

CHAPTER 3
TRADE IN SERVICES

ARTICLE 3.1

Scope and Coverage

1. This Chapter applies to measures by Parties affecting trade in services. It applies to all services sectors.
2. In respect of air transport services, this Chapter shall 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. The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Chapter.
3. Articles 3.4, 3.5 and 3.6 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

ARTICLE 3.2

Incorporation of Provisions from the GATS

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

- (a) "Member" means Party;
- (b) "Schedule" means a Schedule referred to in Article 3.17 and contained in Annex VII; and
- (c) "specific commitment" means a specific commitment in a Schedule referred to in Article 3.17.

ARTICLE 3.3

Definitions

For the purpose of this Chapter:

- (a) the following definitions of Article I of the GATS are incorporated into and made part of this Agreement:
 - (i) “trade in services”;
 - (ii) “services”; and
 - (iii) “a service supplied in the exercise of governmental authority”;
- (b) “measures by Parties” means measures taken by the Parties as defined in Article I paragraph 3 (a) (i) and (ii) of the GATS;
- (c) “service supplier” means any person that supplies, or seeks to supply, a service;¹
- (d) “natural person of another Party” means a natural person who, under the legislation of that other Party, is:
 - (i) a national of that other Party who resides in the territory of any WTO Member; or
 - (ii) a permanent resident of that other Party who resides in the territory of any Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other Party who resides in the territory of any Party or in the territory of any WTO Member;
- (e) “juridical person of another Party” means a juridical person which is either:

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

- (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of:
 - (aa) any Party; or
 - (bb) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i) (aa);
 or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (aa) natural persons of that other Party; or
 - (bb) juridical persons of that other Party identified under subparagraph (e) (i);
- (f) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Chapter:
- (i) “measure”;
 - (ii) “supply of a service”;
 - (iii) “measures by Members affecting trade in services”;
 - (iv) “commercial presence”;
 - (v) “sector” of a service;
 - (vi) “service of another Member”;
 - (vii) “monopoly supplier of a service”;
 - (viii) “service consumer”;
 - (ix) “person”;
 - (x) “juridical person”;
 - (xi) “owned”, “controlled” and “affiliated”; and
 - (xii) “direct taxes”.

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 existing or future agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.
3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it shall notify the other Parties without delay and endeavour to accord to the other Parties treatment no less favourable than that provided under that agreement. The former Party shall, upon request by any other Party, negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement.
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

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.
4. Each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

ARTICLE 3.9

Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.
2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity to

negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

ARTICLE 3.10

Movement of Natural Persons

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, residence or employment on a permanent basis.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.²

ARTICLE 3.11

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.

² The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 3.12

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 3.13

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 3.14

Payments and Transfers

1. Except under the circumstances envisaged in Article 3.15, a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (hereinafter referred to as the "IMF"), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 3.15 or at the request of the IMF.

ARTICLE 3.15

Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of the GATS shall apply under this Chapter.

ARTICLE 3.16

Exceptions

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 3.17

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 commitments are undertaken, each Schedule shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments referred to in Article 3.7; and
 - (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.
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.

ARTICLE 3.18

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 the requesting Party's 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 no 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 Articles 8 and 10.5.

ARTICLE 3.19

Review

With the objective of further liberalising trade in services between them, in particular eliminating substantially all remaining discrimination within a period of ten years, the Parties shall review at least every other year, or more frequently if so agreed, their Schedules of specific commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than three years after the entry into force of this Agreement.

ARTICLE 3.20

Annexes

The following Annexes form an integral part of this Chapter:

- Annex VII (Schedules of Specific Commitments);
- Annex VIII (Lists of MFN Exemptions);
- Annex IX (Financial Services); and
- Annex X (Telecommunications Services).