

## CHAPTER 3                      TRADE IN SERVICES

### ARTICLE 3.1

#### ***Scope and Coverage***

1.        This Chapter applies to measures by Parties affecting trade in services. It applies to all services sectors.
2.        In respect of 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 into and made part of this Agreement, *mutatis mutandis*.
3.        Articles 3.4, 3.5 and 3.6 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 3.2

#### ***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 Agreement, 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 3.16 and contained in Annex VII; and
- (c)        “specific commitment” means a specific commitment in a Schedule referred to in Article 3.16.

### ARTICLE 3.3

#### ***Definitions***

For the purpose of this Chapter, and with reference to Article 3.2:

- (a) the following definitions of Article I of the GATS are incorporated into and made part of this Agreement:
  - (i) “trade in services”;
  - (ii) “services”; and
  - (iii) “a service supplied in the exercise of governmental authority”;
- (b) “measures by Parties”<sup>2</sup> means measures taken by:
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c) “service supplier” means any person that supplies, or seeks to supply, a service;<sup>3</sup>
- (d) “natural person of another Party” means a natural person who is a national or a permanent resident of an EFTA State or of a GCC Member State, under their respective legislation;
- (e) “juridical person of another Party” means a juridical person that 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:
    - (A) any Party; or

<sup>2</sup> This definition incorporates the definition of subparagraphs (a) (i) and (ii) of paragraph 3 of Article I of the GATS. Reference is hereby made to Article 1.5 of this Agreement

<sup>3</sup> 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

- (B) 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)(A);
- or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by natural persons of that other Party, juridical persons that meet the conditions of subparagraph (e)(i) or State entities of that other Party;
- (f) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Agreement:
  - (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”;
- (g) “GATS” means the General Agreement on Trade in Services of 1994.

#### ARTICLE 3.4

##### ***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 VIII, a 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 one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.<sup>4</sup>
3. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Agreement.

#### ARTICLE 3.5

##### ***Market Access***

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Agreement.

#### ARTICLE 3.6

##### ***National Treatment***

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Agreement.

#### ARTICLE 3.7

##### ***Additional Commitments***

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Agreement.

<sup>4</sup> The Parties confirm their understanding that the Agreements between the Member States of the Cooperation Council of the Arab States of the Gulf and the Greater Arab Free Trade Area (GAFTA) are excluded from the application of the MFN obligation under this Article

## ARTICLE 3.8

### ***Domestic Regulation***

1. The rights and obligations of the Parties in respect of domestic regulation shall be governed by paragraphs 1 to 3 of Article VI of the GATS, which are hereby incorporated into and made part of this Agreement.
2. 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 develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements and procedures 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.
3.
  - (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 2, the Parties shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which does not comply with the criteria outlined in subparagraphs 2(a), (b) or (c).
  - (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<sup>5</sup> applied by that Party.
4. Each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

## ARTICLE 3.9

### ***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 request by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such

<sup>5</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of at least all Parties

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.

4. Annex IX sets out further rights and obligations regarding recognition of qualifications of service suppliers of the Parties.

#### ARTICLE 3.10

##### ***Movement of Natural Persons***

1. The rights and obligations of the Parties in respect of the movement of natural persons of a Party supplying services shall be governed by the GATS Annex on Movement of Natural Persons Supplying Services, which is hereby incorporated into and made part of this Agreement.

2. Annex X sets out further rights and obligations regarding movement of natural persons of a Party supplying services.

#### ARTICLE 3.11

##### ***Transparency***

The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Agreement

#### ARTICLE 3.12

##### ***Monopolies and Exclusive Service Suppliers***

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Agreement.

#### ARTICLE 3.13

##### ***Business Practices***

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Agreement.

#### ARTICLE 3.14

##### ***Payments and Transfers***

1. Except under the circumstances envisaged in Article 9.2, 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 the Agreement of the International Monetary Fund (hereinafter referred to as "IMF"), including the use of exchange actions which are in conformity with the Articles of the 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 9.2 or at the request of the IMF.

#### ARTICLE 3.15

##### ***Exceptions***

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, which are hereby incorporated into and made part of this Agreement.

## ARTICLE 3.16

### ***Schedules of Specific Commitments***

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 3.5, 3.6 and 3.7. With respect to sectors where such specific commitments are undertaken, each Schedule shall specify the elements set forth in subparagraphs (a) to (e) of paragraph 1 of Article XX of the GATS.
2. Measures inconsistent with both Articles 3.5 and 3.6 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 VII.

## ARTICLE 3.17

### ***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 7.1 and 9.6

## ARTICLE 3.18

### ***Review<sup>6</sup>***

1. With the objective of further liberalising trade in services between them, in particular eliminating substantially all remaining discrimination within a period of ten years, the Parties shall review at least every two years, or more frequently if so agreed, their Schedules of specific commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than two years after the entry into force of this Agreement.
2. If, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-party, it shall negotiate, upon request by another Party,

<sup>6</sup> The Parties confirm their understanding that the Agreements between the Member States of the Cooperation Council of the Arab States of the Gulf and the Greater Arab Free Trade Area (GAFTA), as well as the EFTA Convention and agreements between any EFTA State and other European countries are excluded from any review conducted pursuant to this Article

the incorporation into this Agreement of a treatment no less favourable than that provided under the agreement with the non-party. The Parties shall take into consideration the circumstances under which a Party enters into any agreement on trade in services with a non-party.

#### ARTICLE 3.19

##### ***Annexes***

The following Annexes form part of this Chapter:

- Annex VII (Schedules of Specific Commitments);
- Annex VIII (Lists of MFN Exemptions);
- Annex IX (Recognition of Qualifications of Service Suppliers);
- Annex X (Movement of Natural Persons Supplying Services);
- Annex XI (Financial Services); and
- Annex XII (Telecommunications Services).