

CHAPTER 3

TRADE IN SERVICES

ARTICLE 3.1

Scope and Coverage

1. This Chapter applies to measures by the 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. Notwithstanding paragraph 1, in respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the Annex on Air Transport Services to the GATS. The definitions of paragraph 6 of the Annex on Air Transport Services to the GATS are hereby incorporated and made part of this Chapter.
3. Articles 3.4 to 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 Chapter, the term “Member” used in the GATS provision shall be understood as meaning “Party” and the term “territory” used in the GATS provision shall be understood as meaning “Area”.

ARTICLE 3.3

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:
 - (i) with respect to the EFTA States: a permanent resident of the Hong Kong Special Administrative Region of the People’s Republic of China under its domestic law who resides in the Area of any Party;
 - (ii) with respect to Hong Kong, China: a natural person who under the domestic law of an EFTA State is a national or a permanent resident of that EFTA State who resides in the Area of any Party;
- (d) “juridical person of another Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the domestic law of that other Party, and is engaged in substantive business operations in the Area of:
 - (A) any Party; or
 - (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:
 - (A) natural persons of that other Party; or
 - (B) juridical persons of that other Party identified under subparagraph (d) (i);

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 Area where the service is supplied or sought to be supplied.

- (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”;
- (f) “Area” means:
 - (i) with respect to an EFTA State:
 - (A) its land territory, internal waters, and territorial sea, and the air-space above, in accordance with international law; and
 - (B) beyond the territorial sea, with respect to measures taken in the exercise of its sovereign right or jurisdiction in accordance with international law;
 - (ii) with respect to Hong Kong, China: the land and sea comprised within the boundary of the Hong Kong Special Administrative Region only, including Hong Kong Island, Kowloon, the New Territories, and the waters of Hong Kong;
 - (iii) with respect to Norway: “Area” does not include the Norwegian territory of Svalbard.

ARTICLE 3.4

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and subject to Article 3.17, each Party shall accord immediately and unconditionally, with respect to any measure covered by this Chapter, 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 concludes an agreement of the type referred to in paragraph 2 after the entry into force of this Agreement or amends such agreement, it shall notify the other Parties without delay. The former Party shall, upon request by any other Party, negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under such agreement. Any such incorporation should ensure an overall balance of commitments undertaken by each Party under this Chapter.
4. 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 Chapter.

ARTICLE 3.5

Market Access

Subject to Article 3.17, a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area measures defined as in subparagraphs 2 (a) to 2 (f) of Article XVI of the GATS,⁷ with respect to market access through the modes of supply identified in subparagraph (a) (i) of Article 3.3.

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Unless otherwise specified in a Party's List of Reservations under Annex X, in respect of market access, where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in subparagraph 2 (a) of Article I of the GATS, that Party is hereby committed to allow such movement of capital. Unless otherwise specified in a Party's List of Reservations under Annex X, in respect of market access, where a service is supplied through the mode of supply referred to in subparagraph 2 (c) of Article I of the GATS, that Party is hereby committed to allow related transfers of capital into its Area.

ARTICLE 3.6

National Treatment

1. Subject to Article 3.17, each Party shall accord to services and service suppliers of any other 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 service suppliers.⁸
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other 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 any other Party.

ARTICLE 3.7

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, 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 each Party shall, within a reasonable period of time after the submission of an application considered complete under domestic law, 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. (a) Pending incorporation of results referred to in subparagraph 4 (c), each Party shall ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures that it adopts or maintains are:
 - (i) based on objective and transparent criteria, such as competence and the ability to supply the service; and

⁸ This Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

- (ii) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
- (b) This paragraph shall not apply to a sector or subsector where a Party does not have any obligations on Market Access and National Treatment under its Appendix to Annex X.
- (c) If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, the Parties shall jointly review such results, and decide on incorporation of such results into this Agreement.
- (d) The Parties confirm their rights and obligations under Article VI of the GATS.

5. In determining whether a Party is in conformity with its obligations under paragraph 4, account shall be taken of international standards of relevant international organisations⁹ applied by that Party.

6. Each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

ARTICLE 3.8

Recognition

1. For the purpose of the fulfilment, in whole or in part, 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 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 Area 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.

⁹ The term “relevant international organisations” refers to the international bodies whose membership is open to the Parties.

ARTICLE 3.9

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 or permanent resident status, residence or employment on a permanent basis.
3. Natural persons covered by an EFTA State's List of Reservations under Annex X or by Hong Kong, China's List of Commitments on Movement of Natural Persons under Annex X shall be allowed to supply the service in accordance with the terms of that List.
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 Area, 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 set out in an EFTA State's List of Reservations under Annex X or Hong Kong, China's List of Commitments on Movement of Natural Persons under Annex X.¹⁰

ARTICLE 3.10

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 Chapter.

ARTICLE 3.11

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 Chapter.

¹⁰ The sole fact of requiring a visa for natural persons of a Party and not for those of another Party or non-party shall not be regarded as nullifying or impairing benefits accruing to another Party under the terms of this Chapter.

ARTICLE 3.12

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 Chapter.

ARTICLE 3.13

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.¹¹
2. The Parties shall review any disciplines agreed under Article XV of the GATS with a view to incorporating them into this Chapter.

ARTICLE 3.14

Payments and Transfers

1. Except under the circumstances envisaged in Article 3.15, 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 the 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 the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with the obligations under this Chapter regarding such transactions, except under Article 3.15 or at the request of the IMF.

ARTICLE 3.15

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.

¹¹ It is understood that consultations held pursuant to paragraph 1 shall be without prejudice to the rights and obligations of the Parties under Chapter 10 or under the WTO Dispute Settlement Understanding.

ARTICLE 3.16

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 Chapter.

ARTICLE 3.17

Lists of Reservations and Commitments

1. Articles 3.4 to 3.6 shall not apply to:
 - (a) existing measures that a Party may maintain, renew at any time or modify without reducing their level of conformity with Articles 3.4 to 3.6, with respect to an EFTA State consistent with its List of Reservations under Annex X and, with respect to Hong Kong, China consistent with its First List of Reservations under Annex X; and
 - (b) measures that a Party may adopt, maintain or modify, with respect to an EFTA State consistent with its List of Reservations under Annex X and, with respect to Hong Kong, China consistent with its Second List of Reservations under Annex X.
2. The commitments of a Party under Article 3.9 are set out, with respect to an EFTA State, in its List of Reservations under Annex X and, with respect to Hong Kong, China, in its List of Commitments on Movement of Natural Persons under Annex X.

ARTICLE 3.18

Modification of Lists of Reservations and Commitments

A Party that intends to modify its reservations or commitments under its Appendix to Annex X shall follow the procedures, which shall be adopted by the Joint Committee within 12 months following the entry into force of this Agreement.

ARTICLE 3.19

Review

With the objective of further liberalising trade in services between them, the Parties shall review at least every two years, or more frequently if so agreed, their respective Lists under Annex X, 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 three years after the entry into force of this Agreement.

ARTICLE 3.20

Relationship to Investment and Taxation Agreements

This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment and taxation to which Hong Kong, China and one or several EFTA States are parties.¹²

ARTICLE 3.21

Annexes

The following Annexes form an integral part of this Chapter:

- (a) Annex VII with respect to disciplines on domestic regulation;¹³
- (b) Annex VIII with respect to financial services;
- (c) Annex IX with respect to telecommunications services; and
- (d) Annex X containing the Lists of Reservations and Commitments.

¹² It is understood that any dispute settlement mechanism in an investment protection agreement to which one or several EFTA States and Hong Kong, China are parties is not applicable to alleged breaches of this Chapter.

¹³ This Annex applies to Hong Kong, China, Iceland, Liechtenstein and Switzerland, but not to Norway.