

CHAPTER III

TRADE IN SERVICES AND ESTABLISHMENT

SECTION I – TRADE IN SERVICES

ARTICLE 22

Coverage

1. This Section applies to measures affecting trade in services 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. This Section applies to measures affecting trade in all services sectors with the exception of air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

- (a) aircraft repair and maintenance services;
- (b) the selling and marketing of air transport services;
- (c) computer reservation system (CRS) services.¹

3. Nothing in this Section shall be construed to impose any obligation with respect to government procurement, which is subject to the Chapter V.

ARTICLE 23

Definitions

For the purposes of this Section:

- (a) “trade in services” is defined as the supply of a service:
 - (i) from the territory of a Party into the territory of another Party (mode 1);
 - (ii) in the territory of a Party to the service consumer of another Party (mode 2);

¹ The terms “aircraft repair and maintenance services”, “selling and marketing of air transport services” and “computer reservation system (CRS) services” are as defined in paragraph 6 of the Annex on Air Transport Services to the GATS.

- (iii) by a service supplier of a Party, through commercial presence in the territory of another Party (mode 3);
 - (iv) by a service supplier of a Party, through presence of natural persons in the territory of another Party (mode 4).
- (b) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (c) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;
- (d) “measures by a Party affecting trade in services” include measures in respect of:
 - (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by that Party to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of another Party for the supply of a service in the territory of that Party;
- (e) “commercial presence” means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office; within the territory of a Party for the purpose of supplying a service;
- (f) “service supplier” means any person that seeks to supply or supplies a service;²
- (g) “natural person of a Party” is, in accordance with its legislation, a national or a permanent resident of that Party if he or she is accorded

² Where the service is not 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 presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

substantially the same treatment as nationals in respect of measures affecting trade in services;

- (h) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (i) “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- (j) “juridical person of a Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of Chile or an EFTA State, and that is engaged in substantive business operations in Chile or in the EFTA State concerned, or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of that Party; or
 - (B) juridical persons identified under paragraph (j)(i); and
- (k) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

ARTICLE 24

Most-favoured nation treatment

1. The rights and obligations of the Parties with respect to most-favoured nation treatment shall be governed by the GATS.
2. If a Party enters into an agreement with a non-Party which has been notified under Article V of the GATS, it shall, upon request from another Party, afford adequate opportunity to the other Parties to negotiate, on a mutually advantageous basis, the benefits granted therein.

ARTICLE 25

Market access

1. With respect to market access through the modes of supply identified in Article 23, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 27.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.³
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entities or joint ventures through which a service supplier of another Party may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 26

National treatment

1. In the sectors inscribed in its Schedule referred to in Article 27 and subject to the conditions and qualifications set out therein, each Party shall grant to services and

³ Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services

services suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.⁴

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of another Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of another Party.

ARTICLE 27

Trade liberalisation

1. The Schedule of specific commitments that each Party undertakes under Articles 25 and 26 as well as paragraph 3 of this Article is set out at Annex VIII. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments referred to in paragraph 3; 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 25 and 26 are inscribed in the column relating to Article 25. In this case, the inscription is considered to provide a condition or qualification to Article 26 as well.

3. Where a Party undertakes a specific commitment on measures affecting trade in services not subject to scheduling under Articles 25 and 26, including those regarding qualifications, standards or licensing matters, such commitments are inscribed in its Schedule as additional commitments.

4. The Parties undertake to review their Schedules of specific commitments at least every three years, or more frequently, with a view to provide for a reduction or elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Section on a mutually advantageous basis and ensuring an overall balance of rights and obligations.

⁴ Specific commitments assumed under this Article shall not be construed to require the Parties to compensate for any inherent competitive disadvantage which result from the foreign character of the relevant services and service suppliers.

ARTICLE 28

Domestic regulation

1. In sectors where specific commitments are undertaken, 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.

3. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, after the submission of an application is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. The Parties shall jointly review the results of the negotiations on disciplines for measures relating to qualification requirements and procedures, technical standards and licensing requirements pursuant to Article VI.4 of the GATS aiming to ensure that such measure do not constitute unnecessary barriers to trade in services, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. In sectors in which a Party has undertaken specific commitments, until the incorporation of disciplines developed pursuant to paragraph 4, a Party shall not apply licensing and qualification requirements and technical standards in a manner which:

- (a) does not comply with the criteria outlined in paragraphs 4 (a), (b) or (c); and
- (b) could not reasonably have been expected of that Party at the time of the conclusion of the negotiation of the present agreement.

6. Whenever a domestic regulation is prepared, adopted and applied in accordance with international standards applied by both Parties, it shall be rebuttably presumed to comply with the provisions of this Article.

7. Each Party shall provide for adequate procedures to verify the competence of professionals of another Party.

ARTICLE 29

Recognition

1. The Parties shall encourage the relevant bodies in their respective territories to provide recommendations on mutual recognition, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by each Party for the authorisation, licensing, accreditation, operation and certification of service suppliers and, in particular, professional services.

2. The Joint Committee, within a reasonable period of time and considering the level of correspondence of the respective regulations, shall decide whether a recommendation referred to in paragraph 1 is consistent with this Section. If that is the case, such a recommendation shall be implemented through an agreement on mutual requirements, qualifications, licences and other regulations to be negotiated by the competent authorities.

3. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of the GATS.

4. Where the Parties agree, each Party shall encourage its relevant bodies to develop procedures for the temporary licensing of professional services suppliers of another Party.

5. The Joint Committee shall periodically, and at least once every three years, review the implementation of this Article.

6. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted in the territory of a non-Party, that Party shall accord another Party, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones 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 licenses or certifications granted in the territory of that other Party should also be recognised.

ARTICLE 30

Movement of natural persons

1. This Section 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. Natural persons covered by a Party's specific commitments shall be allowed to supply the service in accordance with the terms of those commitments.
2. This Section 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, residence or employment on a permanent basis.
3. This Section 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 a manner so as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment.⁵

ARTICLE 31

Telecommunications services

Specific provisions on telecommunications services are set out in Annex IX.

SECTION II – ESTABLISHMENT

ARTICLE 32

Coverage

This Section shall apply to establishment in all sectors, with the exception of establishment in services sectors.

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

ARTICLE 33

Definitions

For the purposes of this Section,

- (a) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (b) "juridical person of a Party" means a juridical person constituted or otherwise organised under the law of an EFTA State or of Chile and that is engaged in substantive business operations in Chile or in the EFTA State concerned;
- (c) "natural person" means a national of an EFTA State or of Chile according to their respective legislation;
- (d) "establishment" means:
 - (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office,within the territory of a Party for the purpose of performing an economic activity.

As regards natural persons, this shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of a Party.

ARTICLE 34

National treatment

With respect to establishment, and subject to the reservations set out in Annex X, each Party shall grant to juridical and natural persons of the other Party treatment no less favourable than that it accords to its own juridical and natural persons performing a like economic activity.

ARTICLE 35

Reservations

1. National treatment as provided for under Article 34 shall not apply to:

- (a) any reservation that is listed by a Party in Annex X;
- (b) an amendment to a reservation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 34;
- (c) any new reservation adopted by a Party, and incorporated into Annex X which does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservations are inconsistent with Article 34.

2. As part of the reviews provided for in Article 37 the Parties undertake to review at least every three years the status of the reservations set out in Annex X with a view to reducing or removing such reservations.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations set out in Annex X by written notification to the other Parties.

4. A Party may, at any time, incorporate a new reservation into Annex X in accordance with paragraph 1(c) of this Article by written notification to the other Parties. On receiving such written notification, the other Parties may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the other Parties.

ARTICLE 36

Right to regulate

Subject to the provisions of Article 34, each Party may regulate the establishment of juridical and natural persons.

ARTICLE 37

Final provisions

With the objective of progressive liberalisation of investment conditions, the Parties affirm their commitment to review the investment legal framework, the investment environment and the flow of investment between them consistent with their commitments in international investment agreements, no later than three years after the entry into force of this Agreement.

SECTION III – PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 38

Objective and scope

1. The Parties shall aim at the liberalisation of current payments and capital movements between them, in conformity with the commitments undertaken in the framework of the international financial institutions and with due consideration to each Party's currency stability.

2. This Section applies to all current payments and capital movements between the Parties. Specific provisions on current payments and capital movements are set out in Annex XI.

ARTICLE 39

Current Account

The Parties shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, any payments and transfers of the Current Account between the Parties.

ARTICLE 40

Capital Account

The Parties shall allow the free movements of capital relating to direct investments made in accordance with the laws of the host country and investments made in accordance with the provisions of Sections Trade in Services and Establishment of this Chapter, and the liquidation or repatriation of these capitals and of any profit stemming therefrom.

ARTICLE 41

Exceptions and safeguard measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in any Party, the Party concerned may take safeguard measures with regard to capital movements that are strictly necessary for a period not exceeding one year. The application of safeguard measures may be extended through their formal reintroduction.

2. The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

ARTICLE 42

Final provisions

The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote the objectives of this Agreement.

SECTION IV – COMMON PROVISIONS

ARTICLE 43

Relation to other international agreements

With respect to matters related to this Chapter, the Parties confirm the rights and obligations existing under any bilateral or multilateral agreements to which they are a party.

ARTICLE 44

General exceptions

Article XIV and Article XXVIII paragraph (o) of the GATS are hereby incorporated into and made part of this Chapter.

ARTICLE 45

Financial services

1. The Parties understand that no commitments have been made in financial services. For greater clarity, financial services are defined as in paragraph 5 of the Annex on Financial Services of the GATS.

2. Notwithstanding paragraph 1, two years after the entry into force of this Agreement, the Parties will consider the inclusion of financial services in this Chapter on a mutually advantageous basis and securing an overall balance of rights and obligations.