

CHAPTER 3 TRADE IN SERVICES

ARTICLE 3.1

Scope and Coverage

1. This Chapter applies to measures affecting trade in services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. It applies to measures in all services sectors except as provided for in Article 4.1. It does not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services.

2. Articles 3.4, 3.5 and 3.6 shall not apply to laws, regulations or requirements governing the procurement by government agencies of services purchased for governmental purposes and not for commercial resale or for use in the supply of services for commercial sale.

ARTICLE 3.2

Incorporation of Provisions from the GATS

Wherever a provision of this Chapter provides that a provision of the GATS is incorporated into and made part of this Chapter, the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) “Member” shall mean “Party”, except that “among Members” shall mean “among Members of the WTO”;
- (b) “Schedules” shall mean the Schedules referred to in Article 3.16 and contained in Annex VII; and
- (c) “Specific Commitment” shall mean a specific commitment in a Schedule referred to in Article 3.16.

ARTICLE 3.3

Definitions

For purposes of this Chapter:

1. The following definitions of Article I of the GATS are incorporated into and made part of this Chapter:
 - (a) “trade in services”;
 - (b) “services”; and
 - (c) “a service supplied in the exercise of governmental authority”.
2. “Service supplier” means any person that supplies, or seeks to supply, a service.¹
3. “Natural person of a Party” is, under its legislation, a national of that Party, or a permanent resident of that Party if that Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services.
4. “Juridical person of a Party” means a juridical person which is either:
 - (a) constituted or otherwise organised under the law of that Party, and
 - (i) is engaged in substantive business operations in the territory of any Party; or
 - (ii) is engaged in substantive business operations in the territory of any Member of the WTO and is owned or controlled by natural persons of that Party or by juridical persons that meet the conditions of paragraph 4(a)(i);

¹ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

or

- (b) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (i) natural persons of that Party; or
 - (ii) juridical persons that meet the conditions of paragraph 4(a).

5. The following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Chapter:

- (a) “measure”;
- (b) “supply of a service”;
- (c) “measures by Members affecting trade in services”;
- (d) “commercial presence”;
- (e) “sector” of a service;
- (f) “service of another Member”;
- (g) “monopoly supplier of a service”;
- (h) “service consumer”;
- (i) “person”;
- (j) “juridical person”;
- (k) “owned”, “controlled” and “affiliated”; and
- (l) “direct taxes”.

ARTICLE 3.4

Most Favoured Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN-exemptions contained in Annex VIII, a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another Party

treatment no less favourable than the treatment it accords to like services and service suppliers of any non-Party.

2. Treatment granted under other agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall upon request from another Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.5

Market Access

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

ARTICLE 3.6

National Treatment

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

ARTICLE 3.7

Additional Commitments

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

ARTICLE 3.8

Domestic Regulation

The rights and obligations of the Parties in respect of domestic regulation shall be governed by Article VI of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.9

Recognition

1. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted in the territory of a non-Party, that Party shall accord another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the territory of that other Party should also be recognised.
2. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of the GATS.
3. Annex IX applies to mutual recognition of, *inter alia*, education or experience, qualifications, licenses, certification or accreditation of service suppliers.

ARTICLE 3.10

Movement of Natural Persons

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

ARTICLE 3.11

Monopolies and Exclusive Service Suppliers

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

ARTICLE 3.12

Business Practices

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

ARTICLE 3.13

Payments and Transfers

1. Subject to its specific commitments and except under the circumstances envisaged in Article 3.14, a Party shall not apply restrictions on international transfers and payments for current transactions relating to the supply of a service with another Party.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (IMF), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments, except under Article 3.14 or at the request of the IMF.

ARTICLE 3.14

Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter.

3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee thereof.

ARTICLE 3.15

Exceptions

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

ARTICLE 3.16

Schedules of Specific Commitments

1. Each Party shall set out in a Schedule the specific commitments it undertakes under Articles 3.5, 3.6 and 3.7. With respect to sectors where such specific commitments are undertaken, each Schedule shall specify the elements set forth in paragraphs (a) to (d) of paragraph 1 of Article XX of the GATS.

2. Measures inconsistent with both Articles 3.5 and 3.6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of specific commitments are set out in Annex VII.

4. Particular aspects of market access, national treatment and additional commitments applicable to telecommunications services and to co-production of broadcasting programmes are dealt with in Annexes X and XI.

ARTICLE 3.17

Modification of Schedules

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in its Schedule of specific commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Article 8.1.

ARTICLE 3.18

Transparency

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

ARTICLE 3.19

Review

With the objective of further liberalisation of trade in services between them, the Parties commit themselves to review every two years their Schedules of specific commitments and their Lists of MFN-exemptions. The first review shall take place not later than three years after the entry into force of this Agreement.

ARTICLE 3.20

Annexes

The following Annexes attached to this Agreement form an integral part of this Chapter:

- Annex VII (Schedules of Specific Commitments);
- Annex VIII (Lists of MFN-exemptions);
- Annex IX (Mutual Recognition);
- Annex X (Telecommunications Services); and
- Annex XI (Co-production of Broadcasting Programmes).

CHAPTER 4 FINANCIAL SERVICES

ARTICLE 4.1

Scope and Coverage

1. This Chapter applies to measures affecting trade in financial services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

2. Articles 4.4, 4.5 and 4.6 shall not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not for commercial resale or for use in the supply of services for commercial sale.

3. Chapter 3 applies to measures described in paragraph 1 where this is specifically provided for by this Chapter.

ARTICLE 4.2

Incorporation of Provisions from the GATS

Article 3.2 shall apply to this Chapter.

ARTICLE 4.3

Definitions

1. Except for its paragraph 1(c), Article 3.3 shall apply to this Chapter.
2. The following definitions of the GATS Annex on Financial Services are incorporated into and made part of this Chapter:
 - (a) “services supplied in the exercise of governmental authority” (paragraphs 1 (b) and (c) of the Annex);
 - (b) “a financial service” (paragraph 5 (a) of the Annex);
 - (c) “financial service supplier” (paragraph 5 (b) of the Annex); and
 - (d) “public entity” (paragraph 5 (c) of the Annex).

ARTICLE 4.4

Most Favoured Nation Treatment

Article 3.4 shall apply to this Chapter.

ARTICLE 4.5

Market Access

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

ARTICLE 4.6

National Treatment

1. Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Chapter.
2. In addition, under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of another 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 paragraph is not intended to confer access to a Party's lender of last resort facilities.
3. Where membership or participation in, or access to, a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association is required by a Party in order for financial service suppliers of any other Party to supply financial services on an equal basis with financial service suppliers of the Party, or where the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment to financial service suppliers of any other Party established in its territory.

ARTICLE 4.7

Additional Commitments

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

ARTICLE 4.8

Domestic Regulation

1. The rights and obligations of the Parties in respect of domestic regulation shall be governed by Article VI of the GATS, which is hereby incorporated into and made part of this Chapter.
2. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, including for:
 - (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
 - (b) ensuring the integrity and stability of a Party's financial system.

Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions. Such measures shall not be more burdensome than necessary to achieve their aim.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

ARTICLE 4.9

Recognition

1. Article 3.9 shall apply to this Chapter.
2. In addition, where a Party recognises prudential measures of a non-Party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for another Party to negotiate its accession to such agreement or arrangement, or to negotiate a comparable agreement or arrangement with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

ARTICLE 4.10

Movement of Natural Persons

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

ARTICLE 4.11

Monopolies and Exclusive Service Suppliers

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

ARTICLE 4.12

Business Practices

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

ARTICLE 4.13

Payments and Transfers

Article 3.13 shall apply to this Chapter.

ARTICLE 4.14

Restrictions to Safeguard the Balance of Payments

Article 3.14 shall apply to this Chapter.

ARTICLE 4.15

Exceptions

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

ARTICLE 4.16

Schedules of Specific Commitments

Each Party shall set out in its schedule referred to in Article 3.16 the specific commitments it undertakes for services defined under paragraph 2(b) of Article 4.3 in accordance with the provisions of paragraphs 1 to 3 of Article 3.16.

ARTICLE 4.17

Modification of Schedules

Article 3.17 shall apply to this Chapter.

ARTICLE 4.18

Transparency

1. The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.
2. In addition, each Party commits to promote regulatory transparency in financial services. Accordingly, the Parties undertake to consult, as appropriate, with the goal of promoting objective and transparent regulatory processes in each Party, taking into account:
 - (a) the work undertaken by the Parties in the GATS and the Parties' work in other fora relating to trade in financial services; and
 - (b) the importance of regulatory transparency of identifiable policy objectives and clear and consistently applied regulatory processes that are communicated or otherwise made available to the public.

ARTICLE 4.19

Review

Article 3.19 shall apply to this Chapter.

ARTICLE 4.20

Sub-Committee on Financial Services

1. A Sub-Committee on Financial Services (hereinafter referred to as “the Sub-Committee”) is to be set up under the Joint Committee. The principal representative of each Party shall be from an authority competent for this Agreement or from a financial authority.
2. The mandate of the Sub-Committee shall be:
 - (a) to supervise the implementation of this Chapter, assess its functioning, and oversee its further elaboration; and
 - (b) to consider issues regarding financial services that are referred to it by a Party.
3. The Sub-Committee shall meet in conjunction with Joint Committee meetings, or as otherwise agreed upon between the Parties.
4. The Sub-Committee shall be chaired jointly by Korea and one of the EFTA States. It shall act by consensus.

ARTICLE 4.21

Dispute Settlement

1. Relevant Articles in Chapter 9 shall apply to the settlement of disputes arising under this Chapter as modified by this Article.
2. Consultations regarding financial services held pursuant to Chapter 9 shall include officials from an authority competent for this Agreement or from a financial authority. The Parties shall report the results of their consultations to the Sub-Committee.
3. Article 9.4 shall apply, with the following modifications:

- (a) where the Parties to the disputes so agree, the arbitration panel shall be composed entirely of individuals meeting the qualifications in paragraph 4; and
- (b) in any other case,
 - (i) each Party to the dispute may select individuals meeting the qualifications set out in paragraph 7 of Article 9.5; and
 - (ii) if the Party complained against invokes Article 4.8, the chair of the panel shall meet the qualifications set out in paragraph 4, unless the Parties to the dispute agree otherwise.

4. Unless otherwise provided for in this Chapter, financial services panellists shall:

- (a) meet the qualifications set out in Article 9.5; and
- (b) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. With regard to paragraph 5 of Article 9.10, the following shall apply wherever practical. Where the measure under dispute affects:

- (a) only the financial services sector, the complaining Party shall first seek to suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party shall first seek to suspend benefits in the respective sectors and with an effect equivalent to the effect of the measure complained against in each sector; or
- (c) only a sector other than the financial services sector, the complaining Party shall seek to avoid suspending benefits in the financial services sector.