

CHAPTER 8

TRADE IN SERVICES

PART I

OBJECTIVES, DEFINITIONS AND SCOPE

ARTICLE 801

Objectives

The objectives of this Chapter are:

- (a) to liberalise trade in services between the Parties, in accordance with Article V of GATS; and
- (b) to enhance cooperation in trade in services between the Parties in order to improve the efficiency, competitiveness and diversity of services and service suppliers.

ARTICLE 802

Definitions

For the purpose of this Chapter:

- (a) “juridical person of the other Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of the other Party and is engaged in substantive business operations in the territory of that Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - a. natural persons of the other Party; or

b. juridical persons of the other Party identified under subparagraph (i)

- (b) “measure” means any measures by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (c) “measures by the Parties affecting trade in services” means measures taken by
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities;

including measures in respect of:

- (i) the purchase, payment or use of a service;
- (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;
- (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

in fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (d) “natural person of a Party” means a natural person who resides in the territory of the Party or elsewhere and who under the law of that Party is a national of that Party;
- (e) “qualification procedures” means administrative procedures relating to the administration of qualification requirements;
- (f) “qualification requirements” means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a licence;
- (g) “service consumer” means any person that receives or uses a service;
- (h) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service; and
- (i) “trade in services” is defined as the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party;
 - (ii) in the territory of a Party to the service consumer of the other Party;
 - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party;
 - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party.

ARTICLE 803

Scope

1. This Chapter shall apply to measures by the Parties affecting trade in services.
2. This Chapter shall not apply to:
 - (a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;
 - (b) a service supplied in the exercise of governmental authority within the territory of each respective Party, which means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
 - (c) laws, regulations or policies 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;
 - (d) measures affecting natural persons seeking access to the employment market of a Party; or
 - (e) measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Chapter shall prevent a Party from maintaining and introducing measures to regulate service sectors within its territory, provided that such measures are applied on a non-discriminatory basis without the intention to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.
4. Nothing in this Chapter shall 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 the other Party under the terms of a specific commitment. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.
5. Unless they are specifically defined in this Chapter or in Annex 8, terms used in this Chapter and in Annex 8 that are also used in GATS shall be construed in accordance with their meaning in GATS, *mutatis mutandis*.

ARTICLE 804

Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service supplier is owned or controlled by persons of a non-Party.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

ARTICLE 805

Payments and Transfers

Subject to Article 1605, a Party shall not apply restrictions on international transfers and payment for current transactions³ relating to its specific commitments.

ARTICLE 806

Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, each Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition may be based upon an agreement or arrangement between the Parties. The Parties acknowledge that, wherever appropriate, recognition should be based on multilaterally agreed criteria.
2. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of qualification requirements, qualification procedures, licensing or registration procedures with a view to the achievement of early outcomes. Such commitments may be set out as additional commitments in Annex 8.

³ “Current transactions” refers to current transactions as defined by the International Monetary Fund (IMF)

ARTICLE 807

Other Rights and Obligations

1. The Parties are deemed to have the same rights and obligations under this Agreement that they would have under the relevant GATS provisions, *mutatis mutandis*, if the market access and national treatment commitments inscribed in Annex 8 were inscribed in their respective specific commitments annexed to GATS.

2. The relevant GATS provisions are: Articles VI (1), (2), (3), (5) and (6); VIII (1), (2), (5); the Annex on Financial Services; the Annex on Air Transport Services, paragraphs (1), (2), (3), (4), (6); and the Annex on Telecommunications, paragraphs (1) – (5).

PART III

COOPERATION

ARTICLE 808

Areas of Cooperation

1. The Parties shall strengthen and enhance existing cooperation efforts in service sectors and develop cooperation in sectors that are not covered by existing cooperation arrangements, through *inter alia*:

- (a) research and development;
- (b) human resource and professional development and apprenticeship;
- (c) trade in services data management; and
- (d) small and medium enterprises capacity enhancement.

2. The Parties shall foster the development of cooperation in education, healthcare, and tourism.

3. The Parties shall work cooperatively to promote the facilitation of temporary entry of business people in particular, through developing the capacity to grant applications offshore for business entry.

PART IV

SPECIFIC COMMITMENTS

ARTICLE 809

Market Access

1. With respect to market access through the modes of supply identified in Article 802 (i), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in Annex 8.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 8, are:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on 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 (this does not cover measures which limit inputs for the supply of services);
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 810

National Treatment

1. In the sectors inscribed in Annex 8, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, 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.⁴
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.

ARTICLE 811

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 809 or 810, including those regarding qualifications, standards, registration or licensing matters. Such commitments shall be inscribed in Annex 8.

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

PART V

PROGRESSIVE LIBERALISATION AND DEVELOPMENT OF RULES

ARTICLE 812

Review of Commitments

1. In pursuance of the objectives of this Chapter, the Parties shall enter into further negotiations on trade in services within three years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken by the Parties under this Agreement.
2. In negotiating further commitments in accordance with this Article, the Parties shall recognise the provisions of Article V (1) and (3) of GATS.
3. If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement.
4. If, after this Agreement enters into force, a Party further liberalises any of its services sectors, sub-sectors or activities, it shall consider a request by the other Party for the incorporation in this Agreement of the unilateral liberalisation.
5. If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned shall consider a request by the other Party for the incorporation in this Agreement of new commitments relating to that service.

ARTICLE 813

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Part IV of this Chapter. 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;
 - (d) where appropriate the time frame for implementation of such commitments;
and
 - (e) the date of entry into force of such commitments.
2. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

ARTICLE 814

Modification of Commitments

By giving three months written notification to the other Party, a Party may modify its commitments. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment required to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in schedules of specific commitments prior to such negotiations. If agreement is not reached, the matter may be referred to arbitration in accordance with Chapter 18.

ARTICLE 815

References to GATS

All references to GATS in this Chapter are to GATS in effect on the date of entry into force of this Agreement. If, after that date, a Party alters its schedule of specific commitments annexed to GATS, GATS is amended or the results of the negotiations provided for in GATS Articles VI (4), X (1), XIII (2) or XV (1) enter into force, this Chapter shall be amended, as appropriate, by agreement between the Parties.

ARTICLE 816

Preservation of GATS Rights

This Agreement shall not diminish the scope of any commitment made by either Party under GATS to which the other Party has access.