

CHAPTER 8

TRADE IN SERVICES

ARTICLE 8.1

Scope and Coverage

1. This Chapter applies to measures by the State Parties affecting trade in services and 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 all services sectors.
2. With respect to 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 measures affecting:
 - (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services; and
 - (c) computer reservation systems (CRS) services.
3. Nothing in this Chapter shall be construed to impose any obligation on the State Parties regarding government procurement, which shall be subject to Chapter 11 (Government Procurement).

ARTICLE 8.2

Definitions

For the purposes of this Chapter:

- (a) “trade in services” means the supply of a service:
 - (i) from the territory of a State Party to the territory of another State Party;
 - (ii) in the territory of a State Party to the service consumer of another State Party;
 - (iii) by a service supplier of a State Party, through commercial presence in the territory of another State Party;
 - (iv) by a service supplier of a State Party, through presence of natural persons of a State Party in the territory of another State Party.
- (b) “services” means any service in any sector, except services supplied in the exercise of governmental authority;

- (c) “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;
- (d) “service supplier” means any person that supplies, or seeks to supply, a service;⁸
- (e) “natural person of another State Party” means a natural person who, under the legislation of that State Party, is:
 - (i) a national of that State Party who resides in the territory of any Member of the WTO; or
 - (ii) a permanent resident of that State Party who resides in the territory of a State Party, if the former State Party accords substantially the same treatment to its permanent residents as to its nationals with respect to 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 State Party who resides in the territory of a State Party;
- (f) “juridical person of another State Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the domestic laws and regulations of that State Party, and is engaged in substantive business operations in the territory of a State Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (aa) natural persons of that State Party; or
 - (bb) juridical persons of that State Party identified under subparagraph (f) (i);
- (g) “measure” means a law, regulation, rule, procedure, decision, administrative action or any other form of a measure by a State Party;
- (h) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;

⁸ 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 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) “measures by a State Party affecting trade in services” include measures with respect to:
 - (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 those State Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party;
- (j) “commercial presence” means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office;
 within the territory of a State Party for the purpose of supplying a service;
- (k) “sector” of a service means:
 - (i) with reference to a specific commitment, one or more subsectors of that service, as specified in a State Party’s Schedule of Specific Commitments; or
 - (ii) the whole of that service sector, including all of its subsectors;
- (l) “service of another State Party” means a service which is supplied:
 - (i) from or in the territory of that State Party, or in the case of maritime transport, by a vessel registered under the domestic laws and regulations of that State Party, or by a person of that State Party which supplies the service through the operation of a vessel or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by service supplier of that State Party;
- (m) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a State Party is authorised or established formally or in effect by that State Party as the sole supplier of that service;
- (n) “service consumer” means any person that receives or uses a service;
- (o) “person” means either a natural person or a juridical person;
- (p) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any

corporation, trust, partnership, joint venture, sole proprietorship or association;

- (q) a juridical person is:
 - (i) “owned” by persons of a State Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that State Party;
 - (ii) “controlled” by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) “affiliated” with another person if it controls, or is controlled by, that other person; or if it and the other person are both controlled by the same person; and
- (r) “direct taxes” means all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

ARTICLE 8.3

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of GATS, and except as provided for in its List of MFN Exemptions contained in Annex XI (List of MFN Exemptions), each State Party shall accord immediately and unconditionally, with respect to all measures affecting the supply of services, to services and service suppliers of another State 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 a State Party and notified under Article V or Article *Vbis* of GATS shall not be subject to paragraph 1.
3. If a State Party concludes or amends an agreement referred to in paragraph 2, it shall notify the other State Parties without delay and endeavour to accord to the other State Parties treatment no less favourable than that provided under that new agreement or under the scope of the amendment to the existing agreement. The State Party concluding or amending an agreement shall, upon request by another State Party, negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under that former agreement.
4. This Chapter shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous zones of services that are both locally produced and consumed.

ARTICLE 8.4

Market Access

1. With respect to market access through the modes of supply identified in subparagraph (a) of Article 8.2 (Definitions), each State Party shall accord services and service suppliers of another State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.⁹

2. In sectors where market-access commitments are undertaken, the measures which a State 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 its Schedule of Specific Commitments, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement 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;¹⁰
- (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 ventures 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.

⁹ If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 1 (a) (i) of Article 8.2 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 1 (a) (iii) of Article 8.2 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

¹⁰ Subparagraph 2 (c) does not cover measures of a State Party which limit inputs for the supply of services.

ARTICLE 8.5

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of another State Party, with respect to all measures affecting the supply of services, treatment no less favourable than it accords to its own like services and service suppliers.¹¹
2. A State Party may meet the requirement of paragraph 1 by according to services and service suppliers of another State 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 a State Party compared to like services or service suppliers of another State Party.

ARTICLE 8.6

Additional Commitments

The State Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.4 (Market Access) or 8.5 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments.

ARTICLE 8.7

Domestic Regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each State 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, 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, each

¹¹ Specific commitments assumed under this Article shall not be construed to require any State Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers.

State Party 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, the competent authorities of a State Party shall, 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. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, the State Parties shall jointly review any disciplines developed in the WTO in accordance with paragraph 4 of Article VI of GATS. The Joint Committee shall decide on the incorporation of such disciplines into this Agreement. The State Parties may also, jointly or bilaterally, decide to develop further disciplines.

5. In sectors in which a State Party has undertaken specific commitments, pending the entry into force of a decision incorporating WTO disciplines for these sectors pursuant to paragraph 4, that State Party shall not apply licensing and qualification requirements or procedures and technical standards that nullify or impair such specific commitments in a manner which is:

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

ARTICLE 8.8

Recognition

1. For the purposes of fulfilment of its relevant standards or criteria for authorisation, licensing or certification of service suppliers, each State Party shall give due consideration to any requests by another State Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that State Party. Such recognition may be based upon an agreement or arrangement with that State Party, or accorded autonomously.

2. Where a State Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in a non-Party, that State Party shall afford another State 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 State Party accords recognition autonomously, it shall afford adequate opportunity for another State Party to

demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that State Party should also be recognised.

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

4. Where professional bodies of the State Parties are mutually interested in establishing dialogues on issues relating to recognition of professional qualifications, licensing or registration, each State Party should consider supporting the dialogue of those bodies where requested and appropriate.

ARTICLE 8.9

Procedures for Recognition

Where a State Party has requirements for the authorisation, licensing or certification of service suppliers, whether by competent governmental authorities or relevant professional bodies, as the case may be, that State Party shall:

- (a) establish or maintain procedures under which a service supplier has ways and means to request the recognition of its qualifications obtained in another State Party; and
- (b) inform the service supplier requesting recognition when the qualifications obtained in another State Party are found to be insufficient. In that case, that State Party shall endeavour to provide, under its procedures, for at least one means to achieve equivalence.

ARTICLE 8.10

Movement of Natural Persons

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

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a State Party, nor shall it apply to measures regarding citizenship, 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 State Party from applying measures to regulate the entry of natural persons of another State 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 State Party under the terms of a specific commitment.¹²

ARTICLE 8.11

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.
2. If publication in accordance with paragraph 1 is not practicable, such information shall be made otherwise publicly available.

ARTICLE 8.12

Disclosure of Confidential Information

Nothing in this Chapter shall require any State Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 8.13

Monopolies and Exclusive Service Suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations under Article 8.3 (Most-Favoured Nation Treatment) and its Schedule of Specific Commitments.
2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's Schedule of Specific Commitments, that State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. This Article shall also apply to cases of exclusive service suppliers, where a State Party, formally or in effect:
 - (a) authorises or establishes a small number of service suppliers; and
 - (b) substantially prevents competition among those suppliers in its territory.

¹² The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 8.14

Payments and Transfers

1. Except under the circumstances referred to in Article 8.15 (Restrictions to Safeguard the Balance-of-Payments), no State Party shall apply restrictions on international transfers and payments for current transactions with another State Party.
2. Nothing in this Chapter shall affect the rights and obligations of the State Parties under the Articles of Agreement of the International Monetary Fund (IMF), including the use of exchange actions, which are in conformity with the Articles of Agreement of the IMF, provided that a State Party shall not impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 8.15 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

ARTICLE 8.15

Restrictions to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance-of-payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition.
2. The restrictions referred to in paragraph 1 shall:
 - (a) not discriminate against a State Party in comparison to another State Party or to a non-Party;
 - (b) be consistent with the Articles of Agreement of the IMF;
 - (c) avoid unnecessary damage to the commercial, economic and financial interests of another State Party;
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
3. In determining the incidence of such restrictions, the State Parties may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes thereof, shall be promptly notified to the Joint Committee.

ARTICLE 8.16

General Exceptions

Article XIV of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 8.17

Security Exceptions

Article XIV**bis** of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 8.18

Schedules of Specific Commitments

1. Each State Party shall set out in a Schedule the Specific Commitments it undertakes under Articles 8.4 (Market Access), 8.5 (National Treatment) and 8.6 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments 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 8.6 (Additional Commitments); and
- (d) where appropriate, the timeframe for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 8.4 (Market Access) and 8.5 (National Treatment) shall be inscribed in the column relating to Article 8.4 (Market Access). In this case, the inscription shall be considered to provide an additional condition or qualification to Article 8.5 (National Treatment).

3. The State Parties' Schedules of Specific Commitments are set out in Annex X (Schedules of Specific Commitments).

ARTICLE 8.19

Modification of Schedules

1. The State Parties shall, upon written request by a State Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting State Party's Schedule of Specific Commitments. The consultations shall be held within three months from the receipt of the request.
2. In the consultations, the State Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained.

ARTICLE 8.20

Review

With the objective of further liberalising trade in services between them, the State Parties shall review whenever necessary, but normally every two years, their Schedules of Specific Commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work in the WTO. The first review shall take place no later than three years from the entry into force of this Agreement.

ARTICLE 8.21

Annexes

The following Annexes form an integral part of this Chapter:

- (a) Annex X (Schedules of Specific Commitments);
- (b) Annex XI (List of MFN Exemptions);
- (c) Annex XII (Financial Services);
- (d) Annex XIII (Telecommunication Services); and
- (e) Annex XIV (Movement of Natural Persons).