

CHAPTER 4

TRADE IN SERVICES

ARTICLE 4.1

Scope and Coverage³

1. This Chapter applies to measures by Parties affecting trade in services and taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
2. With respect to the commitments of the Parties concerning air transport services, paragraphs 2, 3 and 6 of the Annex on Air Transport Services of the GATS shall apply and are hereby incorporated into and made part of this Chapter.
3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement, which is subject to Chapter 7.

ARTICLE 4.2

Incorporation of Provisions from the GATS

Wherever a provision of this Chapter provides that a provision of the GATS is incorporated into and made part of this Chapter, the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) “Member” means Party;
- (b) “Schedule” means a Schedule referred to in Article 4.18 and contained in Annex XV; and
- (c) “specific commitment” means a specific commitment in a Schedule referred to in Article 4.18.

ARTICLE 4.3

Definitions

For the purposes of this Chapter:

- (a) the following definitions of Article I of the GATS are hereby incorporated into and made part of this Chapter:

³ The dispute settlement procedures of this Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Party.

- (i) “trade in services”;
 - (ii) “services”; and
 - (iii) “a service supplied in the exercise of governmental authority”;
- (b) “service supplier” means any person that supplies, or seeks to supply, a service;⁴
- (c) “natural person of another Party” means a natural person who, under the legislation of that other Party, is:
 - (i) a national of that other Party who resides in the territory of any WTO Member; or
 - (ii) a permanent resident of that other Party who resides in the territory of any Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other Party who resides in the territory of any Party or in the territory of any WTO Member;
- (d) “juridical person of another Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of such Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (aa) natural persons of that other Party identified under subparagraph (c)(i), excluding subparagraph (c)(ii); or
 - (bb) juridical persons of that other Party identified under subparagraph (d)(i);
- (e) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Chapter:

4 Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (*i.e.* the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

- (i) “measure”;
- (ii) “supply of a service”;
- (iii) “measures by Members affecting trade in services”;
- (iv) “commercial presence”;
- (v) “sector” of a service;
- (vi) “service of another Member”;
- (vii) “monopoly supplier of a service”;
- (viii) “service consumer”;
- (ix) “person”;
- (x) “juridical person”;
- (xi) “owned”, “controlled” and “affiliated”; and
- (xii) “direct taxes”.

ARTICLE 4.4

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, except as provided for in its List of MFN Exemptions contained in Annex XVI, and with respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally, to services and service suppliers of any other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.

3. If a Party enters into an agreement notified under Article V or Article V *bis* of the GATS, it shall, upon request from another Party, afford adequate opportunity to that Party to negotiate the benefits granted therein.

4. With respect to the rights and obligations of the Parties concerning advantages accorded to adjacent countries, paragraph 3 of Article II of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 4.5

Market Access

With respect to the commitments of the Parties concerning market access, Article XVI of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 4.6

National Treatment

With respect to the commitments of the Parties concerning national treatment, Article XVII of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 4.7

Additional Commitments

With respect to the additional commitments of the Parties, Article XVIII of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 4.8

Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.⁵
3. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after an application considered complete under that Party's domestic laws and regulations has been submitted, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

⁵ The provisions of this paragraph shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures are based on objective and transparent criteria, such as competence and the ability to supply the service.

5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, the Joint Committee shall take a decision aiming at incorporating into this Agreement any disciplines developed in the WTO in accordance with paragraph 4 of Article VI of the GATS. The Parties may also, jointly or bilaterally, decide to develop further disciplines.

6. (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of a decision incorporating WTO disciplines for these sectors pursuant to paragraph 5, and, if agreed between Parties, disciplines developed jointly or bilaterally under this Agreement pursuant to paragraph 5, the Party shall not apply qualification requirements and procedures, technical standards and licensing requirements and procedures that nullify or impair such specific commitments in a manner which is:

(i) more burdensome than necessary to ensure the quality of the service; or

(ii) in the case of licensing procedures, not in itself a restriction on the supply of the service.

(b) In determining whether a Party is in conformity with the obligation under subparagraph (a), account shall be taken of international standards of relevant international organisations⁶ applied by that Party.

7. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

ARTICLE 4.9

Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

⁶ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of at least all Parties.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

ARTICLE 4.10

Movement of Natural Persons Supplying Services

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.⁷

ARTICLE 4.11

Transparency

With respect to the rights and obligations of the Parties concerning transparency, paragraphs 1 and 2 of Article III and Article III *bis* of the GATS shall apply and are hereby incorporated into and made part of this Chapter.

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The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 4.12

Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 4.4 and specific commitments.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
 - (a) authorises or establishes a small number of service suppliers; and
 - (b) substantially prevents competition among those suppliers in its territory.

ARTICLE 4.13

Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 4.12, may restrain competition and thereby restrict trade in services.
2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 4.14

Payments and Transfers

1. Except under the circumstances envisaged in Article 4.15, a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the "IMF"), including the use of exchange actions which are in conformity

with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 4.15 or at the request of the IMF.

ARTICLE 4.15

Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of the GATS shall apply under this Chapter.
3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee thereof.

ARTICLE 4.16

General Exceptions

With respect to the rights and obligations of the Parties concerning general exceptions, Article XIV of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 4.17

Security Exceptions

With respect to the rights and obligations of the Parties concerning security exceptions, paragraph 1 of Article XIV *bis* of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 4.18

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 4.5, 4.6 and 4.7. With respect to sectors where such commitments are undertaken, each schedule shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;

- (c) undertakings relating to additional commitments referred to in Article 4.7; and
 - (d) where appropriate, the time-frame for implementation of such commitments; and the date of entry into force of such commitments.
2. Measures inconsistent with both Articles 4.5 and 4.6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.
3. The Parties' Schedules of Specific Commitments are set out in Annex XV.

ARTICLE 4.19

Modification of Schedules

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Articles 11.1 and 13.3.

ARTICLE 4.20

Review

The Schedules of Specific Commitments and the Lists of MFN Exemptions of the Parties shall be subject to periodic review within the framework of the Joint Committee with a view to achieving a higher level of liberalisation, taking into account in particular any autonomous liberalisation and ongoing work under the auspices of the WTO.

ARTICLE 4.21

Annexes

The following Annexes form an integral part of this Chapter:

- (a) Annex XV (Schedules of Specific Commitments);
- (b) Annex XVI (Lists of MFN Exemptions); and
- (c) Annex XVII (Financial Services).