

## CHAPTER 9

### Monopolies and State Enterprises

#### Article 9-1: Monopolies

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:
  - (a) wherever possible, provide prior written notification of the designation to the other Party; and
  - (b) endeavour to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits, within the scope of subparagraph 1(c) of Article 14-2.
3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:
  - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

- (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);
- (c) provides non-discriminatory treatment to goods of the other Party, in its purchase or sale of the monopoly good in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affects the other Party, including through the discriminatory provision of the monopoly good.

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

5. For purposes of this Article, maintain includes a designation prior to the date of entry into force of this Agreement and existing on that date.

#### **Article 9-2: State Enterprises**

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

2. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods.

### **Article 9-3: Exceptions**

This Chapter shall not apply to practices and arrangements that are exempted from the application of national competition legislation of the Parties. Each Party shall make available to the other Party public information concerning exemptions and relevant changes to their respective national competition legislation.

### **Article 9-4: Definitions**

For purposes of this Chapter:

- (a) **designate** means to establish, authorize, or to expand the scope of a monopoly to cover an additional good, after the date of entry into force of this Agreement;
- (b) **discriminatory provision** includes treating:
  - (i) a parent, a subsidiary or other enterprise with common ownership more favourably than an unaffiliated enterprise, or
  - (ii) one class of enterprises more favourably than another, in like circumstances;
- (c) **government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such government monopoly;
- (d) **in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry;
- (e) **market** means the geographic and commercial market for a good;

- (f) **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, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;
- (g) **non-discriminatory treatment** means the better of national treatment or most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and
- (h) **state enterprise** means, except as set out in Annex 9-3, an enterprise owned, or controlled through ownership interests, by a Party.

## ANNEX 9-3

### Country-Specific Definitions of State Enterprises

For purposes of paragraph 2 of Article 9-2, “state enterprise” means:

- (a) with respect to Canada, a Crown corporation within the meaning of the *Financial Administration Act* of Canada, R.S.C. 1985, c. F-11, as amended, a Crown corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law;
- (b) with respect to Jordan, any corporation established in accordance with a bilateral agreement between the government of Jordan and any other country, or established in accordance with a cabinet decision or by a special law.