

safety of people in the course of trade in goods and movement of persons, the two sides decide to strengthen communication and cooperation in the sanitary and phytosanitary areas including commodity inspection and quarantine, food safety, health and quarantine of people, and certification, accreditation and standardisation. The specific content of cooperation shall be formulated and implemented in accordance with Chapter 11 (Economic and Technical Cooperation).

CHAPTER 8

TRADE IN SERVICES

Article 16

Scope and Definition

1. All measures in Annex 1 and Annex 2 to the CEPA apply to trade in services between Hong Kong and Macao.
2. Trade in services referred to in the CEPA means:
 - (i) the supply of a service from the area of one side into the area of the other side;
 - (ii) the supply of a service in the area of one side to the service consumer of the other side;
 - (iii) the supply of a service by a service supplier of one side, through commercial presence in the area of the

other side;

- (iv) the supply of a service by a service supplier of one side, through presence of natural persons of one side in the area of the other side.

Sub-paragraphs (i), (ii) and (iv) above shall collectively be referred to as cross-border services.

3. Unless otherwise specified in the CEPA, **service supplier** as used in the CEPA refers to any person that supplies a service. In this context:

- (i) **person** means either a natural person or a juridical person;
- (ii) **natural person**:
 - (a) in the case of Hong Kong, means a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China;
 - (b) in the case of Macao, means a permanent resident of the Macao Special Administrative Region of the People's Republic of China;
- (iii) **juridical person** means any legal entity duly constituted or organised under the applicable laws of Hong Kong or Macao, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association (business association), and engaged in substantive business

operations in any side.

4. For the purposes of this Chapter:

- (i) **measure** means any measure by one side, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form.

In fulfilling its obligations and commitments under the CEPA, each side shall take such reasonable measures as may be available to it to ensure observance of such obligations and commitments by governments and authorities as well as non-governmental bodies within its area.

- (ii) **services** includes any service in any sector except services supplied in the exercise of governmental authority.

- (iii) **a service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

- (iv) **commercial presence** means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or operation of a juridical person, or

- (b) the constitution or operation of a branch or a representative office,

within the area of one side for the purpose of supplying

a service.

- (v) **government procurement** means procuring the use of goods or services or procuring goods or services or both, by the government by contractual means in the form of purchase, lease, etc., and not with a view to commercial sale or resale or for use in the production or supply of the goods or services for commercial sale or resale.

5. This Chapter shall not apply to:

- (i) government procurement; or
- (ii) subsidies or donations accorded by one side, including government-supported loan, guarantee and insurance.

However, should the laws and regulations of one side provide otherwise for sub-paragraphs (i) and (ii), such laws and regulations shall prevail.

Article 17

National Treatment

1. Subject to the observance of any conditions and qualifications set out in Annex 1 and Annex 2 to the CEPA, one side shall accord to services and service suppliers of the other side, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and

service suppliers.¹

2. Either side may meet the requirement of paragraph 1 by according to services and service suppliers of the other side, 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 one side compared to like services or service suppliers of the other side.

Article 18

Specific Commitments

1. The two sides will, through consultations, formulate and implement further liberalisation of trade in services for the other side's services and service suppliers. The relevant specific commitments will be listed in Annex 1 and Annex 2 to the CEPA.

2. At the request of either side, the two sides may, through consultations, further raise the level of liberalisation of trade in services between them.

3. Any measures to raise the level of liberalisation of trade in

¹ Specific commitments assumed under this Article shall not be construed to require either side to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers of the other side.

services pursuant to paragraph 2 of this Article shall be included in Annex 1 and Annex 2 to the CEPA for implementation.

Article 19

Transparency

The two sides reiterate their observance of Article III of the *WTO General Agreement on Trade in Services* (hereafter referred to as “GATS”), and undertake to publish promptly all relevant measures of general application which pertain to or affect the operation of this Chapter.

Article 20

Domestic Regulation

1. The two sides reiterate their observance of Article VI of GATS, and shall ensure that in sectors where specific commitments are undertaken, all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. One side shall, as far as practicable, maintain or institute promptly judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such

procedures are not independent of the agency entrusted with the administrative decision concerned, that side shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorisation is required for the supply of a service on which a specific commitment has been made by one side, the competent authorities of that side shall:

- (i) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (ii) within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application;
- (iii) at the request of the applicant, provide without undue delay information concerning the status of the application; and
- (iv) if an application is terminated or denied, to the maximum extent possible, inform promptly the applicant in writing the reasons for such action. The applicant may, in accordance with the respective domestic laws and regulations, resubmit a new application at its discretion.

4. In sectors in which specific commitments are undertaken, one side shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, and meet the following requirements:

- (i) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (ii) not more burdensome than necessary to ensure the quality of the service; and
- (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. In determining whether one side is in conformity with the obligation under paragraph 4 of this Article, account shall be taken of international standards of relevant international organisations² applied by that side.

6. In the event that the negotiation results pursuant to Article VI.4 of GATS enter into force, the two sides shall jointly review the relevant results of the negotiations so as to decide whether to incorporate them into this Article.

7. In sectors where specific commitments regarding professional services are undertaken, one side shall provide for adequate procedures to verify the competence of professionals of

² The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of both sides under the CEPA.

the other side.

8. No provisions of this Article shall apply to measures adopted or maintained, which are consistent with any conditions and qualifications set forth in Annex 1 and Annex 2 to the CEPA.

Article 21

Prudential Principle on Financial Services

1. Notwithstanding any other provisions of the CEPA, one side shall not be prevented from taking or maintaining measures relating to financial services for prudential reasons. These prudential reasons include the protection of investors, depositors, policy holders or persons to whom a fiduciary obligation is owed by a financial service supplier, or to ensure the integrity and stability of the financial system³.

2. No provisions of the CEPA shall apply to non-discriminatory measures of general application in implementing monetary or related credit policies or exchange rate policies⁴.

3. The term “financial service” shall bear the same meaning of financial service as defined in paragraph 5(a) of the *Annex on*

³ The term “prudential reasons” shall be interpreted as including the security, stability, integrity and financial responsibility of a single financial institution or a financial system, as well as protecting the security of payment and clearing system and the stability of finance and operation.

⁴ To avoid ambiguity, measures of general application in implementing monetary or related credit policies or exchange rate policies do not include measures which expressly declare invalid or modify a contract term stipulating the denomination in a currency or exchange rate of a currency.

Financial Services to GATS (hereafter referred to as “Annex on Financial Services”) and the term “financial service supplier” contained in that paragraph also includes public entity as defined in paragraph 5(c) of the Annex on Financial Services.

4. To avoid ambiguity, the CEPA shall not be construed as preventing one side from adopting measures that are applicable to a financial institution, or from enforcing measures in a financial institution, relating to the service suppliers of the other side or covered services necessary to ensure compliance with laws or regulations that are consistent with the provisions of the CEPA, including measures relating to the prevention of false and fraudulent practices or measures to deal with the effects of default on financial services contracts, provided that the manner in which such measures are applied would not constitute a means of arbitrary or unjustifiable discrimination to countries (or regions) where like conditions prevail or a disguised restriction on the investment of the financial institution.

5. Each side reserves the right to implement restrictive measures for any sectors not clearly covered in existing regulations.

Article 22

Mutual Recognition of Professional Qualifications

The two sides shall encourage mutual recognition of

professional qualifications and promote the exchange of professional talents between each other.

Article 23

Safeguard Measures

1. Each side reserves the right to establish or maintain any restrictive measures relating to services in the event that the implementation of this Chapter causes substantial impact on its trade and relevant sectors.
2. One side should, on a best endeavour basis, notify the other side fully and in a timely manner, measures intended to be taken pursuant to paragraph 1 of this Article, and resolution shall be sought through consultation.

Article 24

Requirement on Information

One side may request information relating to services or service suppliers from the service suppliers of the other side only for information or statistical purposes. The former side shall protect confidential commercial information from leakage which may adversely affect the competitive position of the service supplier. This paragraph shall not be construed as preventing either side from acquiring or disclosing information relating to the laws on the

application of fairness and integrity.

CHAPTER 9

INVESTMENT

Article 25

Investment Agreement

The two sides decide to commence discussions on an investment agreement to promote and protect investment.

CHAPTER 10

INTELLECTUAL PROPERTY

Article 26

Commitments in Intellectual Property

The two sides reiterate their observance of the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* and provisions relating to intellectual property in other agreements that are applicable to them.

Article 27

Cooperation in the Area of Intellectual Property