

**CHAPTER 7: COMPETITION AND PUBLIC, PRIVATE,
AND SMALL- AND MEDIUM-SIZED ENTERPRISES**

Article 7.1: General Policy towards Restrictive Business Practices

1. Each Party shall take appropriate measures and shall cooperate to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives of this Agreement.

2. Each Party shall provide that the following business practices are presumptively restrictive:

- (a) fixing prices, terms, or conditions to be observed in dealing with others in the purchase, sale, or lease of any product;
- (b) excluding enterprises from, or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;
- (c) discriminating against particular enterprises;
- (d) limiting production or fixing production quotas;
- (e) preventing by agreement the development or application of technology or invention whether patented or unpatented;
- (f) extending the use of rights under patents, trademarks, or copyrights granted by a Party to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production, use, or sale which are likewise not the subject of such grants;
- (g) any similar practices which the Parties may decide constitute restrictive business practices.

3. Each Party shall take all possible measures by legislation or otherwise to ensure that private and public commercial enterprises do not engage in practices which are:

- (a) as specified in paragraph 2 and have the effect indicated in paragraph 1; and
- (b) occur within its jurisdiction.

4. Nothing shall prevent a Party from taking action to address the practices described in paragraph (2)(a) which do not occur within its jurisdiction, but have an appropriate nexus to its jurisdiction.

5. With respect to enforcing its law, each Party shall ensure that it treats persons of another Party no less favorably than persons of the Party in like circumstances;

6. The Parties recognize that certain services, such as transportation, telecommunications, insurance and the commercial services of banks, are substantial elements of international trade and that any restrictive business practices by enterprises engaged in these activities in international trade may have harmful effects similar to those indicated in paragraph 1.

Article 7.3: Non-Commercial Assistance

1. The Parties recognize that the provision of non-commercial assistance to enterprises of a Party can have distortive effects on trade.

2. No Party shall cause material harm to the interests of another Party through the use of non-commercial assistance that it provides, either directly or indirectly, to an enterprise of the Party with respect to:

- (a) the production and sale of a good by that enterprise;
- (b) the supply of a service by that 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 in the territory of that other Party or any other Party.

3. The Parties recognize that they may choose to provide non-commercial assistance to distressed enterprises. Nothing in this Agreement shall prohibit such assistance. However, the Parties further recognize that such assistance should be exceptional, should not distort trade, and where it does distort trade, the Party providing such assistance should compensate the other Party when the use of non-commercial assistance causes material harm to the interests of the other Party.

Article 7.4: Small- and Medium-Sized Enterprises (SMEs)

1. The Parties recognize that the complexities of international trade may operate to provide an advantage to large businesses over SMEs.

2. The Parties further recognize the importance of SMEs in fostering competition, innovation, and job creation, including in local markets.

3. Accordingly, each Party shall:

- (a) develop, maintain, and enhance its infrastructure for SMEs, including dedicated SME centers, incubators and accelerators, export assistance centers, and other centers as appropriate;
- (b) collaborate to create a dedicated portal to facilitate SME use of the Agreement;

- (c) share best practices, exchange market research, and promote SME use of the Agreement, as well as business growth in local markets;
- (d) strengthen its collaboration with the other Party on activities to:
 - (i) promote SMEs owned by under-represented groups, including women, minorities, indigenous peoples, and youth, as well as start-ups, agricultural, and rural SMEs;
 - (ii) promote partnership among these SMEs and their ability to participate in international trade; and
 - (iii) improve access to capital and credit for such SMEs;
- (e) enhance its cooperation with the other Party to exchange information and best practices in areas including improving SME access to capital and credit, SME participation in covered government procurement opportunities, and helping SMEs adapt to changing market conditions;
- (f) encourage participation in platforms for business entrepreneurs and counselors to share information and best practices to help SMEs link with international suppliers, buyers, and other potential business partners.

Article 7.5: Cooperation

The Parties may cooperate for the purpose of making more effective within their respective jurisdictions any remedial measures taken in furtherance of the objectives of this Chapter.

Article 7.6: Definitions

For purposes of this Chapter:

business practice does not include an individual contract between two parties as seller and buyer, lessor and lessee, or principal and agent, provided that such contract is not used to restrain competition, limit access to markets or foster monopolistic control;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

public commercial enterprises means

- (i) agencies of governments in so far as they are engaged in trade, and

- (ii) trading enterprises directly or indirectly owned or controlled by a public authority, provided the Party concerned declares that for the purposes of this Chapter it has effective control over or assumes responsibility for the enterprises;

private commercial enterprises means all commercial enterprises other than public commercial enterprises;

non-commercial assistance includes:

- (i) loans or loan guarantees provided to an uncreditworthy public or private commercial enterprise of that Party;
- (ii) non-commercial assistance provided by a Party to a public or private commercial enterprise of that Party, in circumstances where the recipient is insolvent or on the brink of insolvency, without a credible restructuring plan designed to return the within a reasonable period of time to long-term viability; or
- (iii) conversion by a Party of the outstanding debt of a public or private commercial enterprise of that Party to equity, in circumstances where this would be inconsistent with the usual investment practice of a private investor;

material harm to the interests of another Party includes a loss of market share or revenue by a public or private commercial enterprise of that Party.