约方未经提供信息的缔约方事先同意不得披露该信息。



### **Article 17.11: Technical Cooperation**

The Parties shall, where appropriate and subject to available resources, engage in mutually agreed technical cooperation activities, including:

- (a) exchanging information regarding Parties' experiences in improving the corporate governance and operation of their state-owned enterprises;
- (b) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and
- (c) 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.

### **Article 17.12: Committee on State-Owned Enterprises and Designated Monopolies<sup>31</sup>**

1. The Parties hereby establish a Committee on State-Owned Enterprises and Designated Monopolies (Committee), composed of government representatives of each Party.

2. The Committee's functions shall include:

- (a) reviewing and considering the operation and implementation of this Chapter;
- (b) at a Party's request, consulting on any matter arising under this Chapter;
- (c) developing cooperative efforts, as appropriate, to promote the principles underlying the disciplines contained in this Chapter in the free trade area and to contribute to the development of similar disciplines in other regional and multilateral institutions in which two or more Parties participate; and
- (d) undertaking other activities as the Committee may decide.

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<sup>31</sup> Article 17.12 (Committee on State-Owned Enterprises and Designated Monopolies) shall not apply to Viet Nam with respect to the Entities listed in:

- (a) the entry at Annex IV – Viet Nam – 8 that engage in the non-conforming activities described in that entry, until that entry ceases to have effect; and
- (b) the entry at Annex IV – Viet Nam – 10 that engage in the non-conforming activities described in that entry.

## 第 17.11 条 技术合作

缔约方，如适当并根据可获得的资源，应开展双方同意的技术合作活动，包括：

- (a) 就缔约方在改进其国有企业公司治理和经营方面的经验交流信息；
- (b) 分享政策方法的最佳实践，以保证国有企业和私营企业之间的公平竞争，包括与竞争中立相关的政策；以及
- (c) 组织国际研讨会、讲习班或任何其他适当论坛，以分享与国有企业公司治理和经营相关的技术信息和专门知识。

## 第 17.12 条 国有企业和指定垄断委员会<sup>31</sup>

1. 缔约方特此设立国有企业和指定垄断委员会(委员会)，由每一缔约方的政府代表组成。
2. 委员会的职能应包括：
  - (a) 审议和考虑本章的运用和实施情况；
  - (b) 应缔约方请求，对本章下产生的任何事项进行磋商；
  - (c) 酌情推动合作努力，以在本自由贸易区内促进本章所含纪律中体现的原则，并为在两个或多个缔约方参加的其他区域和多边机构中制定类似纪律作出贡献；以及
  - (d) 开展委员会可能决定的其他活动。

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<sup>31</sup> 第 17.12 条(国有企业和指定垄断委员会)不适用于越南在下列文件中列出的实体：

- (a) 越南附件 4 第 8 条目，从事该条所述的不符活动，直至该条目失效；及
- (b) 越南附件 4 第 10 条目，从事该条所述的不符活动。

3. The Committee shall meet within one year after the date of entry into force of this Agreement, and at least annually thereafter, unless the Parties agree otherwise.

### **Article 17.13: Exceptions**

1. Nothing in Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance) shall be construed to:

- (a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or
- (b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a national or global economic emergency, for the duration of that emergency.

2. Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall 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 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;<sup>32</sup>
- (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.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to give rise to adverse effects under Article

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<sup>32</sup> In circumstances where no comparable financial services are offered in the commercial market: (a) for the purposes of paragraphs 2(a)(ii), 2(b)(ii), 3(a)(ii) and 3(b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of paragraphs 2(a)(i), 2(b)(i), 3(a)(i) and 3(b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

3. 委员会应自本协定生效之日 1 年内召开会议，并在此后至少每年召开 1 次会议，除非缔约方另有议定。

### 第 17.13 条 例外

1. 第 17.4 条(非歧视待遇和商业考虑)或第 17.6 条(非商业援助)中任何内容不得解释为：

- (a) 阻止任何缔约方采取或实施措施，以临时应对国家或全球经济紧急状况；或
- (b) 适用于缔约方为应对国家或全球经济紧急状况而在该紧急状况期间对其临时采取或实施措施的国有企业。

2. 第 17.4.1 条(非歧视待遇和商业考虑)不得适用于国有企业根据政府授权提供金融服务，如所提供的金融服务：

- (a) 支持出口或进口，只要这些服务：
  - (i) 无意取代商业融资；或
  - (ii) 所提供的条件并不优于可自商业市场中获得的可比金融服务的条件；<sup>32</sup>
- (b) 支持该缔约方领土之外的私人投资，只要这些服务：
  - (i) 无意取代商业融资；或
  - (ii) 所提供的条件并不优于可自商业市场中获得的可比金融服务的条件；或
- (c) 以与该安排相一致的条件提供，只要其属该安排范围内。

3. 国有企业根据政府授权提供金融服务应被视为不造成第 17.6.1 条(b)项(非商业援助)或第 17.6.2 条(b)项、第 17.6.1 条(c)项

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<sup>32</sup> 在商业市场中无可比金融服务提供的情况下：(a)就第 2 款(a)项(ii)目、第 2 款(b)项(ii)目、第 3 款(a)项(ii)目和第 3 款(b)项(ii)目而言，国有企业如必要可依靠可获得的证据设定此类服务据以在商业市场中提供的条件基准；及(b)就第 2 款(a)项(i)目、第 2 款(b)项(i)目、第 3 款(a)项(i)目和第 3 款(b)项(i)目而言，提供金融服务不得视为有意取代商业融资。

17.6.1(b) (Non-commercial Assistance) or Article 17.6.2(b), or under Article 17.6.1(c) or Article 17.6.2(c) where the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services:<sup>33</sup>

- (a) supports exports and imports, 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;
- (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.

4. Article 17.6 (Non-commercial Assistance) shall not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise or state-owned enterprise of the Party, provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.6 (Non-commercial Assistance), Article 17.10 (Transparency) and Article 17.12 (Committee on State-Owned Enterprises and Designated Monopolies) shall not apply with respect to a state-owned enterprise or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 17-A.<sup>34, 35</sup>

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<sup>33</sup> For the purposes of this paragraph, in cases where the country in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

<sup>34</sup> When a Party invokes this exception during consultations under Article 28.5 (Consultations), the consulting Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the

或第 17.6.2 条(c)项下的不利影响，如金融服务提供地所属缔约方要求建立当地存在以便提供这些服务，且如该金融服务的提供：

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- (a) 支持出口和进口，只要这些服务：
  - (i) 无意取代商业融资；或
  - (ii) 所提供的条件并不优于可自商业市场中获得的可比金融服务的条件；
- (b) 支持该缔约方领土之外的私人投资，只要这些服务：
  - (i) 无意取代商业金融资；或
  - (ii) 所提供的条件并不优于可自商业市场中获得的可比金融服务的条件；或
- (c) 以与该安排相一致的条件提供，只要其属该安排范围内。

4. 第 17.6 条(非商业援助)不得适用于因丧失抵押品赎回权或与拖欠债务有关的类似诉讼，或与第 2 款和第 3 款中所指金融服务提供相关的国有企业对保险索赔的支付而由缔约方的国有企业取得临时所有权的位于该缔约方领土之外的企业，只要在临时享有所有权期间，该缔约方、该缔约方国家企业或国有企业向该企业提供任何支持目的在于依照最终会导致该企业资产剥离的重组或清算计划收回该国有企业的投资。

5. 第 17.4 条(非歧视待遇和商业考虑)、第 17.6 条(非商业援助)、第 17.10 条(透明度)和第 17.12 条(国有企业和指定垄断委员会)不得适用于在前 3 个连续财务年度的任何一年中自商业活动获得的年收入低于依照附件 17-A 应计算得出的门槛金额的国有企业或指定垄断。<sup>34,35</sup>

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<sup>33</sup> 就本款而言，如金融服务提供地所属国要求当地存在以便提供这些服务，则通过属涵盖投资的企业提供本款中所确定的金融服务应视为未产生不利影响。

<sup>34</sup> 如一缔约方在根据第 28.5 条(磋商)进行的磋商中援引该例外，则磋商缔约方应交换并讨论关于该国有企业或指定垄断在前 3 个连续财务年度中自商业活动获得的年收入的可获得

#### **Article 17.14: Further Negotiations**

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of the disciplines in this Chapter in accordance with Annex 17-C (Further Negotiations).

#### **Article 17.15: Process for Developing Information**

Annex 17-B (Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies) shall apply in any dispute under Chapter 28 (Dispute Settlement) regarding a Party's conformity with Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance).

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three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

<sup>35</sup> Notwithstanding this paragraph, for a period of five years after the date of entry into force of this Agreement for Brunei Darussalam, Malaysia or Viet Nam, Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply with respect to a state-owned enterprise or designated monopoly of Brunei Darussalam, Malaysia or Viet Nam, respectively, if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the enterprise was less than SDR 500 million.

### 第 17.14 条 进一步谈判

本协定生效之日后 5 年内，缔约方应开展进一步谈判，以依照附件 17-C(进一步谈判)扩大本章纪律的适用范围。

### 第 17.15 条 信息形成过程

附件 17-B(关于国有企业和指定垄断的信息形成过程)应适用于第 28 章(争端解决)下关于缔约方遵守第 17.4 条(非歧视待遇和商业考虑)或第 17.6 条(非商业援助)的任何争端。

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的证据，以便在磋商阶段解决有关该例外适用的任何分歧。

<sup>35</sup> 尽管有本款，但是本协定在对文莱达鲁萨兰国、马来西亚或越南生效之日后 5 年期限内，第 17.4 条(非歧视待遇和商业考虑)和第 17.6 条(非商业援助)不适用于文莱达鲁萨兰国、马来西亚或越南的国有企业或指定垄断，如在前 3 个连续财务年度的任何一年中，该企业自商业活动获得的年收入低于 5 亿特别提款权。



## ANNEX 17-A

## THRESHOLD CALCULATION

1. On the date of entry into force of this Agreement, the threshold referred to in Article 17.13.5 (Exceptions) shall be 200 million Special Drawing Rights (SDRs).
2. The amount of the threshold shall be adjusted at three-year intervals with each adjustment taking effect on 1 January. The first adjustment shall take place on the first 1 January following the entry into force of this Agreement, in accordance with the formula set out in this Annex.
3. The threshold shall be adjusted for changes in general price levels using a composite SDR inflation rate, calculated as a weighted sum of cumulative per cent changes in the Gross Domestic Product (GDP) deflators of SDR component currencies over the three-year period ending 30 June of the year prior to the adjustment taking effect, and using the following formula:

$$T_1 = (1 + (\sum w_i^{SDR} \cdot \Pi_i^{SDR}))T_0$$

where:

- $T_0$  = threshold value at base period;
- $T_1$  = new (adjusted) threshold value;
- $w_i^{SDR}$  = respective (fixed) weights of each currency,  $i$ , in the SDR (as at 30 June of the year prior to adjustment taking effect); and
- $\Pi_i^{SDR}$  = cumulative per cent change in the GDP deflator of each currency,  $i$ , in the SDR over the three-year period ending 30 June of the year prior to adjustment taking effect.

4. Each Party shall convert the threshold into national currency terms where the conversion rates shall be the average of monthly values of that Party's national currency in SDR terms over the three-year period to 30 June of the year before the threshold is to take effect. Each Party shall notify the other Parties of their applicable threshold in their respective national currencies.
5. For the purposes of this Chapter, all data shall be drawn from the International Monetary Fund's *International Financial Statistics* database.
6. The Parties shall consult if a major change in a national currency *vis-à-vis* the SDR were to create a significant problem with regard to the application of this Chapter.

## 附件 17-A

### 门槛金额计算

1. 在本协定生效之日，第 17.13.5 条(例外)中所指的门槛金额应为 2 亿特别提款权(SDRs)。
2. 门槛金额应每隔 3 年调整一次，每次调整于 1 月 1 日生效。门槛金额的首次调整应在本协定生效后的第一个 1 月 1 日依照本附件中所列公式进行。
3. 门槛金额应使用 SDR 复合通货膨胀率针对一般价格水平的变化进行调整，按以调整生效前一年的 6 月 30 日为期末的 3 年期内 SDR 组成货币国内生产总值(GDP)平减指数累计百分比变化的加权总和计算得出，并使用下列公式：

$$T_1 = (1 + (\sum w_i^{SDR} \cdot \Pi_i^{SDR}))T_0$$

其中：

- $T_0$  = 基期门槛金额；
- $T_1$  = 新(调整后)门槛金额；
- $w_i^{SDR}$  = 每一货币  $i$  在 SDR 中的各自(固定)权重(在调整生效前一年的 6 月 30 日)；以及
- $\Pi_i^{SDR}$  = 每一货币  $i$  在以调整生效前一年的 6 月 30 日为期末的 3 年期内 SDR 中 GDP 平减指数累计百分比变化。

4. 每一缔约方应将门槛金额转换为以本国货币表示，转换率应为在以调整生效前一年的 6 月 30 日为期末的 3 年期内该缔约方以 SDR 表示的本国货币的月平均价值。每一缔约方应将其各自本国货币表示的其适用的门槛金额向其他缔约方作出通知。
5. 就本章而言，所有数据应来源于国际货币基金组织的“国际金融统计数据库”。
6. 如本国货币兑 SDR 出现重大变化可能对本章的适用造成严重问题，则缔约方应进行磋商。

**ANNEX 17-B****PROCESS FOR DEVELOPING INFORMATION CONCERNING STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES**

1. If a panel has been established pursuant to Chapter 28 (Dispute Settlement) to examine a complaint arising under Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance), the disputing Parties may exchange written questions and responses, as set forth in paragraphs 2, 3 and 4, to obtain information relevant to the complaint that is not otherwise readily available.
2. A disputing Party (questioning Party) may provide written questions to another disputing Party (answering Party) within 15 days of the date the panel is established. The answering Party shall provide its responses to the questions to the questioning Party within 30 days of the date it receives the questions.
3. The questioning Party may provide any follow-up written questions to the answering Party within 15 days of the date it receives the responses to the initial questions. The answering Party shall provide its responses to the follow-up questions to the questioning Party within 30 days of the date it receives the follow-up questions.
4. If the questioning Party considers that the answering Party has failed to cooperate in the information-gathering process under this Annex, the questioning Party shall inform the panel and the answering Party in writing within 30 days of the date the responses to the questioning Party's final questions are due, and provide the basis for its view. The panel shall afford the answering Party an opportunity to reply in writing.
5. A disputing Party that provides written questions or responses to another disputing Party pursuant to these procedures shall, on the same day, provide the questions or answers to the panel. In the event that a panel has not yet been composed, each disputing Party shall, upon the composition of the panel, promptly provide the panel with any questions or responses it has provided to the other disputing Party.
6. The answering Party may designate information in its responses as confidential information in accordance with the procedures set out in the Rules of Procedure established under Article 27.2.1(f) (Functions of the Commission) or other rules of procedure agreed to by the disputing Parties.
7. The time periods in paragraphs 2, 3 and 4 may be modified upon agreement of the disputing Parties or approval by the panel.
8. In determining whether a disputing Party has failed to cooperate in the information-gathering process, the panel shall take into account the reasonableness of the questions and the efforts the answering Party has made to respond to the questions in a cooperative and timely manner.

## 附件 17-B

### 关于国有企业和指定垄断的信息形成过程

1. 如专家组已根据第 28 章(争端解决)设立,以审查在第 17.4 条(非歧视待遇和商业考虑)或第 17.6 条(非商业援助)下提起的起诉,则争端各方可按第 2 款、第 3 款和第 4 款中所列交换书面问题和答复,以获得与起诉相关的以其他方式无法容易获得的信息。
2. 一争端方(提问缔约方)可在专家组设立之日起 15 天内向另一争端方(答复缔约方)提交书面问题。答复缔约方应在收到问题之日起 30 天内向提问缔约方提交其对问题的答复。
3. 提问缔约方可在收到对最初所提问题的答复之日起 15 天内向答复缔约方提交任何后续书面问题。答复缔约方应自收到后续问题之日起 30 天内向提问缔约方提交其对后续问题的答复。
4. 如提问缔约方认为答复缔约方未在本附件下的信息收集过程中进行合作,则提问缔约方应在对其最后问题的答复期限到期之日后 30 天内书面告知专家组和答复缔约方,并提供支持其观点的根据。专家组应给予答复缔约方作出书面答复的机会。
5. 根据这些程序向另一争端缔约方提交书面问题或答复的一争端方,应在同日将问题或答复提交专家组。在专家组尚未设立的情况下,争端各方应在专家组设立后迅速向专家组提交其已向另一争端方提交的任何问题或答复。
6. 答复缔约方可依照第 27.2.1 条(f)项(自贸协定委员会的职能)制定的议事规则或争端各方议定的其他议事规则中所列程序指定其答复中的信息为机密信息。
7. 第 2 款、第 3 款和第 4 款中的时限经争端各方同意或经专家组批准后可进行修改。
8. 在确定一争端方是否未在信息收集过程中合作时,专家组应考虑问题的合理性和答复缔约方在以合作和及时的方式答复问题方面所作努力。

9. In making findings of fact and its initial report, the panel should draw adverse inferences from instances of non-cooperation by a disputing Party in the information-gathering process.
10. The panel may deviate from the time period set out in Chapter 28 (Dispute Settlement) for the issuance of the initial report if necessary to accommodate the information-gathering process.
11. The panel may seek additional information from a disputing Party that was not provided to the panel through the information-gathering process where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non-cooperation in the information-gathering process.

9. 在作出对事实的调查结果和最初报告时，专家组应对一争端方在信息收集过程中的不合作情况作出不利推论。
10. 如为配合信息收集过程所必要，专家组可偏离第 28 章(争端解决)中所列发布最初报告的时限。
11. 专家组可自一争端方处寻求未通过信息收集过程向专家组提交而专家组认为对解决争端所必要的额外信息。然而，专家组不得为完成记录而请求提供可支持一方立场的额外信息，而记录中该信息的缺失系因该缔约方在信息收集过程中未合作所造成。

## **ANNEX 17-C**

### **FURTHER NEGOTIATIONS**

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of:

- (a) the disciplines in this Chapter to the activities of state-owned enterprises that are owned or controlled by a sub-central level of government, and designated monopolies designated by a sub-central level of government, where such activities have been listed in Annex 17-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies); and
- (b) the disciplines in Article 17.6 (Non-commercial Assistance) and Article 17.7 (Adverse Effects) to address effects caused, in a market of a non-Party, by the supply of services by a state-owned enterprise.

## 附件 17-C

### 进一步谈判

本协定生效之日后 5 年内，缔约方应就扩大下列各项的适用开展进一步谈判：

- (a) 本章中的纪律，扩大至次中央政府拥有或控制的国有企业的活动，及次中央政府指定的指定垄断的活动，如此类活动已列入附件 17-D(对次中央国有企业和指定垄断的适用)中；及
- (b) 第 17.6 条(非商业援助)和第 17.7 条(不利影响)中的纪律，以处理因国有企业提供服务而在非缔约方的市场中造成的影响。



## ANNEX 17-D

### APPLICATION TO SUB-CENTRAL STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Pursuant to Article 17.9.2 (Party-Specific Annexes), the following obligations shall not apply with respect to a state-owned enterprise owned or controlled by a sub-central level of government and a designated monopoly designated by a sub-central level of government:<sup>36</sup>

(a) For Australia:

- (i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);
- (ii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);
- (iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Australia;
- (iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and
- (v) Article 17.10.1 (Transparency).

(b) For Canada:

- (i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);
- (ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);
- (iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);
- (iv) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;

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<sup>36</sup> For the purposes of this Annex, “sub-central level of government” means the regional level of government and the local level of government of a Party.

## 附件 17-D

### 对次中央国有企业和指定垄断的适用

根据第 17.9.2 条(缔约方特定附件), 下列义务不得适用于由次中央政府拥有或控制的国有企业和由次中央政府指定的指定垄断:<sup>36</sup>

- (a) 对于澳大利亚:
  - (i) 第 17.4.1 条(a)项和(b)项(非歧视待遇和商业考虑);
  - (ii) 第 17.4.2 条(非歧视待遇和商业考虑);
  - (iii) 第 17.6.1 条(a)项和第 17.6.2 条(a)项(非商业援助), 对于与在澳大利亚领土内的涵盖投资所生产和销售的同类货物竞争的货物的生产和销售;
  - (iv) 第 17.6.1 条(b)项和(c)项(非商业援助)、第 17.6.2 条(b)项和(c)项(非商业援助); 以及
  - (v) 第 17.10.1 条(透明度)。
- (b) 对于加拿大:
  - (i) 第 17.4.1 条(a)项和(b)项(非歧视待遇和商业考虑);
  - (ii) 第 17.4.1 条(c)项(i)目(非歧视待遇和商业考虑);
  - (iii) 第 17.4.2 条(非歧视待遇和商业考虑);
  - (iv) 第 17.5.2 条(法院和行政机构), 对于由次中央政府建立或设立的行政监管机构;

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<sup>36</sup> 就本附件而言, “次中央政府”指缔约方的地区一级和地方一级政府。

- (v) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment;
- (vi) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance);
- (vii) Article 17.6.3 (Non-commercial Assistance);
- (viii) Article 17.10.1 (Transparency); and
- (ix) Article 17.10.4 (Transparency), with respect to a policy or program adopted or maintained by a sub-central level of government.

(c) For Chile:

- (i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);
- (ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);
- (iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);
- (iv) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Chile;
- (v) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and
- (vi) Article 17.10.1 (Transparency).

(d) For Japan:

- (i) Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations);
- (ii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);
- (iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance) with respect to the production and sale of a good:

- (v) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助), 对于与涵盖投资所生产和销售的同类货物相竞争的货物的生产和销售;
  - (vi) 第 17.6.1 条(b)项和(c)项(非商业援助)和第 17.6.2 条(b)项和(c)项(非商业援助);
  - (vii) 第 17.6.3 条(非商业援助);
  - (viii) 第 17.10.1 条(透明度); 以及
  - (ix) 第 17.10.4 条(透明度), 对于次中央政府采用或维持的政策或计划。
- (c) 对于智利:
- (i) 第 17.4.1 条(a)项和(b)项(非歧视待遇和商业考虑);
  - (ii) 第 17.4.1 条(c)项(i)目(非歧视待遇和商业考虑);
  - (iii) 第 17.4.2 条(非歧视待遇和商业考虑);
  - (iv) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助), 对于与在智利领土内的涵盖投资所生产和销售的同类货物相竞争的货物的生产和销售;
  - (v) 第 17.6.1 条(b)项和(c)项(非商业援助)及 17.6.2 条(b)项和(c)项(非商业援助); 以及
  - (vi) 第 17.10.1 条(透明度)。
- (d) 对于日本:
- (i) 第 17.4.1 条(非歧视待遇和商业考虑);
  - (ii) 第 17.4.2 条(非歧视待遇和商业考虑);
  - (iii) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助), 对于属下列情况的货物的生产和销售:

- (A) by a state-owned enterprise in competition with a like good produced and sold by a covered investment of another Party in the territory of Japan; or
    - (B) by a state-owned enterprise that is a covered investment in competition with like good produced and sold by a covered investment of another Party in the territory of any other Party;
  - (iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance);
  - (v) Article 17.6.3 (Non-commercial Assistance); and
  - (vi) Article 17.10.1 (Transparency).
- (e) For Malaysia:
- (i) Article 17.4 (Non-discriminatory Treatment and Commercial Considerations);
  - (ii) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;
  - (iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Malaysia;
  - (iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and
  - (v) Article 17.10 (Transparency).
- (f) For Mexico:
- (i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);
  - (ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);
  - (iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);
  - (iv) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good

- (A) 由国有企业生产和销售，与在日本领土内的另一缔约方的涵盖投资所生产和销售同类货物相竞争；或
  - (B) 由属涵盖投资的国有企业生产和销售，与在任何其他缔约方领土内的另一缔约方的涵盖投资所生产和销售同类产品相竞争。
- (iv) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)；
- (v) 第 17.6.3 条(非商业援助)；以及
- (vi) 第 17.10.1 条(透明度)。
- (e) 对于马来西亚：
  - (i) 第 17.4 条(非歧视待遇和商业考虑)；
  - (ii) 第 17.5.2 条(法院和行政机构)，对于次中央政府建立或设立的行政监管机构；
  - (iii) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助)，对于与在马来西亚领土内的涵盖投资所生产和销售同类货物相竞争的货物的生产和销售；
  - (iv) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)；以及
  - (v) 第 17.10 条(透明度)。
- (f) 对于墨西哥：
  - (i) 第 17.4.1 条(a)项和(b)项(非歧视待遇和商业考虑)；
  - (ii) 第 17.4.1 条(c)项(i)目(非歧视待遇和商业考虑)；
  - (iii) 第 17.4.2 条(非歧视待遇和商业考虑)；
  - (iv) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助)，对于与在墨西哥领土内的涵盖投资所生产和销售同类货物相竞争

produced and sold by a covered investment in the territory of Mexico;

(v) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(vi) Article 17.10 (Transparency).

(g) For New Zealand:

(i) Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.6.1 (a) (Non-commercial Assistance) and Article 17.6.2 (a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of New Zealand;

(iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance);

(v) Article 17.6.3 (Non-commercial Assistance); and

(vi) Article 17.10.1 (Transparency).

(h) For Peru:

(i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iv) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Peru;

(v) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(vi) Article 17.10.1 (Transparency).

的货物的生产和销售；

- (v) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)； 以及
  - (vi) 第 17.10 条(透明度)。
- (g) 对于新西兰：
- (i) 第 17.4.1 条(非歧视待遇和商业考虑)；
  - (ii) 第 17.4.2 条(非歧视待遇和商业考虑)；
  - (iii) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助)，对于与在新西兰领土内的涵盖投资所生产和销售的同类货物相竞争的货物的生产和销售；
  - (iv) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)；
  - (v) 第 17.6.3 条(非商业援助)； 以及
  - (vi) 第 17.10.1 条(透明度)。
- (h) 对于秘鲁：
- (i) 第 17.4.1 条(a)项和(b)项(非歧视待遇和商业考虑)；
  - (ii) 第 17.4.1 条(c)项(i)目(非歧视待遇和商业考虑)；
  - (iii) 第 17.4.2 条(非歧视待遇和商业考虑)；
  - (iv) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助)，对于与在秘鲁领土内的涵盖投资所生产和销售的同类货物相竞争的货物的生产和销售；
  - (v) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)； 以及
  - (vi) 第 17.10.1 条(透明度)。



## (i) For the United States:

- (i) Article 17.4.1 (a) (Non-discriminatory Treatment and Commercial Considerations);
- (ii) Article 17.4.1 (b) (Non-discriminatory Treatment and Commercial Considerations), with respect to purchases of a good or service;
- (iii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);
- (iv) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations), with respect to designated monopolies designated by a sub-central level of government;
- (v) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;
- (vi) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of the United States;
- (vii) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and
- (viii) Article 17.10.1 (Transparency).

## (j) For Viet Nam:

- (i) Article 17.4 (Non-discriminatory Treatment and Commercial Considerations);
- (ii) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;
- (iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Viet Nam;
- (iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

- (i) 对于美国：
  - (i) 第 17.4.1 条(a)项(非歧视待遇和商业考虑)；
  - (ii) 第 17.4.1 条(b)项(非歧视待遇和商业考虑)，对于货物或服务的购买；
  - (iii) 第 17.4.1 条(c)项(i)目(非歧视待遇和商业考虑)；
  - (iv) 第 17.4.2 条(非歧视待遇和商业考虑)，对于由次中央政府指定的指定垄断；
  - (v) 第 17.5.2 条(法院和行政机构)，对于由次中央政府建立或设立的行政监管机构；
  - (vi) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助)，对于与在美国领土内的涵盖投资所生产和销售的同类货物相竞争的货物的生产和销售；
  - (vii) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)；以及
  - (viii) 第 17.10.1 条(透明度)。
- (j) 对于越南：
  - (i) 第 17.4 条(非歧视待遇和商业考虑)；
  - (ii) 第 17.5.2 条(法院和行政机构)，对于由次中央政府建立或设立的行政监管机构；
  - (iii) 第 17.6.1 条(a)项(非商业援助)和第 17.6.2 条(a)项(非商业援助)，对于与在越南领土内的涵盖投资所生产和销售的同类货物相竞争的货物的生产和销售；
  - (iv) 第 17.6.1 条(b)项和(c)项(非商业援助)及第 17.6.2 条(b)项和(c)项(非商业援助)；以及

- (v) Article 17.10 (Transparency).

(v) 第 17.10 条(透明度)。

## ANNEX 17-E

## SINGAPORE

1. Neither Singapore, nor a sovereign wealth fund of Singapore<sup>37</sup>, shall take action to direct or influence decisions of a state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore, including through the exercise of any rights or ownership interests over such state-owned enterprises, except in a manner consistent with this Chapter. However, Singapore, or a sovereign wealth fund of Singapore, may exercise its voting rights in any state-owned enterprise it owns or controls through ownership interests in a manner that is not inconsistent with this Chapter.

2. Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to a state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore.

3. Article 17.6.2 (Non-commercial Assistance) shall not apply with respect to a state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore, unless:

- (a) in the five-year period preceding the purported breach of Article 17.6.2 (Non-commercial Assistance), Singapore or a sovereign wealth fund of Singapore has:
  - (i) appointed<sup>38</sup> the CEO or a majority of the other senior management of the state-owned enterprise;
  - (ii) appointed a majority of the members of the board of directors of that state-owned enterprise;<sup>39</sup> or
  - (iii) taken action to exercise its legal rights in that state-owned enterprise to actively direct and control the business decisions of that state-owned enterprise in a manner that would be inconsistent with the obligations in this Chapter; or
- (b) the state-owned enterprise, pursuant to law, government policy or other measures, is required to:

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<sup>37</sup> For the purposes of this Chapter, sovereign wealth funds of Singapore include GIC Private Limited and Temasek Holdings (Private) Limited. Temasek Holdings (Private) Limited is the legal owner of its assets.

<sup>38</sup> For paragraphs 3(a)(i) and 3(a)(ii), such appointment includes an appointment that occurred before the aforementioned five-year period, provided the tenure falls during that period.

<sup>39</sup> For greater certainty, the mere exercise of a shareholder vote to approve the election of directors does not constitute the appointment of such directors.

## 附件 17-E

### 新加坡

1. 新加坡或一新加坡主权财富基金<sup>37</sup>均不得采取行动以指示或影响由一新加坡主权财富基金拥有或控制的国有企业的决策，包括通过对此类国有企业行使任何权利或通过所有者权益，除非以符合本章的方式。然而，新加坡或一新加坡主权财富基金可以不与本章相抵触的方式在其拥有或通过所有者权益控制的任何国有企业中行使投票权。
2. 第 17.4.1 条(非歧视待遇和商业考虑)不得适用于由一新加坡主权财富基金拥有或控制的国有企业。
3. 第 17.6.2 条(非商业援助)不得适用于由一新加坡主权财富基金拥有或控制的国有企业，除非：
  - (a) 在声称违反第 17.6.2 条(非商业援助)之前的 5 年期限内，新加坡或一新加坡主权财富基金已经：
    - (i) 任命<sup>38</sup>该国有企业的首席执行官或大部分其他高级管理人员；
    - (ii) 任命该国有企业董事会的大部分成员；<sup>39</sup>或
    - (iii) 以可能与本章义务不一致的方式，采取行动以行使其在该国有企业中的法律权利，积极指示和控制该国有企业的商业决策；或
  - (b) 根据法律、政府政策或其他措施，要求该国有企业：

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<sup>37</sup> 就本章而言，新加坡主权财富基金包括新加坡政府投资有限公司和淡马锡控股(私人)有限公司。淡马锡控股(私人)有限公司是其资产的法定拥有人。

<sup>38</sup> 就第 3 款(a)项(i)目和第 3 款(a)项(ii)目而言，此种任命包括发生在上述 5 年期限之前的任命，只要任期在这一期限内届满。

<sup>39</sup> 为进一步明确，仅行使股东投票权批准对董事的选举不构成对此类董事的任命。

- (i) provide non-commercial assistance to another state-owned enterprise; or
- (ii) make decisions about its commercial purchase or sales.

4. Singapore is deemed to comply with Article 17.10.1 (Transparency) with respect to any state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore if:

- (a) Singapore provides to the other Parties or otherwise makes publicly available on an official website the annual report of the sovereign wealth fund which owns that state-owned enterprise;
- (b) any class of securities of that state-owned enterprise is listed on a securities exchange regulated by a member of an internationally recognised securities commissions body including the International Organisation of Securities Commissions; or
- (c) that state-owned enterprise files its annual financial reports based on internationally-recognised financial reporting standards including the *International Financial Reporting Standards*.

- (i) 向另一国有企业提供非商业援助；或
- (ii) 就其商业购买或销售作出决策。

4. 在下列情况下，新加坡被视为对于一新加坡主权财富基金拥有或控制的任何国有企业符合第 17.10.1 条(透明度)：

- (a) 新加坡向其他缔约方提供或通过其他方式在官方网站上公开提供拥有该国有企业的主权财富基金的年度报告；
- (b) 该国有企业的任何等级的证券在由包括国际证监会组织在内的一国际公认的证券委员会的成员监管的证券市场上市；或
- (c) 该国有企业根据包括《国际财务报告准则》在内的国际公认的财务报告准则提交其年度财务报告。



## ANNEX 17-F

## MALAYSIA

**Permodalan Nasional Berhad**

1. The obligations in this Chapter shall not apply with respect to Permodalan Nasional Berhad or an enterprise owned or controlled by Permodalan Nasional Berhad, provided that Permodalan Nasional Berhad:

- (a) engages exclusively in the following activities:
  - (i) administering or providing a plan for members of the public relating to collective investment schemes for the purpose of enhancing their savings and investments, in furtherance of a national agenda solely for the benefit of natural persons who are participants to such a plan and their beneficiaries; or
  - (ii) investing the assets of these plans;
- (b) has a fiduciary duty to the natural persons referenced in subparagraph (a); and
- (c) is free from investment direction from the Government of Malaysia.<sup>40</sup>

2. Notwithstanding paragraph 1 of this Annex, Article 17.6.1 (Non-commercial Assistance) and Article 17.6.3 shall apply with respect to Malaysia's:

- (a) direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by Permodalan Nasional Berhad;<sup>41</sup> and
- (b) indirect provision of non-commercial assistance through an enterprise owned or controlled by Permodalan Nasional Berhad.

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<sup>40</sup> Investment direction from the Government of Malaysia: (a) does not include general guidance of the Malaysian Government with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of Malaysian government officials on the enterprise's board of directors or investment panel.

<sup>41</sup> For greater certainty, for the purposes of this Annex, non-commercial assistance does not include Malaysia's transfer of funds collected from contributors to Permodalan Nasional Berhad for investment on behalf of the contributors and their beneficiaries.

## 附件 17-F

### 马来西亚

#### 国民投资机构

1. 本章中的义务不得适用于国民投资机构或国民投资机构拥有或控制的企业，只要国民投资机构：

- (a) 专门从事下列活动：
  - (i) 为公众成员管理或提供与集合投资计划相关的计划，以增加其储蓄和投资，完全为参与该计划的自然人及其受益人的利益促进国家议程的实现；或
  - (ii) 对这些计划的资产进行投资；
- (b) 对(a)项中所指的自然人负有受信责任；以及
- (c) 不接受马来西亚政府的投资指示。<sup>40</sup>

2. 尽管有本附件第 1 款，但是第 17.6.1 条(非商业援助)和第 17.6.3 条应适用于马来西亚的下列援助：

- (a) 直接或间接向由国民投资机构拥有或控制的公司提供非商业援助；<sup>41</sup>及
- (b) 通过国民投资机构拥有或控制的企业间接提供非商业援助。

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<sup>40</sup> 马来西亚政府的投资指示：(a)不包括与通常的投资惯例不相抵触的马来西亚政府关于风险管理和资产配置的一般指导；及(b)不能仅通过企业的董事会或投资委员会中包含马来西亚政府官员加以证明。

<sup>41</sup> 为进一步明确，就本附件而言，非商业援助不包括马来西亚转移自国民投资机构出资人处收取的资金、代表出资人及其受益人进行投资的情况。

### **Lembaga Tabung Haji**

3. The obligations in this Chapter shall not apply with respect to Lembaga Tabung Haji or an enterprise owned or controlled by Lembaga Tabung Haji, provided that Lembaga Tabung Haji:

- (a) engages exclusively in the following activities:
  - (i) administering or providing a personal savings and investment plan solely for the benefit of the natural persons who are contributors to such a plan and their beneficiaries, for the purpose of:
    - (A) enabling individual Muslim beneficiaries, through the investment of their savings in investment activities permissible in Islam, to support their expenditure during pilgrimage; and
    - (B) protecting, safeguarding the interests and ensuring the welfare of pilgrims during pilgrimage by providing various facilities and services; or
  - (ii) investing the assets of these plans;
- (b) has a fiduciary duty to the natural persons referenced in subparagraph (a); and
- (c) is free from investment direction from the Government of Malaysia.<sup>42</sup>

4. Notwithstanding paragraph 3 of this Annex, Article 17.6.1 (Non-commercial Assistance) and Article 17.6.3 (Non-commercial Assistance), shall apply with respect to Malaysia's:

- (a) direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by Lembaga Tabung Haji<sup>43</sup>; and
- (b) indirect provision of non-commercial assistance through an enterprise owned or controlled by Lembaga Tabung Haji.

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<sup>42</sup> Investment direction from the Government of Malaysia: (a) does not include general guidance of the Malaysian Government with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of Malaysian government officials on the enterprise's board of directors or investment panel.

<sup>43</sup> For greater certainty, for the purposes of this Annex, non-commercial assistance does not include Malaysia's transfer of funds collected from contributors to Lembaga Tabung Haji for investment on behalf of the contributors and their beneficiaries.

## 朝圣基金局

3. 本章中的义务不得适用于朝圣基金局或朝圣基金局拥有或控制的企业，只要朝圣基金局：

- (a) 专门从事下列活动：
  - (i) 完全为属个人储蓄和投资计划出资人的自然人及其受益人的利益而管理或提供此种计划，目的在于：
    - (A) 通过将穆斯林个人受益人的储蓄投资于伊斯兰教允许的投资活动，使其能够负担在朝圣期间的支出；及
    - (B) 通过提供各种设施和服务在朝圣期间保护朝圣者、保障其利益并保证其福利；或
  - (ii) 此类计划的资产进行投资；
- (b) 对(a)款中所指的自然人负有受信责任；以及
- (c) 不接受马来西亚政府的投资指示。<sup>42</sup>

4. 尽管有本附件第 3 款，但是第 17.6.1 条(非商业援助)和第 17.6.3 条(非商业援助)应适用于马来西亚的下列援助：

- (a) 直接或间接向朝圣基金局<sup>43</sup>拥有或控制的公司提供非商业援助；及
- (b) 通过由朝圣基金局拥有或控制的企业间接提供非商业援助。

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<sup>42</sup> 马来西亚政府的投资指示：(a)不包括与通常的投资惯例不相抵触的马来西亚政府关于风险管理和资产配置的一般指导；及(b)不能仅通过企业的董事会或投资委员会中包含马来西亚政府官员加以证明。

<sup>43</sup> 为进一步明确，就本附件而言，非商业援助不包括马来西亚转移自朝圣基金局出资人处收取的资金、代表出资人及其受益人进行投资的情况。