

- (c) promptly clarifying and addressing, where possible, any issue that a Party raises relating to the development, adoption or application of technical regulations, standards and conformity assessment procedures under this Chapter and the TBT Agreement.

CHAPTER 8

TRADE IN SERVICES, INVESTMENT LIBERALISATION AND ELECTRONIC COMMERCE

SECTION A

General provisions

ARTICLE 8.1

Scope

1. The Parties, affirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive and reciprocal liberalisation of trade in services and investment and for cooperation on electronic commerce.
2. For the purposes of this Chapter, the Parties affirm their right to adopt within their territories regulatory measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.
3. This Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, 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 the other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits accrued under this Chapter.

ARTICLE 8.2

Definitions

For the purposes of this Chapter:

- (a) 'aircraft repair and maintenance services during which an aircraft is withdrawn from service' means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (b) 'computer reservation system (CRS) services' means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (c) 'covered enterprise' means an enterprise in the territory of a Party established in accordance with subparagraph (i), directly or indirectly, by an entrepreneur of the other Party, in existence on the date of entry into force of this Agreement or established thereafter, in accordance with the applicable law;
- (d) 'cross-border trade in services' means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party; or
 - (ii) in the territory of a Party to the service consumer of the other Party;

- (e) 'direct taxes' comprises 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;
- (f) 'economic activity' means any service or activity of an industrial, commercial or professional character or activities of craftsmen, except for services supplied or activities performed in the exercise of governmental authority;
- (g) 'enterprise' means a juridical person or branch or representative office;
- (h) 'entrepreneur of a Party' means a natural or juridical person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with subparagraph (i), in the territory of the other Party;
- (i) 'establishment' means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in the European Union or in Japan respectively, with a view to establishing or maintaining lasting economic links; ⁽¹⁾
- (j) 'existing' means in effect on the date of entry into force of this Agreement;
- (k) 'ground handling services' means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;
- (l) 'juridical person' means any legal entity duly constituted or otherwise organised under the 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;
- (m) a juridical person is:
 - (i) 'owned' by natural or juridical persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party; and
 - (ii) 'controlled' by natural or juridical persons of a Party if those natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (n) 'juridical person of a Party' means:
 - (i) for the European Union, a juridical person constituted or organised under the laws and regulations of the European Union or its Member States and engaged in substantive business operations ⁽²⁾ in the territory of the European Union; and
 - (ii) for Japan, a juridical person constituted or organised under the laws and regulations of Japan and engaged in substantive business operations in the territory of Japan;

Notwithstanding subparagraphs (i) and (ii), shipping companies established outside the European Union or Japan and controlled by nationals of a Member State of the European Union or of Japan, respectively, shall also be beneficiaries of the provisions of this Chapter if their vessels are registered in accordance with their respective legislation, in a Member State of the European Union or in Japan and fly the flag of that Member State of the European Union or of Japan;

⁽¹⁾ Expansion is understood by the Parties as being covered through the definition of establishment in the form of establishment by a covered enterprise.

⁽²⁾ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of 'effective and continuous link' with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of 'substantive business operations'.

- (o) 'measures by a Party' means measures adopted or maintained by:
 - (i) central, regional or local governments or authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (p) 'operation' means conduct, management, maintenance, use, enjoyment and sale or other form of disposal of an enterprise;
- (q) 'selling and marketing of air transport services' means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution; these activities do not include the pricing of air transport services nor the applicable conditions;
- (r) 'services' means any service in any sector except services supplied in the exercise of governmental authority;
- (s) 'services supplied or activities performed in the exercise of governmental authority' means services or activities which are supplied or performed neither on a commercial basis nor in competition with one or more economic operators;
- (t) 'service supplier' means any natural or juridical person that seeks to supply or supplies a service; and
- (u) 'service supplier of a Party' means any natural or juridical person of a Party that seeks to supply or supplies a service.

ARTICLE 8.3

General exceptions

1. For the purposes of Section B, Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. ⁽¹⁾
2. 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 establishment or trade in services, nothing in Sections B to F shall be construed as preventing a Party from adopting or enforcing measures which are:
 - (a) necessary to protect public security or public morals or to maintain public order; ⁽²⁾
 - (b) necessary to protect human, animal or plant life or health; ⁽³⁾
 - (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 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; or
 - (iii) safety; or

⁽¹⁾ The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health. The Parties understand that subparagraph (g) of Article XX of GATT 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.

⁽²⁾ The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

⁽³⁾ The Parties understand that the measures referred to in subparagraph (b) include environmental measures necessary to protect human, animal or plant life or health.

- (d) inconsistent with paragraphs 1 and 2 of Article 8.8 and paragraph 1 of Article 8.16 provided that the difference in treatment is aimed at ensuring the equitable or effective ⁽¹⁾ imposition or collection of direct taxes in respect of economic activities, entrepreneurs, services or service suppliers of the other Party.

ARTICLE 8.4

Committee on Trade in Services, Investment Liberalisation and Electronic Commerce

1. The Committee on Trade in Services, Investment Liberalisation and Electronic Commerce established pursuant to Article 22.3 (hereinafter referred to in this Chapter as 'the Committee') shall be responsible for the effective implementation and operation of this Chapter.
2. The Committee shall have the following functions:
 - (a) reviewing and monitoring the implementation and operation of this Chapter and the non-conforming measures set out in each Party's Schedules in Annexes I to IV to Annex 8-B;
 - (b) exchanging information on any matters related to this Chapter;
 - (c) examining possible improvements to this Chapter;
 - (d) discussing any issue related to this Chapter as may be agreed upon between the representatives of the Parties; and
 - (e) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1.
3. The Committee shall be composed of representatives of the Parties including officials of relevant ministries or agencies in charge of the issues to be addressed. The Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.

ARTICLE 8.5

Review

1. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its respective Schedules in Annexes I to IV to Annex 8-B.
2. With a view to introducing possible improvements to the provisions of this Chapter, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services, investment liberalisation, electronic commerce and investment environment, including this Agreement, in accordance with Article 23.1.

⁽¹⁾ 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:

- (a) apply to non-resident entrepreneurs and 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;
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (e) distinguish entrepreneurs and service suppliers subject to tax on worldwide taxable items from other entrepreneurs and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) 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 Party's tax base.

Tax terms or concepts in subparagraph 2(d), including 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.

SECTION B

Investment liberalisation

ARTICLE 8.6

Scope

1. This Section applies to measures by a Party with regard to the establishment or operation of economic activities by:

- (a) entrepreneurs of the other Party;
- (b) covered enterprises; and
- (c) for the purposes of Article 8.11, any enterprise in the territory of the Party adopting or maintaining the measure.

2. This Section does not apply to:

- (a) cabotage in maritime transport services ⁽¹⁾;
- (b) air services or related services in support of air services ⁽²⁾, other than the following:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services; and
 - (iv) ground handling services; and
- (c) audio-visual services.

ARTICLE 8.7

Market access

A Party shall not maintain or adopt, with regard to market access through establishment or operation by an entrepreneur of the other Party or by a covered enterprise, either on the basis of a territorial subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on ⁽³⁾:
 - (i) the number of enterprises, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
 - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
 - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or

⁽¹⁾ For the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage in maritime transport services under this Section covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in a Member State of the European Union.

⁽²⁾ For greater certainty, this Section does not apply to a service using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

⁽³⁾ Subparagraphs (a)(i) to (iii) do not cover measures taken in order to limit the production of an agricultural good.

- (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which an entrepreneur of the other Party may perform an economic activity.

ARTICLE 8.8

National treatment

1. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own entrepreneurs and to their enterprises, with respect to establishment in its territory.
2. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own entrepreneurs and to their enterprises, with respect to operation in its territory.
3. For greater certainty, paragraphs 1 and 2 shall not be construed as preventing a Party from prescribing statistical formalities or information requirements, in connection with the covered enterprises, provided that those formalities or requirements do not constitute a means to circumvent that Party's obligations pursuant to this Article.

ARTICLE 8.9

Most-favoured-nation treatment

1. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to entrepreneurs of a third country and to their enterprises, with respect to establishment in its territory.
2. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to entrepreneurs of a third country and to their enterprises, with respect to operation in its territory.
3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to entrepreneurs of the other Party and to covered enterprises the benefit of any treatment resulting from:
 - (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or
 - (b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of its Annex on Financial Services.
4. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements.
5. Substantive provisions in other international agreements concluded by a Party with a third country ⁽¹⁾ do not in themselves constitute treatment under this Article. For greater certainty, actions or inactions of a Party in relation to those provisions can constitute treatment ⁽²⁾ and thus can give rise to a breach of this Article to the extent that the breach is not established solely based on the said provisions.

⁽¹⁾ For greater certainty, the mere transposition of those provisions into domestic legislation does not change their qualification as international law provisions and consequently their coverage under this paragraph.

⁽²⁾ For greater certainty, the entrepreneurs of the other Party or their covered enterprises would be entitled to receive that treatment even in the absence of enterprises established by entrepreneurs of the third country at the time when the comparison is made.

ARTICLE 8.10

Senior management and boards of directors

A Party shall not require a covered enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors.

ARTICLE 8.11

Prohibition of performance requirements

1. A Party shall not impose or enforce any of the following requirements or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory: ⁽¹⁾

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entity in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
- (e) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;
- (f) to restrict exportation or sale for export;
- (g) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;
- (h) to locate the headquarters of such enterprise for a specific region or the world market in its territory;
- (i) to hire a given number or percentage of its nationals;
- (j) to achieve a given level or value of research and development in its territory;
- (k) to supply one or more of the goods produced or services supplied by the enterprise to a specific region or to the world market exclusively from its own territory; or
- (l) to adopt:
 - (i) a rate or amount of royalty below a certain level; or
 - (ii) a given duration of the term of a licence contract ⁽²⁾;

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. ⁽³⁾

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;

⁽¹⁾ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

⁽²⁾ A 'licence contract' referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

⁽³⁾ For greater certainty, subparagraph (l) does not apply when the licence contract is concluded between the enterprise and a Party.

- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from natural or juridical persons or any other entity in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
 - (d) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or
 - (e) to restrict exportation or sale for export.
3. Nothing in paragraph 2 shall be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
4. Subparagraphs 1(a) to (c), 2(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
5. Subparagraphs 1(g) and (l) do not apply when:
- (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court, administrative tribunal or competition authority in order to remedy a violation of competition law; or
 - (b) a Party authorises use of an intellectual property right in accordance with Article 31 or 31bis of the TRIPS Agreement, or measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.
6. Subparagraph 1(l) does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.
7. Subparagraphs 2(a) and (b) do not apply to requirements imposed or enforced by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.

ARTICLE 8.12

Non-conforming measures and exceptions

1. Articles 8.7 to 8.11 do not apply to:
- (a) any existing non-conforming measure that is maintained by a Party at a level of:
 - (i) for the European Union:
 - (A) the European Union, as set out in its Schedule in Annex I to Annex 8-B;
 - (B) the central government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B;
 - (C) a regional government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B; or
 - (D) a local government, other than that referred to in subparagraph (C); and
 - (ii) for Japan:
 - (A) the central government, as set out in its Schedule in Annex I to Annex 8-B;
 - (B) a prefecture, as set out in its Schedule in Annex I to Annex 8-B; or
 - (C) a local government other than a prefecture;

- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment of, or modification to, any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure with Articles 8.7 to 8.11 as it existed immediately before the amendment or modification.
2. Articles 8.7 to 8.11 do not apply to any measure by a Party with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex II to Annex 8-B.
 3. A Party shall not require, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex II to Annex 8-B, an entrepreneur of the other Party, by reason of its nationality, to sell or otherwise dispose of an enterprise that exists at the time the measure becomes effective.
 4. Articles 8.8 and 8.9 do not apply to any measure that constitutes an exception to, or a derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of the TRIPS Agreement.
 5. Articles 8.7 to 8.11 do not apply to any measure by a Party with respect to government procurement.
 6. Articles 8.7 to 8.10 do not apply to subsidies granted by the Parties.

ARTICLE 8.13

Denial of benefits

A Party may deny the benefits of this Section to an entrepreneur of the other Party that is a juridical person of the other Party and to its covered enterprise if that juridical person is owned or controlled by a natural or juridical person of a third country and the denying Party adopts or maintains measures with respect to the third country that:

- (a) are related to the maintenance of international peace and security, including the protection of human rights; and
- (b) prohibit transactions with that juridical person or its covered enterprise, or would be violated or circumvented if the benefits of this Section were accorded to them.

SECTION C

Cross-border trade in services

ARTICLE 8.14

Scope

1. This Section applies to measures by a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include among others measures affecting:
 - (a) the production, distribution, marketing, sale or delivery of a service;
 - (b) the purchase or use of, or payment for, a service; and
 - (c) the access to and the use of services offered to the public generally in connection with the supply of a service.
2. This Section does not apply to:
 - (a) cabotage in maritime transport services ⁽¹⁾;

⁽¹⁾ For the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage in maritime transport services under this Section covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in a Member State of the European Union.

- (b) air services or related services in support of air services ⁽¹⁾, other than the following:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services; and
 - (iv) ground handling services;
- (c) government procurement;
- (d) audio-visual services; and
- (e) subsidies, as defined and provided for in Chapter 12.

ARTICLE 8.15

Market access

A Party shall not maintain or adopt, either on the basis of a territorial subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; ⁽²⁾
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or
 - (iii) the total number of service operations or 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 test; ⁽³⁾ or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 8.16

National treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the 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 the other Party.
4. Nothing in this Article shall be construed as requiring either Party to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant services or service suppliers.

⁽¹⁾ For greater certainty, this Section does not apply to a service using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

⁽²⁾ Subparagraph (a)(i) includes measures by a Party which require a service supplier of the other Party to establish or maintain any form of enterprise or to be resident in the territory of the Party as a condition for the cross-border supply of a service.

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

ARTICLE 8.17

Most-favoured-nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a third country.
2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:
 - (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or
 - (b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of its Annex on Financial Services.

ARTICLE 8.18

Non-conforming measures

1. Articles 8.15 to 8.17 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at a level of:
 - (i) for the European Union:
 - (A) the European Union, as set out in its Schedule in Annex I to Annex 8-B;
 - (B) the central government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B;
 - (C) a regional government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B; or
 - (D) a local government, other than that referred to in subparagraph (C); and
 - (ii) for Japan:
 - (A) the central government, as set out in its Schedule in Annex I to Annex 8-B;
 - (B) a prefecture, as set out in its Schedule in Annex I to Annex 8-B; or
 - (C) a local government other than a prefecture;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment of, or modification to, any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure with Articles 8.15 to 8.17 as it existed immediately before the amendment or modification.
2. Articles 8.15 to 8.17 do not apply to any measure by a Party with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex II to Annex 8-B.

ARTICLE 8.19

Denial of benefits

A Party may deny the benefits of this Section to a service supplier of the other Party that is a juridical person of the other Party and to services of that service supplier if that juridical person is owned or controlled by a natural or juridical person of a third country and the denying Party adopts or maintains measures with respect to the third country that:

- (a) are related to the maintenance of international peace and security, including the protection of human rights; and
- (b) prohibit transactions with the service supplier, or would be violated or circumvented if the benefits of this Section were accorded to the service supplier or to its services.

SECTION D

Entry and temporary stay of natural persons

ARTICLE 8.20

General provisions and scope

1. This Section reflects the strengthened trade relationship between the Parties as well as the desire of the Parties to facilitate entry and temporary stay of natural persons for business purposes on a reciprocal basis, and to ensure transparency of the process.
2. This Section applies to measures by a Party affecting the entry into that Party by natural persons of the other Party, who are business visitors for establishment purposes, intra-corporate transferees, investors, contractual service suppliers, independent professionals and short-term business visitors, and to measures affecting their business activities during their temporary stay in the former Party.
3. To the extent that commitments are not undertaken in this Section, all requirements provided for in the laws and regulations of a Party regarding the entry and temporary stay shall continue to apply, including regulations concerning the length of stay.
4. Notwithstanding the provisions of this Section, all requirements provided for in the laws and regulations of a Party regarding work and social security measures shall continue to apply, including regulations concerning minimum wages and collective wage agreements.
5. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

ARTICLE 8.21

Definitions

For the purposes of this Section:

- (a) 'business visitors for establishment purposes' means natural persons of a Party working in a senior position who are responsible for setting up an enterprise, do not offer nor provide services, do not engage in any economic activity other than what is required for establishment purposes and do not receive remuneration within the other Party;
- (b) 'contractual service suppliers' means:
 - (i) in respect of the entry and temporary stay in the European Union, natural persons employed by a juridical person of Japan which is itself not an agency for placement and supply services of personnel and is not acting through such an agency, has not established in the territory of the European Union and has concluded a *bona fide* contract to supply services to a final consumer in the European Union, requiring the presence on a temporary basis of its employees in the European Union in order to fulfil the contract to supply services; ⁽¹⁾
 - (ii) in respect of the entry and temporary stay in Japan, natural persons of the European Union who are employees of a juridical person of the European Union that has not established in Japan provided that the following requirements are satisfied:
 - (A) a service contract between a juridical person of Japan and a juridical person of the European Union that has not established in Japan has been concluded;
 - (B) a competent immigration authority of Japan determines, in the context of the service contract referred to in subparagraph (A), that a labour contract between the natural person of the European Union and the juridical person of Japan has been concluded; and

⁽¹⁾ The contract to supply services referred to in subparagraph (b)(i) shall comply with the requirements of the laws and regulations that apply in the place where the contract is executed.

- (C) the service contract referred to in subparagraph (A) does not fall under the scope of service contract for the placement and supply services of personnel (CPC872), and the labour contract as referred to in subparagraph (B) complies with the relevant laws and regulations of Japan;
- (c) 'independent professionals' means:
- (i) in respect of the entry and temporary stay in the European Union, natural persons who are engaged in the supply of a service and established as self-employed in the territory of Japan, have not established in the territory of the European Union and have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) to supply services to a final consumer in the European Union, requiring their presence on a temporary basis in the European Union in order to fulfil the contract to supply services; ⁽¹⁾ and
 - (ii) in respect of the entry and temporary stay in Japan, natural persons of the European Union who will engage in business activities of supplying services during their temporary stay in Japan on the basis of a personal contract with a juridical person of Japan;
- (d) 'intra-corporate transferees' means natural persons who have been employed by a juridical person of a Party or have been partners in it, for a period of not less than one year immediately preceding the date of their application for the entry and temporary stay in the other Party, and who are temporarily transferred to an enterprise, in the territory of the other Party, which forms part of the same group of the former juridical person including its representative office, subsidiary, branch or head company, provided that the following conditions are met:
- (i) the natural person concerned must belong to one of the following categories:
 - (A) managers: persons working in a senior position, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:
 - (1) directing the enterprise or a department thereof;
 - (2) supervising and controlling the work of other supervisory, professional or managerial employees; or
 - (3) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions; or
 - (B) specialists: persons who possess specialised knowledge essential to the enterprise's production, research equipment, techniques, processes, procedures or management; and
 - (ii) for the European Union, in assessing the knowledge referred to in subparagraph (i)(B), account shall be taken not only of knowledge specific to the enterprise, but also of whether the natural person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession; and
- (e) 'investors' means natural persons who establish an enterprise, and develop or administer the operation of that enterprise in the other Party in a capacity that is supervisory or executive, and to which that person or the juridical person employing that person has committed, or is in the process of committing, a substantial amount of capital.

ARTICLE 8.22

General obligations

1. A Party shall grant the entry and temporary stay to natural persons of the other Party for business purposes in accordance with this Section, and Annexes III and IV to Annex 8-B, provided that those persons comply with the immigration laws and regulations of the former Party applicable to the entry and temporary stay.
2. Each Party shall apply its measures relating to the provisions of this Section consistently with the desire of the Parties set out in paragraph 1 of Article 8.20, and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services, or establishment or operation under this Agreement.

⁽¹⁾ The contract to supply services referred to in subparagraph (c)(i) shall comply with the requirements of the laws and regulations that apply in the place where the contract is executed.

3. The measures taken by each Party to facilitate and expedite procedures related to the entry and temporary stay of natural persons of the other Party for business purposes shall be consistent with Annex 8-C.

ARTICLE 8.23

Transparency

1. A Party shall make publicly available information relating to the entry and temporary stay by natural persons of the other Party, referred to in paragraph 2 of Article 8.20.
2. The information referred to in paragraph 1 shall include, where applicable, the following information:
 - (a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;
 - (b) documentation required and conditions to be met;
 - (c) method of filing an application and options on where to file, such as consular offices or online;
 - (d) application fees and an indicative timeframe of the processing of an application;
 - (e) the maximum length of stay under each type of authorisation described in subparagraph (a);
 - (f) conditions for any available extension or renewal;
 - (g) rules regarding accompanying dependents;
 - (h) available review or appeal procedures; and
 - (i) relevant laws of general application pertaining to the entry and temporary stay of natural persons.
3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into, temporary stay in and, where applicable, permission to work in the former Party.

ARTICLE 8.24

Obligations in other sections

1. This Agreement does not impose any obligation on a Party regarding its immigration measures, except as specifically provided for in this Section.
2. Without prejudice to any decision to grant entry to a natural person of the other Party within the terms of this Section, including the permissible length of stay pursuant to any such grant:
 - (a) the obligations of Articles 8.7 to 8.11 subject to:
 - (i) Article 8.6; and
 - (ii) Article 8.12 to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,are hereby incorporated into and made part of this Section and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of business visitors for establishment purposes, intra-corporate transferees and investors, as defined in Article 8.21;
 - (b) the obligations of Articles 8.15 and 8.16 subject to:
 - (i) Article 8.14; and
 - (ii) Article 8.18 to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,

are hereby incorporated into and made part of this Section and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of:

- (i) contractual service suppliers and independent professionals, as defined in Article 8.21, for all sectors listed in Annex IV to Annex 8-B; and
 - (ii) short-term business visitors, referred to in Article 8.27, in accordance with Annex III to Annex 8-B; and
- (c) the obligation of Article 8.17 subject to:
- (i) Article 8.14; and
 - (ii) Article 8.18 to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,

is hereby incorporated into and made part of this Section and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of:

- (i) contractual service suppliers and independent professionals, as defined in Article 8.21; and
 - (ii) short-term business visitors, referred to in Article 8.27.
3. For greater certainty, the obligations referred to in paragraph 2 do not apply to measures relating to the granting of entry into a Party to natural persons of that Party or of a third country.

ARTICLE 8.25

Business visitors for establishment purposes, intra-corporate transferees and investors

1. Each Party shall grant entry and temporary stay to business visitors for establishment purposes, intra-corporate transferees and investors of the other Party in accordance with Annex III to Annex 8-B.
2. A Party shall not adopt or maintain limitations on the total number of natural persons granted entry in accordance with paragraph 1, in a specific sector or sub-sector, in the form of numerical quotas or the requirement of an economic needs test either on the basis of a territorial subdivision or on the basis of its entire territory.

ARTICLE 8.26

Contractual service suppliers and independent professionals

1. Each Party shall grant entry and temporary stay to contractual service suppliers and independent professionals of the other Party in accordance with Annex IV to Annex 8-B.
2. Unless otherwise specified in Annex IV to Annex 8-B, a Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party granted entry, in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 8.27

Short-term business visitors

1. Each Party shall grant entry and temporary stay to short-term business visitors of the other Party in accordance with Annex III to Annex 8-B, subject to the following conditions:
 - (a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;
 - (b) the short-term business visitors do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily; and

- (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has not established in the territory of the Party where they are staying temporarily, and a consumer there, except as provided for in Annex III to Annex 8-B.
2. Unless otherwise specified in Annex III to Annex 8-B, each Party shall grant entry of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.

ARTICLE 8.28

Contact points

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the effective implementation and operation of this Section and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

SECTION E

Regulatory framework

SUB-SECTION 1

Domestic regulation

ARTICLE 8.29

Scope and definitions

1. This Sub-Section applies to measures by a Party relating to licensing requirements and procedures, qualification requirements and procedures and technical standards ⁽¹⁾ that affect:
- (a) cross-border trade in services as defined in subparagraph (d) of Article 8.2;
 - (b) establishment as defined in subparagraph (i) of Article 8.2 or operation as defined in subparagraph (p) of Article 8.2; or
 - (c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party, in accordance with Article 8.24.
2. This Sub-Section does not apply to licensing requirements and procedures, qualification requirements and procedures and technical standards:
- (a) pursuant to a measure that does not conform with Article 8.7 or 8.8 and is referred to in subparagraphs 1(a) to (c) of Article 8.12 or with Article 8.15 or 8.16 and is referred to in subparagraphs 1(a) to (c) of Article 8.18; or
 - (b) pursuant to a measure referred to in paragraph 2 of Article 8.12 or paragraph 2 of Article 8.18.
3. For the purposes of this Sub-Section, a 'competent authority' is a central, regional or local government or authority, or a non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish an enterprise in order to engage in an economic activity other than a service.

ARTICLE 8.30

Conditions for licensing and qualification

Measures relating to licensing requirements and procedures, and qualification requirements and procedures of each Party shall be based on the following criteria:

- (a) clarity;

⁽¹⁾ For greater certainty, as far as measures relating to technical standards are concerned, this Sub-Section applies only to such measures affecting trade in services.

- (b) objectivity;
- (c) transparency;
- (d) advance public availability; and
- (e) accessibility.

ARTICLE 8.31

Licensing and qualification procedures

1. Licensing and qualification procedures shall be clear, made public in advance and be such as to ensure that the applications are dealt with objectively and impartially.
2. Licensing and qualification procedures shall be as simple as possible and shall not in themselves be a restriction on the supply of a service or the pursuit of any other economic activity. Any authorisation fee ⁽¹⁾ which the applicants may incur from their application should be reasonable, transparent and shall not in itself restrict the supply of a service or the pursuit of any other economic activity.
3. The procedures used by, and the decisions of, the competent authority in the authorisation process shall be impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and should not be accountable to any person supplying the services or carrying out the economic activities for which the authorisation is required.
4. If a specific period of time for applications exists, the competent authority shall allow an applicant a reasonable period of time for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, the competent authority should accept an application in electronic format under the same conditions of authenticity as an application in paper format.
5. The competent authority shall complete the processing of an application, including reaching a final decision, within a reasonable period of time from the submission of a complete application. Each Party shall endeavour to establish an indicative timeframe for the processing of an application and shall make publicly available that timeframe, when established.
6. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, and, to the extent feasible, identify the additional information required to complete the application and provide the opportunity to correct deficiencies.
7. The competent authority should, where possible, accept authenticated copies in place of original documents.
8. If the competent authority rejects an application by an applicant, it shall inform the applicant, in principle in writing, and without undue delay. It shall also, on request of the applicant, inform the applicant of the reasons for rejection of the application and the timeframe for an appeal against that decision.
9. The competent authority shall grant an authorisation as soon as it is established, in the light of an appropriate examination, that the applicant meets the conditions for obtaining it.
10. The competent authority shall ensure that an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

ARTICLE 8.32

Technical standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body designated to develop technical standards to use open and transparent processes.

⁽¹⁾ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

SUB-SECTION 2

Provisions of general application

ARTICLE 8.33

Administration of measures of general application

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. Paragraph 1 does not apply to:
 - (a) the aspects of a measure that do not conform with Article 8.7 or 8.8 and are referred to in subparagraphs 1(a) to (c) of Article 8.12 or with Article 8.15 or 8.16 and are referred to in subparagraphs 1(a) to (c) of Article 8.18; or
 - (b) a measure referred to in paragraph 2 of Article 8.12 or paragraph 2 of Article 8.18.

ARTICLE 8.34

Review procedures for administrative decisions

1. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, upon request of an affected entrepreneur or service supplier of the other Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions that affect:
 - (a) cross-border trade in services as defined in subparagraph (d) of Article 8.2;
 - (b) establishment as defined in subparagraph (i) of Article 8.2 or operation as defined in subparagraph (p) of Article 8.2; or
 - (c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party, in accordance with Article 8.24.
2. If the procedures referred to in paragraph 1 are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

ARTICLE 8.35

Mutual recognition

1. Nothing in this Section shall prevent a Party from requiring that natural persons must possess the necessary qualifications or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.
2. Each Party shall encourage the relevant professional bodies in its territory to provide joint recommendations on mutual recognition to the Committee, for the purpose of the fulfilment, in whole or in part, by entrepreneurs and service suppliers of the criteria applied by that Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers, and, in particular, in the sector of professional services.
3. On receipt of a joint recommendation referred to in paragraph 2, the Committee shall, within a reasonable period of time, review that recommendation with a view to ensuring its consistency with this Agreement and, on the basis of the information contained therein, assess in particular:
 - (a) the extent to which the standards and criteria applied by each Party for the authorisation, licensing, operation and certification referred to in paragraph 2 are converging; and
 - (b) the potential economic value of a mutual recognition agreement for the authorisation, licensing, operation and certification referred to in paragraph 2.

4. Where those requirements are satisfied, the Committee shall establish the necessary steps to negotiate. Thereafter the Parties shall enter into negotiations, through their competent authorities, of a mutual recognition agreement for the authorisation, licensing, operation and certification referred to in paragraph 2.

5. Any mutual recognition agreement that the Parties may conclude shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

SUB-SECTION 3

Postal and courier services

ARTICLE 8.36

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for the supply of postal and courier services, and applies to measures by a Party affecting trade in postal and courier services.

2. For the purposes of this Sub-Section:

- (a) 'licence' means an authorisation that an independent regulatory authority of a Party may require of an individual supplier, in accordance with the laws and regulations of the Party, in order for that supplier to offer postal and courier services; and
- (b) 'universal service' means the permanent supply of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

ARTICLE 8.37

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. That obligation will not be regarded *per se* as anti-competitive, provided that it is administered in a transparent, non-discriminatory and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the Party, with regard to all suppliers subject to the obligation.

2. Within the framework of its postal legislation or by other customary means, each Party shall set out the scope of the universal service obligation, fully taking into account the needs of the users and national conditions, including market forces, of that Party.

3. Each Party shall ensure that a supplier of postal and courier services in its territory which is subject to a universal service obligation under its laws and regulations does not engage in the following practices:

- (a) excluding the business activities of other enterprises by cross-subsidising, with revenues derived from the supply of the universal service, the supply of express mail services (EMS) ⁽¹⁾ or any non-universal service in a way which constitutes a private monopolisation in contravention of Article 3 of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) of Japan or an abuse of a dominant market position in contravention of the competition law of the European Union respectively; ⁽²⁾ or
- (b) unjustifiably differentiating among customers, such as large volume mailers or consolidators, where like conditions prevail with respect to charges and the provisions concerning acceptance, delivery, redirection, return and the number of days required for delivery for the supply of a service subject to a universal service obligation.

⁽¹⁾ For the purposes of this subparagraph, 'express mail services (EMS)' means services referred to in subparagraph 1.3 of Article 1 of the Universal Postal Convention, done at Istanbul on 6 October 2016.

⁽²⁾ For greater certainty, the enforcement of each Party's competition law and the related decisions by competition authority shall be covered by the provisions of Chapter 11.

ARTICLE 8.38

Border procedures

1. The border procedures for international postal services and international courier services ⁽¹⁾ are enforced in accordance with related international agreements and the laws and regulations of each Party.
2. Without prejudice to paragraph 1, each Party shall not unduly accord less favourable treatment with respect to border procedures to international courier services than it accords to international postal services.

ARTICLE 8.39

Licences

1. Each Party may require a licence for the supply of a service covered by this Sub-Section.
2. If a Party requires a licence, it shall make publicly available:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of licences.
3. If a licence application is rejected by the competent authority, it shall upon request inform the applicant of the reasons for the rejection of the licence. Each Party shall establish an appeal procedure through an independent body available to applicants whose licence has been rejected. That procedure shall be transparent, non-discriminatory, and based on objective criteria.

ARTICLE 8.40

Independence of the regulatory body

Each Party shall ensure that:

- (a) its regulatory body ⁽²⁾ for the services covered by this Sub-Section is legally separated from, and not accountable to, any supplier of those services; and,
- (b) subject to the laws and regulations of each Party, decisions of, and procedures used by, its regulatory body are impartial.

SUB-SECTION 4

Telecommunications services

ARTICLE 8.41

Scope

1. This Sub-Section sets out the principles of the regulatory framework for all telecommunications services and applies to measures by a Party affecting trade in telecommunications services, which consist in the conveyance of signals including, *inter alia*, transmission of video and audio signals (irrespective of the types of protocols and technologies used) through public telecommunications transport networks.
2. This Sub-Section does not apply to measures affecting:
 - (a) broadcasting services as defined in the laws and regulations of each Party; and
 - (b) services providing, or exercising editorial control over, content transmitted using telecommunications transport networks and services.

⁽¹⁾ For the purposes of this Article, 'international postal services' means services that designated operators referred to in subparagraph 1.12 of Article 1 of the Universal Postal Convention supply in accordance with the Acts of the Universal Postal Union.

'International courier services' means services consisting of the collection, sorting, transport and delivery of documents, printed matter, parcels and goods for foreign destinations, not regulated by the Acts of the Universal Postal Union.

⁽²⁾ The regulatory body referred to in this Article does not include customs authorities of each Party.

3. Notwithstanding subparagraph 2(a), a supplier of broadcasting services shall be considered as a supplier of public telecommunications transport services and its networks as public telecommunications transport networks, when and to the extent that such networks are also used for providing public telecommunications transport services.

4. Nothing in this Sub-Section shall be construed as requiring a Party:

- (a) to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in this Agreement; or
- (b) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

ARTICLE 8.42

Definitions

For the purposes of this Sub-Section:

- (a) 'associated facilities' means services and infrastructures associated with public telecommunications transport networks or services which are necessary for the provision of services via those networks or services, such as buildings (including entries and wiring), ducts and cabinets as well as masts and antennae;
- (b) 'cost-oriented' means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) 'end user' means a final consumer of, or subscriber to, a public telecommunications transport network or service, including a service supplier other than a supplier of public telecommunications transport networks or services;
- (d) 'essential facilities' means facilities of a public telecommunications transport network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (e) 'interconnection' means linking ⁽¹⁾ with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with the users of another supplier or to access services provided by any supplier who has access to the network;
- (f) 'international mobile roaming service' means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications transport services that enables an end user to use its home mobile handset or other device for voice, data or messaging services while outside the territory in which the end user's home public telecommunications transport network is located;
- (g) 'leased circuits' means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user, irrespective of the technology used;
- (h) 'major supplier' means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications transport services as a result of:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (i) 'non-discriminatory' means treatment no less favourable than that accorded, under like circumstances, to other service suppliers and users of like public telecommunications transport networks or services;

⁽¹⁾ For greater certainty, linking may include physical or logical linking, as appropriate.

- (j) 'number portability' means the ability of an end user of public telecommunications transport services who requests to retain, at the same location, the same telephone numbers without impairment of quality or reliability when switching between the same category of suppliers of like public telecommunications transport services;
- (k) 'public telecommunications transport network' means public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (l) 'public telecommunications transport service' means any telecommunications transport service offered to the public generally that may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;
- (m) 'regulatory authority' means the body or bodies of a Party responsible for the regulation of telecommunications;
- (n) 'telecommunications' means the transmission and reception of signals by wire, radio, optical or any other electromagnetic means; and
- (o) 'users' means end users, or suppliers of public telecommunications transport networks or services that are consumers of, or subscribers to, a public telecommunications transport network or service.

ARTICLE 8.43

Approaches to regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that a Party may determine how to implement its obligations under this Sub-Section.
2. In that respect, the Parties recognise that a Party may:
 - (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market; or
 - (b) rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities.
3. For greater certainty, a Party that refrains from engaging in regulation in accordance with subparagraph 2(b) remains subject to the obligations under this Sub-Section. Nothing in this Article shall prevent a Party from applying regulation to telecommunications services.

ARTICLE 8.44

Access and use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to, and use of, public telecommunications transport networks and services on terms and conditions which are reasonable, non-discriminatory and no less favourable than those which the supplier of those public telecommunications transport networks and services provides for its own like services under like circumstances. This obligation shall be applied, *inter alia*, through paragraphs 2 to 6.
2. Each Party shall ensure that service suppliers of the other Party are accorded access to, and use of, any public telecommunications transport network or service offered within or across the borders of the former Party, including private leased circuits, and shall to that end ensure, subject to paragraphs 5 and 6, that such service suppliers are permitted to:
 - (a) purchase or lease, and attach, terminal or other equipment which interfaces with the network and which is necessary to supply their services;

- (b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and
- (c) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across the borders of the former Party, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in either Party or in any other member of the WTO.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to, and use of, public telecommunications transport networks and services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to, and use of, public telecommunications transport networks and services may include:

- (a) restrictions on resale or shared use of those services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with public telecommunications transport networks and services;
- (c) requirements, if necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 8.55;
- (d) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of that equipment to those networks;
- (e) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services, or with circuits leased or owned by other service suppliers; or
- (f) notification, permit, registration and licensing.

ARTICLE 8.45

Number portability

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability for mobile services and any other services designated by that Party, on a timely basis and on reasonable terms and conditions.

ARTICLE 8.46

Resale

If a Party requires a supplier of public telecommunications transport services to offer its public telecommunications transport services for resale, that Party shall ensure that such supplier does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications transport services.

ARTICLE 8.47

Enabling use of network facilities and interconnection

1. The Parties recognise that enabling use of network facilities ⁽¹⁾ and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications transport networks or services concerned.
2. Each Party shall ensure that any supplier of public telecommunications transport networks or services in its territory has a right and, if requested by a supplier of public telecommunications transport networks or services of the other Party, an obligation to negotiate interconnection for the purpose of providing public telecommunications transport networks or services. Each Party shall provide its regulatory authority with the power to require, where necessary, a supplier of public telecommunications transport networks or services to provide interconnection with suppliers of public telecommunications transport networks or services of the other Party.
3. A Party shall not adopt or maintain any measure which obliges suppliers of public telecommunications transport networks or services enabling use of network facilities or providing interconnection to offer different terms and conditions to different suppliers for like services or imposes obligations that are not related to the services provided.

ARTICLE 8.48

Obligations relating to major suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them in order to provide services.
2. Each Party shall provide its regulatory authority with the power to require, where appropriate, that major suppliers in its territory accord to suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than that which the major supplier concerned accords in like circumstances to its subsidiaries or its affiliates, regarding:
 - (a) the availability, provisioning, rates or quality of like telecommunications services; and
 - (b) the availability of technical interfaces necessary for interconnection.
3. Each Party shall ensure that major suppliers in its territory provide interconnection with suppliers of public telecommunications transport networks or services of the other Party at any technically feasible point in the network of the major supplier concerned and that the major supplier concerned provides such interconnection:
 - (a) under terms, conditions (including with respect to technical standards, specifications, quality and maintenance) and rates which are non-discriminatory and no less favourable than those provided for its own like services under like circumstances, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms, conditions (including with respect to technical standards, specifications, quality and maintenance) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

⁽¹⁾ For the purposes of this Article, 'enabling use of network facilities' means the making available of facilities or services to another supplier of public telecommunications transport networks or services under defined conditions, for the purpose of providing public telecommunications transport services. It may include the use of active or passive network elements, associated facilities, virtual network services, co-location or other forms of associated facilities sharing, the use of leased circuits and the use of specified network facilities or elements, including the local loop, on an unbundled basis.

- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
- 4. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunications transport networks or services of the other Party with the opportunity to interconnect their facilities and equipment with those of a major supplier through:
 - (a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services; or
 - (b) the terms and conditions of an interconnection agreement in effect.
- 5. Each Party shall ensure that the procedures applicable for interconnection with major suppliers in its territory are made publicly available.
- 6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or their reference interconnection offers.
- 7. Each Party shall ensure that major suppliers in its territory that acquire information from another supplier of public telecommunications transport networks or services in the process of negotiating arrangements on, and as a result of, the use of network facilities or interconnection, use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
- 8. Each Party shall ensure that major suppliers in its territory enable the use of network facilities, which may include, *inter alia*, network elements and associated facilities, to suppliers of public telecommunications transport networks or services of the other Party on terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance) which are transparent, reasonable, non-discriminatory (including with respect to timeliness) and no less favourable than those provided for their own like services under like circumstances. ⁽¹⁾

ARTICLE 8.49

Regulatory authority

- 1. Each Party shall ensure that its regulatory authority is legally distinct, and functionally independent ⁽²⁾ from any supplier of telecommunications services, telecommunications networks or telecommunications network equipment.
- 2. A Party that retains ownership or control of a supplier of public telecommunications transport networks or services shall ensure effective structural separation of the regulatory function of telecommunications from activities associated with the ownership or control.
- 3. Each Party shall provide its regulatory authority with the power to regulate the telecommunications sector, and to carry out the task assigned to it including enforcement of the measures relating to the obligations under this Sub-Section. The tasks to be undertaken by the regulatory authority shall be made publicly available in an easily accessible and clear form.
- 4. Each Party shall ensure that the decisions of, and the procedures used by, its regulatory authority are impartial with respect to all market participants.
- 5. Each Party shall ensure that its regulatory authority performs its tasks in a transparent manner and, to the extent practicable, without undue delay.
- 6. Each Party shall provide its regulatory authority with the power to request from suppliers of telecommunications networks and services all the information, including financial information, which is necessary to carry out its tasks in accordance with this Sub-Section. The regulatory authority shall not request more information than that which is necessary to perform its tasks and shall treat the information obtained from those suppliers in accordance with the laws and regulations of that Party relating to business confidentiality.

⁽¹⁾ For greater certainty, nothing in this paragraph shall be construed as preventing a Party from allowing a major supplier in its territory to reject co-location where there is a reasonable ground for rejection, in particular with regard to technical feasibility.

⁽²⁾ For greater certainty, the regulatory authority of a Party shall not be regarded as not functionally independent solely based on the fact that an authority of that Party (other than the regulatory authority) holds shares or other equity interest in a supplier of telecommunications services, telecommunications networks or telecommunications network equipment.

ARTICLE 8.50

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain. Those obligations are not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, objective, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.
2. All suppliers of telecommunications services should be eligible to provide universal service. Universal service suppliers shall be designated through a transparent, non-discriminatory and not unduly burdensome mechanism.
3. The regulatory authority of a Party may determine whether a mechanism is required in order to compensate the net cost of the suppliers designated to provide universal service, taking into account the market benefit, if any, accruing to those suppliers, or to share the net cost of the universal service obligations.

ARTICLE 8.51

Authorisation to provide telecommunications networks and services

1. Each Party shall authorise the provision of telecommunications networks or services, to the extent possible, upon simple notification or registration without requiring a prior explicit decision by its regulatory authority. The rights and obligations resulting from such authorisation shall be made publicly available in an easily accessible form.
2. If necessary, a Party may require a licence for the right of use for radio frequencies and numbers, in particular in order to:
 - (a) avoid harmful interference;
 - (b) ensure technical quality of service; and
 - (c) safeguard efficient use of spectrum.
3. If a Party requires a licence, that Party shall make publicly available:
 - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision on a licence; and
 - (b) the terms and conditions of individual licences.
4. Each Party shall notify an applicant of the outcome of its application without undue delay after a decision on the licence has been taken. In case a decision is taken to deny an application for or revoke a licence, each Party shall make known to the applicant, in principle in writing, upon request, the reasons for the denial or revocation. In that case, the applicant shall be able to have recourse to an appeal body as referred to in Article 8.54.
5. Each Party shall ensure that any administrative fees imposed on suppliers of telecommunications networks or services are objective, transparent and commensurate with the administrative costs of its regulatory authority. Those administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 8.52

Allocation and use of scarce resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, numbers and rights of way, in an open, objective, timely, transparent, non-discriminatory and not unduly burdensome manner.
2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. Measures by a Party allocating and assigning spectrum and managing frequency are not *per se* inconsistent with Articles 8.7 and 8.15. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport services, provided that the Party does so in a manner consistent with the other provisions of this Agreement. That right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

ARTICLE 8.53

Transparency

Each Party shall ensure that its measures relating to access to, and use of, public telecommunications transport networks and services are made publicly available, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces;
- (c) bodies responsible for the preparation, amendment and adoption of standards affecting the access and use;
- (d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport networks; and
- (e) notifications, permits, registrations or licensing requirements, if any.

ARTICLE 8.54

Resolution of telecommunications disputes

1. Each Party shall ensure, in accordance with its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to the regulatory authority of the former Party to resolve disputes in relation to the rights and obligations of those suppliers arising from this Sub-Section. In such cases, the regulatory authority shall aim to issue a binding decision, as appropriate, in order to resolve the dispute without undue delay.

2. If the regulatory authority declines to initiate any action on a request to resolve a dispute, it shall, upon request and within a reasonable period of time, provide a written explanation for its decision.

3. The regulatory authority shall make the decision resolving the dispute available to the public in accordance with the laws and regulations of the Party, having regard to the requirements of business confidentiality.

4. Each Party shall ensure that a supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its regulatory authority may obtain review of that determination or decision by either the regulatory authority or an independent appeal body which may or may not be a judicial authority.

5. Each Party shall ensure that a supplier of public telecommunications transport networks or services affected by a decision of its regulatory authority or independent appeal body, if the latter is not a judicial authority, may obtain further review of that decision by an independent judicial authority, except if the supplier has accepted a procedure where the regulatory authority or independent appeal body issues a final decision, in accordance with the laws and regulations of the Party.

6. A Party shall not permit an application for review by an appeal body or a judicial authority to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant appeal body or judicial authority withholds, suspends or repeals such determination or decision.

7. The procedure referred to in paragraphs 1 to 3 shall not preclude either party concerned from bringing an action before the judicial authorities.

ARTICLE 8.55

Relation to international organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications transport networks and services, and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

ARTICLE 8.56

Confidentiality of information

Each Party shall ensure the confidentiality of telecommunications and related traffic data of users over public telecommunications transport networks and services without unduly restricting trade in services.

ARTICLE 8.57

International mobile roaming ⁽¹⁾

1. Each Party shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.
2. Each Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
 - (a) ensuring that information regarding retail rates is easily accessible to consumers; and
 - (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers, when visiting the territory of a Party from the territory of the other Party, can access telecommunications services using the device of their choice.
3. Each Party shall encourage suppliers of public telecommunications transport services in its territory to make publicly available information on retail rates for international mobile roaming services for voice, data and text messages offered to their end users when visiting the territory of the other Party.
4. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

SUB-SECTION 5

Financial services

ARTICLE 8.58

Scope

1. This Sub-Section applies to measures by a Party affecting trade in financial services.
2. For the purposes of the application of subparagraph (r) of Article 8.2 to this Sub-Section, 'services supplied in the exercise of governmental authority' means the following:
 - (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

⁽¹⁾ This Article does not apply to intra-European Union roaming services, which are commercial mobile services provided pursuant to a commercial agreement between suppliers of public telecommunications transport services that enable an end user to use its home mobile handset or other device for voice, data or messaging services in a Member State of the European Union other than that in which the end user's home public telecommunications transport network is located.

- (b) activities forming part of a statutory system of social security or public retirement plans; and
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Party or its public entities.
3. For the purposes of the application of subparagraph (r) of Article 8.2 to this Sub-Section, if a Party allows any of the activities referred to in subparagraph 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, 'services' shall include those activities.
4. Subparagraph (s) of Article 8.2 does not apply to services covered by this Sub-Section.

ARTICLE 8.59

Definitions

For the purposes of this Chapter:

- (a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party; financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance); financial services include the following activities:
 - (i) insurance and insurance-related services:
 - (A) direct insurance (including co-insurance):
 - (1) life; and
 - (2) non-life;
 - (B) reinsurance and retrocession;
 - (C) insurance intermediation, such as brokerage and agency; and
 - (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and
 - (ii) banking and other financial services (excluding insurance):
 - (A) acceptance of deposits and other repayable funds from the public;
 - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (C) financial leasing;
 - (D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (E) guarantees and commitments;
 - (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (1) money market instruments (including cheques, bills and certificates of deposits);
 - (2) foreign exchange;
 - (3) derivative products including, but not limited to, futures and options;
 - (4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (5) transferable securities; and
 - (6) other negotiable instruments and financial assets, including bullion;
 - (G) participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or privately, and provision of services related to such issues;

- (H) money broking;
 - (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
 - (K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) to (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) 'financial service supplier' means any natural or juridical person of a Party wishing to supply or supplying financial services but does not include a public entity;
- (c) 'new financial service' means any service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;
- (d) 'postal insurance entity' means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of a Party;
- (e) 'public entity' means:
- (i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or a monetary authority, when exercising those functions; and
- (f) 'self-regulatory organisation' means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.

ARTICLE 8.60

Financial services new to the territory of a Party

1. A Party shall permit financial service suppliers of the other Party established in its territory to offer in its territory any new financial service.
2. Notwithstanding subparagraph (b) of Article 8.7, a Party may determine the juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires an authorisation, it may refuse the authorisation for prudential reasons but not solely for the reason that the service is not supplied by any financial service supplier in its territory.

ARTICLE 8.61

Payment and clearing systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

ARTICLE 8.62

Self-regulatory organisations

If a Party requires membership or participation in, or access to, a self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of that Party, or if that Party provides, directly or indirectly, the self-regulatory organisation privileges or advantages in supplying financial services, that Party shall ensure that the self-regulatory organisation observes the obligations contained in Article 8.8.

ARTICLE 8.63

Transfers of information and processing of information

1. A Party shall not take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, if those transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.

2. Nothing in paragraph 1 restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as that right is not used to circumvent Sections B to D and this Sub-Section.

ARTICLE 8.64

Effective and transparent regulation

1. If a Party requires a licence for the supply of a financial service, it shall make the requirements and procedures for such a licence publicly available.

2. If a Party requires additional information from the applicant in order to process its application, it shall notify the applicant without undue delay.

3. A Party shall endeavour to ensure that the rules of general application adopted or maintained by self-regulatory organisations in the territory of that Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

ARTICLE 8.65

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, including for:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

(b) ensuring the integrity and stability of the Party's financial system.

2. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's obligations under this Agreement.

3. Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 8.66

Supply of insurance services by postal insurance entities

1. This Article sets out disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this Article do not include the supply of insurance services relating to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.
2. A Party shall not adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services referred to in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:
 - (a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
 - (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.
3. With respect to the supply of insurance services referred to in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.
4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services referred to in paragraph 1 to publish an annual financial statement with respect to the supply of those services. The statement shall provide the level of detail and meet the auditing standards required under generally accepted accounting and auditing principles, internationally accepted accounting and auditing standards or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises that supply like services.
5. Paragraphs 1 to 4 do not apply to a postal insurance entity in the territory of a Party:
 - (a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantage that modifies the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or
 - (b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market.

ARTICLE 8.67

Regulatory cooperation on financial regulation

The Parties shall promote regulatory cooperation on financial regulation in accordance with Annex 8-A.

SUB-SECTION 6

International maritime transport services

ARTICLE 8.68

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for the provision of international maritime transport services pursuant to Sections B to D of this Chapter, and applies to measures by a Party affecting trade in international maritime transport services.

2. For the purposes of this Chapter:

- (a) 'container station and depot services' means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;
- (b) 'customs clearance services' means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;
- (c) 'door-to-door or multimodal transport operations' means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;
- (d) 'freight forwarding services' means activities consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- (e) 'international maritime transport services' means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or a third country, and includes the direct contracting with suppliers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but does not include the right to supply such other transport services;
- (f) 'maritime agency services' means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and
 - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- (g) 'maritime auxiliary services' means maritime cargo handling services, storage and warehousing services, customs clearance services, container station and depot services, maritime agency services and freight forwarding services;
- (h) 'maritime cargo handling services' means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - (i) the loading or discharging of cargo to or from a ship;
 - (ii) the lashing or unlashings of cargo; and
 - (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge; and
- (i) 'storage and warehousing services' means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and storage and warehousing services of other goods including cotton, grain, wool, tobacco, other farm products and other household goods.

ARTICLE 8.69

Obligations

Without prejudice to non-conforming measures or other measures referred to in Articles 8.12 and 8.18, each Party shall:

- (a) respect the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;

- (b) accord to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that it accords to its own ships, with regard to, *inter alia*, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading; ⁽¹⁾
- (c) permit international maritime transport service suppliers of the other Party to establish and operate an enterprise in its territory under conditions of establishment and operation no less favourable than that it accords to its own service suppliers; and
- (d) make available to international maritime transport suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services, shore-based operational services essential to ship operations, including communications, water and electrical supplies.

SECTION F

Electronic commerce

ARTICLE 8.70

Objective and general provisions

1. The Parties recognise that electronic commerce contributes to economic growth and increases trade opportunities in many sectors. The Parties also recognise the importance of facilitating the use and development of electronic commerce.
2. The objective of this Section is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties.
3. The Parties recognise the importance of the principle of technological neutrality in electronic commerce.
4. This Section applies to measures by a Party affecting trade by electronic means.
5. This Section does not apply to gambling and betting services, broadcasting services, audio-visual services, services of notaries or equivalent professions, and legal representation services.
6. In the event of any inconsistency between the provisions of this Section and the other provisions of this Agreement, those other provisions shall prevail to the extent of the inconsistency.

ARTICLE 8.71

Definitions

For the purposes of this Section:

- (a) 'electronic authentication' means the process or act of verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication; and

⁽¹⁾ In applying the principles set out in subparagraphs (a) and (b), each Party shall not adopt or maintain cargo-sharing arrangements in any agreement concerning international maritime transport services. Each Party shall terminate any such arrangement in any agreement in force or signed prior to the date of entry into force of this Agreement, upon the entry into force of this Agreement.

- (b) 'electronic signature' means data in electronic form which are attached to or logically associated with other electronic data and fulfil the following requirements:
- (i) that it is used by a person to confirm that the electronic data to which it relates have been created or signed, in accordance with each Party's laws and regulations, by that person; and
 - (ii) that it confirms that information in the electronic data has not been altered.

ARTICLE 8.72

Customs duties

The Parties shall not impose customs duties on electronic transmissions.

ARTICLE 8.73

Source code

1. A Party may not require the transfer of, or access to, source code of software owned by a person of the other Party ⁽¹⁾. Nothing in this paragraph shall prevent the inclusion or implementation of terms and conditions related to the transfer of or granting of access to source code in commercially negotiated contracts, or the voluntary transfer of or granting of access to source code for instance in the context of government procurement.
2. Nothing in this Article shall affect:
 - (a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law;
 - (b) requirements by a court, administrative tribunal or administrative authority with respect to the protection and enforcement of intellectual property rights to the extent that source codes are protected by those rights; and
 - (c) the right of a Party to take measures in accordance with Article III of the GPA.
3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures ⁽²⁾ which are inconsistent with paragraph 1, in accordance with Articles 1.5, 8.3 and 8.65.

ARTICLE 8.74

Domestic regulation

Each Party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective and impartial manner.

ARTICLE 8.75

Principle of no prior authorisation

1. The Parties will endeavour not to impose prior authorisation or any other requirement having equivalent effect on the provision of services by electronic means.
2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

⁽¹⁾ For greater certainty, 'source code of software owned by a person of the other Party' includes source code of software contained in a product.

⁽²⁾ Those measures include measures to ensure security and safety, for instance in the context of a certification procedure.

ARTICLE 8.76

Conclusion of contracts by electronic means

Unless otherwise provided for in its laws and regulations, a Party shall not adopt or maintain measures regulating electronic transactions that:

- (a) deny the legal effect, validity or enforceability of a contract, solely on the grounds that it is concluded by electronic means; or
- (b) otherwise create obstacles to the use of contracts concluded by electronic means.

ARTICLE 8.77

Electronic authentication and electronic signature

1. Unless otherwise provided for in its laws and regulations, a Party shall not deny the legal validity of a signature solely on the grounds that the signature is in electronic form.
2. A Party shall not adopt or maintain measures regulating electronic authentication and electronic signature that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
 - (b) prevent parties to electronic transactions from having the opportunity to establish before judicial or administrative authorities that their electronic transactions comply with any legal requirements with respect to electronic authentication and electronic signature.
3. Notwithstanding paragraph 2, each Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

ARTICLE 8.78

Consumer protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures applicable to electronic commerce as well as measures conducive to the development of consumer confidence in electronic commerce.
2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.
3. The Parties recognise the importance of adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

ARTICLE 8.79

Unsolicited commercial electronic messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; and
 - (b) require the prior consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any time.
3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

ARTICLE 8.80

Cooperation on electronic commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.
2. The Parties agree to maintain a dialogue on regulatory matters relating to electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce, in relation to, *inter alia*:
 - (a) consumer protection;
 - (b) cybersecurity;
 - (c) combatting unsolicited commercial electronic messages;
 - (d) the recognition of certificates of electronic signatures issued to the public;
 - (e) challenges for small and medium-sized enterprises in the use of electronic commerce;
 - (f) the facilitation of cross-border certification services;
 - (g) intellectual property; and
 - (h) electronic government.

ARTICLE 8.81

Free flow of data

The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.

CHAPTER 9

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

ARTICLE 9.1

Current account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency ⁽¹⁾, and in accordance with the Articles of Agreement of the International Monetary Fund, as applicable, any payments and transfers with regard to transactions on the current account of the balance of payments which fall within the scope of this Agreement.

⁽¹⁾ For the purposes of this Chapter, 'freely convertible currency' means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions. For greater certainty, currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the IMF in accordance with the Articles of Agreement of the International Monetary Fund.