

CHAPTER 5

TRADE IN SERVICES

ARTICLE 5.1

Scope and Coverage

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. It applies to all services sectors.
2. With respect to air transport services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Chapter.
3. Articles 5.4, 5.5 and 5.6 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

ARTICLE 5.2

Incorporation of Provisions from the GATS

Where 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 5.18 and contained in Annex VIII; and
- (c) “specific commitment” means a specific commitment in a Schedule referred to in Article 5.18.

ARTICLE 5.3

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:
 - (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;⁶
- (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 a 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 a 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:
 - (aa) a Party; or
 - (bb) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i)(aa); or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:

⁶ 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.

- (aa) natural persons of that other Party; 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:
 - (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 5.4

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex IX, each Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another 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 a Party 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. Paragraph 3 of Article II of the GATS shall apply to the rights and obligations of the Parties with respect to advantages accorded to adjacent countries and is hereby incorporated into and made part of this Chapter.

ARTICLE 5.5

Market Access

Article XVI of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 5.6

National Treatment

Article XVII of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 5.7

Additional Commitments

Article XVIII of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 5.8

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.

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 the

submission of an application is considered complete under that Party's domestic laws and regulations, 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.

4. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, in all services sectors, 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, 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 organisations applied by that Party. For the purposes of this Chapter, "relevant international organisations" means international bodies whose membership is open to the relevant bodies of all Parties.

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

ARTICLE 5.9

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 shall give due consideration to any requests by another Party to 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.

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 5.10

Movement of Natural Persons

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, 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 5.11

Transparency

Paragraphs 1 and 2 of Article III and Article III *bis* of the GATS are hereby incorporated into and made part of this Chapter.

⁷ The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 5.12

Monopolies and Exclusive Service Suppliers

Paragraphs 1, 2 and 5 of Article VIII of the GATS shall apply and are hereby incorporated into and made part of this Chapter.

ARTICLE 5.13

Business Practices

Article IX of the GATS shall apply and is hereby incorporated into and made part of this Chapter.

ARTICLE 5.14

Payments and Transfers

1. Except under the circumstances envisaged in Article 5.15, 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 Agreement of the International Monetary Fund (hereinafter referred to as the “IMF”), including the use of exchange actions which are in conformity with that Agreement, provided that a Party shall not impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 5.15 or at the request of the IMF.

ARTICLE 5.15

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. Paragraphs 1 to 3 of Article XII of the GATS shall apply and are hereby incorporated into and made part of this Chapter.
3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

ARTICLE 5.16

Subsidies

1. A Party which considers that it is adversely affected by a subsidy of another Party may request *ad hoc* consultations with that Party on such matters. The requested Party shall enter into such consultations.⁸
2. The Parties shall review any disciplines agreed under Article XV of the GATS with a view to incorporating them into this Chapter.

ARTICLE 5.17

Exceptions

Article XIV and paragraph 1 of Article XIV *bis* of the GATS shall apply and are hereby incorporated into and made part of this Chapter.

ARTICLE 5.18

Schedules of Specific Commitments

1. Each Party shall set out in a Schedule the specific commitments it undertakes under Articles 5.5, 5.6 and 5.7. 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 5.7; and
 - (d) where appropriate, the timeframe for implementation of such commitments and the date of entry into force of such commitments.
2. Measures inconsistent with both Articles 5.5 and 5.6 shall be subject to paragraph 2 of Article XX of the GATS.
3. The Parties' Schedules of Specific Commitments are set out in Annex VIII.

⁸ It is understood that consultations held pursuant to paragraph 1 shall be without prejudice to the rights and obligations of the Parties under Chapter 12 or under the WTO Dispute Settlement Understanding.

ARTICLE 5.19

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 from the receipt of the 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 Articles 11 and 13.2.

ARTICLE 5.20

Review

With a view to the progressive liberalisation of trade in services, the Parties aim to periodically review their Schedules of Specific Commitments and Lists of MFN Exemptions. The first such review shall take place no later than three years from the entry into force of this Agreement.

ARTICLE 5.21

Annexes

The following Annexes form an integral part of this Chapter:

- (a) Annex VIII (Schedules of Specific Commitments);
- (b) Annex IX (Lists of MFN-Exemptions);
- (c) Annex X (Financial Services);
- (d) Annex XI (Telecommunications Services);
- (e) Annex XII (Maritime Transport and Related Services); and
- (f) Annex XIII (Energy Related Services).