

ANNEX VI

REFERRED TO IN ARTICLE 8.21

TRADE IN SERVICES

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TRADE IN SERVICES

ARTICLE 1

Scope

This Annex provides for disciplines and regulatory principles of horizontal or sectoral application relating to trade in services between the Parties and complementing the other rights and obligations of the Parties under this Chapter.

SECTION I

HORIZONTAL PROVISIONS

ARTICLE 2

Provisions of General Application

1. Each Party shall publish in its official journal, by appropriate classification or by service sector where relevant, a list of all authorities of the central government, including organisations with delegated authority from the central government, that are responsible for authorising, approving or regulating services activities whether through grant of licence or other approval. Requirements and procedures and the conditions for obtaining such licences or approval shall also be published.

2. Each Party shall ensure that licensing requirements and procedures do not act as barriers to market access and are not more trade restrictive than necessary. In sectors where specific commitments are undertaken, each Party shall ensure that:

- (a) licensing requirements and procedures are published prior to becoming effective;
- (b) such publication specifies reasonable time-frames for the review of applications and decision by the competent authority or authorities;
- (c) applicants are able to request licensing without individual invitation;
- (d) any fees charged, excluding fees determined through auction or a tendering process, shall be commensurate with the administrative cost of processing an application;

- (e) its competent authorities, after receipt of an application, inform the applicant whether the application is considered complete under that Party's domestic laws and regulations and in the case of incomplete applications, identify without undue delay the additional information that is required to complete the application and provide the opportunity to cure deficiencies;
- (f) at the request of the applicant, its competent authorities provide, without undue delay, information concerning the status of the application;
- (g) decisions by its competent authorities are taken promptly on all applications;
- (h) if an application is terminated or denied, the applicant is informed in writing and without delay concerning the reasons for such action. The applicant shall have the possibility of resubmitting, at its discretion, a new application that addresses the reasons for termination or denial; and
- (i) if an application is approved, the applicant is informed in writing and without delay. The licence or approval shall enable the applicant to start the commercial operations upon registration of the commercial presence. This registration shall be completed, as a rule, within two months of the submission of a complete application.

3. In sectors where specific commitments are undertaken, relevant regulatory authorities of each Party shall be separate from, and not accountable to, any service suppliers they regulate, except for postal, courier and railway transportation services.

SECTION II

MOVEMENT OF NATURAL PERSONS

ARTICLE 3

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 the other 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 that other Party under the terms of a specific commitment.¹

ARTICLE 4

Scope

Articles 6 to 9 apply to measures by a Party affecting the movement of natural persons of the other Party into the territory of that Party covered by the categories of natural persons supplying services defined with respect to that Party in Article 5.

ARTICLE 5

Definitions

For the purpose of this Section:

(a) with respect to China:

BUSINESS VISITORS AND SERVICES SALESPERSONS

(i) “business visitor” means a natural person of Switzerland who is:

- (A) a service seller being a natural person who is a sales representative of a service supplier of Switzerland and is seeking temporary entry into China for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly; or
- (B) an investor of Switzerland, or a duly authorised representative of an investor of Switzerland, seeking temporary entry into China to establish, expand, monitor, or dispose of a commercial presence of that investor;

¹ The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

CONTRACTUAL SERVICE SUPPLIERS

- (ii) “contractual service supplier” means a natural person of Switzerland who:
 - (A) is an employee of a service supplier or an enterprise of Switzerland, whether a company, partnership or firm, who enters into China temporarily in order to perform a service pursuant to a contract(s) between his or her employer and a service consumer(s) in China;
 - (B) is employed by a company, partnership or firm of Switzerland, which has no commercial presence in China where the service is to be supplied;
 - (C) receives his or her remuneration from that employer; and
 - (D) has appropriate educational and professional qualifications relevant to the service to be supplied;

INTRA-CORPORATE TRANSFEREES

- (iii) “intra-corporate transferee” means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of Switzerland with a commercial presence in China;
 - (A) “manager” means a natural person within an organisation who primarily directs the organisation or a department or subdivision of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations;
 - (B) “executive” means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;
 - (C) “specialist” means a natural person within an organisation who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary

knowledge of the organisation's service, research equipment, techniques or management;

OTHER

(iv) "installers and maintainers" means a natural person who is an installer or maintainer of machinery and/or equipment, where such installation and/or maintenance service by the supplying company is a condition of purchase of the said machinery or equipment. An installer or maintainer cannot perform services which are not related to the service activity which is the subject of the contract;

(b) with respect to Switzerland:

BUSINESS VISITORS AND SERVICES SALESPERSONS

(i) (A) "Business visitors" means persons responsible for establishing a commercial presence who are employees of an enterprise not having commercial presence in Switzerland and who have been beforehand employees of that enterprise located in China for a period of not less than one year immediately preceding their application for admission, and who fulfil the conditions of subparagraph (iii)(A) below, and who are entering Switzerland for the purpose of establishing a commercial presence of that enterprise in Switzerland. Persons responsible for establishing a commercial presence may not sell services directly to the general public or supply services themselves.

(B) "Services salespersons" means persons employed or mandated by an enterprise and who stay temporarily in Switzerland in order to conclude the contract for the sale of a service on behalf of the enterprise which employs them or has mandated them. Services salespersons may not sell services directly to the general public or supply services themselves.

CONTRACTUAL SERVICE SUPPLIERS

(ii) "Contractual service suppliers" means persons who are employees of an enterprise (juridical person) located in China not having commercial presence in Switzerland (and other than enterprises supplying services as defined by CPC 872), which has concluded a services contract with an enterprise engaged in substantive business in Switzerland, and who have been beforehand employees of the enterprise located in China for a time period of not less than one year immediately preceding their application for

admission, who have three years of related experience, and who fulfil the conditions of subparagraph (iii)(B) below and who supply a service in Switzerland as a professional in a service sector as set out below on behalf of the enterprise located in China. Per contract, temporary entry for a limited number of service suppliers will be granted for a single period of three months, the number of service suppliers depending on the size of the task to be performed under the contract. Individual service suppliers not employed by such enterprise located in China are considered as persons seeking access to the Swiss employment market.

Services sectors:

- architectural services (CPC 8671);
- engineering services (CPC 8672);
- integrated engineering services (CPC 8673);
- urban planning services (CPC 86741);
- consultancy services related to the installation of computer hardware (CPC 841);
- software implementation services (CPC 842);
- management consulting services (CPC 865);
- technical testing and analysis services (CPC 8676);
- translation and interpretation services from or into a national language of China (part of CPC 87905).

INTRA-CORPORATE TRANSFEREES

(iii) “Intra-corporate transferees” means essential persons transferred to Switzerland within a specific business or company of China and defined under (A) and (B) below who are employees of that business or company (hereinafter referred to as “enterprise”) supplying services in Switzerland through a branch, subsidiary or affiliate established in Switzerland and who have been beforehand employees of their enterprise located in China for a period of not less than one year immediately preceding their application for admission.

(A) Executives and senior managers: Persons who primarily direct the enterprise or one of its departments and who receive only general supervision or direction from high-level executives, the board of directors or the stockholders of the enterprise. Executives and senior managers would not directly perform tasks related to the actual supply of services of the enterprise.

(B) Specialists: Highly qualified persons who, within an enterprise, are essential for the supply of a specific service by reason of their knowledge at an advanced level of

expertise in the field of services, research equipment, techniques or management of the enterprise.

OTHER

- (iv) “Installers and maintainers” means qualified specialists who are employees of an enterprise located in China not having commercial presence in Switzerland, supplying installation or maintenance services for machinery or industrial equipment. The supply of that service has to occur on a fee or contractual basis (installation/maintenance contract) between the builder of the machinery or equipment and the owner of that machinery or equipment, both of them being enterprises (excluding any supply of services in connection with enterprises mentioned by CPC 872).

ARTICLE 6

Expeditious Application Procedures

1. The competent authorities of each Party shall, as a rule within 45 calendar days after an application requesting temporary stay and work permit for a natural person covered by its specific commitments is considered complete under its domestic laws and regulations, inform the applicant of the final decision concerning the application.
2. The competent authorities of each Party shall finalise within ten calendar days the procedure related to visa applications submitted by service suppliers of the other Party.
3. When the competent authorities of a Party require additional information from the applicant for temporary stay, work permit or visa in order to process its application, they shall notify the applicant without undue delay.
4. Upon request by the applicant for temporary stay or work permit, the competent authorities of a Party shall provide, without undue delay, information concerning the status of its application.
5. Upon request by the applicant for temporary stay or work permit, the competent authorities of each Party shall notify the applicant of the outcome of its application promptly after a decision has been taken. The notification shall include, if applicable, the period of stay and any other terms and conditions.

ARTICLE 7

Market Access

With respect to the natural persons covered by its specific commitments, neither Party shall:

- (a) require labour certification tests;
- (b) impose quantitative restrictions; or
- (c) require economic needs test.²

ARTICLE 8

Provision of Information

1. In the application of Article 8.9, each Party shall make publicly available, or shall ensure that its competent authorities make publicly available, information necessary for an effective application for the grant of entry, temporary stay and work in its territory. Such information shall be kept updated.

2. The information referred to in paragraph 1 shall include a description of, in particular:

- (a) all categories of visas and work permits relevant to the entry, temporary stay and work of natural persons covered by this Section;
- (b) requirements and procedures for application for, and issuance of, first-time entry, temporary stay and, where applicable, work permits, including information on documentation required, conditions to be met and method of filing; and
- (c) requirements and procedures for application for, and issuance of, renewed temporary stay and, where applicable, work permits.

3. Each Party shall provide the other Party with details of relevant publications or web-sites where information referred to in paragraph 2 is made available.

4. Should the implementation of paragraph 1 prove not to be practicable for a Party, that Party shall provide the information referred to in paragraph 2, as well as any subsequent change thereto, to the other Party. In addition, that Party shall indicate to the other Party the contact details of an authority from which service suppliers of the other Party can, upon request, obtain the information referred to under paragraph 2.

² The meaning of “economic needs test” and of other terms used in this Article shall be understood as in the GATS.

ARTICLE 9

Contact Points

The contact points established in Article 14.2 of the Agreement shall facilitate the access of the other Party's service suppliers to the information referred to in Article 8.

SECTION III

FINANCIAL SERVICES

ARTICLE 10

Scope and Definitions

1. This Section applies to measures by Parties affecting trade in financial services.³
2. For the purpose of this Section:
 - (a) a "financial service" is 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:

INSURANCE AND INSURANCE-RELATED SERVICES

- (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

³ "Trade in financial services" shall be understood in accordance with the definition contained in subparagraph (a) of Article 8.2 of the Agreement.

BANKING AND OTHER FINANCIAL SERVICES (EXCLUDING INSURANCE)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion;
- (xi) 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;
- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depositary and trust services;
- (xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

- (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) A “financial service supplier” means any natural or juridical person of a Party wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity.
- (c) “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 monetary authority, when exercising those functions.
- (d) For the purpose of subparagraph (b) of Article 8.2 of the Agreement, “services supplied in the exercise of governmental authority” means the following:
- (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; and
 - (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (e) For the purpose of subparagraph (b) of Article 8.2 of the Agreement, if a Party allows any of the activities referred to in subparagraphs (d)(ii) or (d)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.
- (f) Subparagraph (c) of Article 8.2 of the Agreement shall not apply to services covered by this Section.

ARTICLE 11

Domestic Regulation

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented 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 that 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 that Party's commitments or obligations under this Chapter. Such measures shall not constitute a disguised restriction on trade in services and shall not discriminate against financial services or financial service suppliers of the other Party in comparison to the Party's own like financial services or like financial service suppliers.

2. Nothing in this Chapter shall be construed to require 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 12

Recognition of Prudential Measures

1. A Party may recognise prudential measures of a non-party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the non-party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones 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 recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

ARTICLE 13

Exchange of Information between the Parties

1. The Parties shall exchange detailed information, upon request, on regulations and rules applicable to financial products and services of interests for their service suppliers.
2. Upon request, the Parties shall clarify the extent of existing level of market access and limitations regarding the items referred to in paragraph 1. On that basis and by common agreement, they may prepare appropriate instruments with provisions corresponding to market access to commit mutually.

SECTION IV

TRADITIONAL CHINESE MEDICINE SERVICES

ARTICLE 14

Dialogue between the Parties

1. Both Parties shall exchange information and have discussions on issues related to any policies, regulations and actions that are considered to have an impact on traditional Chinese medicine (TCM) services in Switzerland, aiming to find solutions for further cooperation on the basis of mutual benefits.
 2. Both Parties shall strengthen the cooperation on the movement of TCM practitioners, including the following areas:
 - (a) the requirements and conditions of qualification for applying the work permit of the TCM practitioners;
 - (b) the criteria for TCM practitioners' applying of work permit from short-term to annual; and
 - (c) the existing possibility of facilitating the supply of TCM services in accordance with applicable regulations.
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