

III SERVICES

ARTICLE 21¹

Scope and Coverage

1. This Chapter 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 Chapter 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) services².
3. The EFTA States and Singapore agree to review developments in the air transport sector with a view to reassessing the need for further co-operation in this sector.
4. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.

ARTICLE 22

Definitions

For the purposes of this Chapter:

- (a) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (b) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;

¹ Article 21 was amended by Joint Committee Decision No. 1 of 2011 (23 November 2011). The Decision will enter into force when the instruments of acceptance have been deposited by all Parties with the Depositary. The Article will then be replaced.

² 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.

- (c) “measures by Parties 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 those Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (d) “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;
- (e) “sector” of a service means:
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule;
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) “service supplier” means any person that seeks to supply or supplies a service³;
- (g) “service consumer” means any person that receives or uses a service;
- (h) “service of another Party” means a service which is supplied:
 - (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that

³ 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.

other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (i) “person” means either a natural person or a juridical person;
- (j) “natural person of a Party” means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:
 - (i) is a national of that Party; or
 - (ii) has the right of permanent residence in that Party and is accorded substantially the same treatment as nationals in respect of measures affecting trade in services;
- (k) “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;
- (l) “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 operations⁴ in the territory of any Party; this includes a service supplier of a WTO member who is a non-Party that is a juridical person constituted under the laws of a Party, provided that it engages in substantive business operations in the territory of the Parties; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that other Party; or
 - 2. juridical persons identified under paragraph (l)(i);
- (m) a juridical person is:

⁴ This also includes juridical persons intending to engage in substantive business operations such as start-up companies.

- (i) “owned” by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (n) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (o) “trade in services” means the supply of a service:
 - (i) from the territory of a Party into the territory of another Party (hereinafter referred to as “cross-border supply”);
 - (ii) in the territory of a Party to the service consumer of another Party (hereinafter referred to as “consumption abroad”);
 - (iii) by a service supplier of a Party, through commercial presence in the territory of another Party (hereinafter referred to as “commercial presence”);
 - (iv) by a service supplier of a Party, through presence of natural persons of that Party in the territory of another Party (hereinafter referred to as “presence of natural persons”);
- (p) “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- (q) “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;
- (r) “direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

ARTICLE 23

Most-Favoured-Nation Treatment

1. Subject to exceptions that may derive from harmonisation of regulations based on agreements concluded by a Party with a non-Party providing for mutual recognition in accordance with Article VII of the GATS, and except as provided in Annex VI, a Party shall accord immediately and unconditionally, with respect to any measure covered by this Chapter, to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.
2. Treatment granted under other agreements concluded by one of the Parties with a non-Party which have been notified under Article V of the GATS shall not be subject to paragraph 1.
3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall, upon request from another Party, afford adequate opportunity to the other Parties to negotiate the benefits granted therein.

ARTICLE 24

Market Access

1. With respect to market access through the modes of supply identified in Article 22 (o), 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 Schedule⁵.
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 sub-division 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;

⁵ If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 22 (o) (i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 22 (o) (iii), it is thereby committed to allow related transfers of capital into its territory.

- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test⁶;
- (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 the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier 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 25

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service 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 service suppliers⁷.
2. A Party may meet the requirement in 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 a Party compared to like services or service suppliers of another Party.

⁶ Paragraph 2 (c) does not cover measures of a Party which limit inputs for the supply of services.

⁷ Specific commitments assumed under 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 services suppliers.

ARTICLE 26

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 24 and 25 above, including those regarding qualifications, standards or licensing matters. Such commitments shall be entered in a Party's Schedule.

ARTICLE 27

Trade Liberalisation/Schedule of Specific Commitments

1. The Parties shall liberalise trade in services between themselves, in conformity with Article V of the GATS.
2. Each Party shall set out in a Schedule the specific commitments it undertakes under Articles 24, 25 and 26. 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; and
 - (d) where appropriate, the time-frame for implementation of such commitments.
3. Measures inconsistent with both Articles 24 and 25 shall be inscribed in the column relating to Article 24. In this case, the inscription will be considered to provide a condition or qualification to Article 25 as well.
4. The Parties' Schedules of specific commitments are set out in Annex VII, and form an integral part of this Chapter.
5. The Parties undertake to review their Schedules of specific commitments at least every two years, but earlier if so agreed, with a view to provide for the elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Chapter at the end of a transitional period of ten years from the date of entry into force of this Agreement. Such review shall continue if substantially all remaining discrimination has not been eliminated at the end of this transitional period. This paragraph is not subject to dispute settlement pursuant to Chapter IX.

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 on which a specific commitment has been made, the competent authorities of a Party shall promptly, after the submission of an application 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 certain regulations, including qualification requirements and procedures, technical standards and licensing requirements, pursuant to Article VI.4 of the GATS, 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 where a Party has undertaken specific commitments, subject to any terms, limitations, conditions or qualifications set out therein, pending the incorporation of disciplines developed pursuant to paragraph 4, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

- (a) does not comply with the criteria outlined in paragraph 4 (a), (b) or (c) and
- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

6. Whenever a domestic regulation is prepared, adopted and applied in accordance with international standards of relevant international organisations⁸ applied by a Party, there shall be a rebuttable presumption that it complies with the provisions of this Article.

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 another Party.

ARTICLE 29

Subsidies

A Party which considers that it is adversely affected by a subsidy of another Party may request consultations with that Party on such matters. Such requests shall be accorded sympathetic consideration.

ARTICLE 30

Recognition

1. In principle no later than three years following the entry into force of this Agreement, the Joint Committee shall establish the necessary steps for the negotiation of agreements or arrangements providing for the mutual recognition of education or experience obtained, requirements, qualifications, licenses and other regulations, 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, operation and certification of service suppliers.

2. Any such recognition conferred by a Party shall be in conformity with the relevant provisions of the WTO and, in particular, Article VII of the GATS.

⁸ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties.

3. 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 31

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 the Party's obligations under its 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 obligations under its 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. If a Party has reason to believe that a monopoly supplier of a service of another Party is acting in a manner inconsistent with paragraph 1 or 2, it may request that other Party to provide specific information concerning the relevant operations.

4. 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 32

Movement of Natural Persons

1. This Chapter 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 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 citizenship, residence or employment on a permanent basis.

3. 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 a manner so as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment⁹.

ARTICLE 33

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order¹⁰;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;

⁹ The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

¹⁰ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (d) inconsistent with Article 25, provided that the difference in treatment is aimed at ensuring the equitable or effective¹¹ imposition or collection of direct taxes in respect of services or service suppliers of another Party;
- (e) inconsistent with Article 23, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which a Party is bound.

ARTICLE 34

Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;

¹¹ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in Article 33 (d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

- (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE 35

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.
2. Articles XI and XII of the GATS shall apply to payments and transfers, and to restrictions to safeguard the balance-of-payments relating to trade in services.
3. A Party adopting or maintaining a measure under this Article shall promptly notify the other Parties and the Joint Committee thereof.

ARTICLE 36

Annexes

Annexes VI to X form an integral part of this Chapter.

IV INVESTMENT

ARTICLE 37

Definitions

For the purposes of this Chapter:

- (a) “*company*” means any entity constituted or organized under the applicable law, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;