

APPENDIX 1

NEW CHAPTER 8 CROSS-BORDER TRADE IN SERVICES

Article 1 Definitions

For the purposes of this Chapter:

(a) **cross-border trade in services or cross-border supply of 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 by a person of that Party to a service consumer of the other Party; or
- (iii) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment as defined in Section C (Definitions) of Chapter 10 (Investment);

- (b) **enterprise** means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise;
- (c) **enterprise of a Party** means an enterprise organised or constituted under the laws of a Party, or a branch located in the territory of a Party and carrying out business activities there;
- (d) **existing** means in effect on the date of entry into force of 2023 Protocol;

- (e) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (f) **measures by Parties** 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 or authorities;
- (g) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (h) **natural person of a Party** means a national or a permanent resident of a Party under its laws. Until such time as China enacts its law on treatment of permanent residents of foreign countries, the obligations of each Party with respect to the permanent residents of the other Party shall be limited to the extent of its obligations under the GATS;
- (i) **person** means either a natural person or an enterprise;
- (j) **qualification procedures** means administrative procedures relating to the administration of qualification requirements;
- (k) **qualification requirements** means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a licence;
- (l) **services** includes any service in any sector except services supplied in the exercise of governmental authority;

- (m) **service consumer** means any person that receives or uses a service;
- (n) **service of the other Party** means a service which is supplied:
 - (i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other 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 the presence of natural persons, by a service supplier of the other Party;
- (o) **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;
- (p) **service supplier** means any person that seeks to supply or supplies a service; and
- (q) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service.

Article 2

Scope and Coverage

1. This Chapter applies to measures by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the purchase, payment or use of a service;
- (b) 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;
- (c) the presence in its territory of a service supplier of the other Party;
- (d) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. Notwithstanding paragraph 1,¹ Articles 3 (Market Access) and 8 (Domestic Regulation) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment as defined in Section C (Definitions) of Chapter 10 (Investment).

3. This Agreement shall not apply to:

- (a) services supplied in the exercise of governmental authority within the territory of each Party; and
- (b) 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.

4. This Chapter shall not apply to 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,

¹ For greater certainty, nothing in this Chapter is subject to investor-state dispute settlement under Section B (Investor-State Dispute Settlement) of Chapter 10 (Investment).

service consumers or service suppliers except:

- (a) as otherwise specified in this Agreement; or
- (b) disciplines that may be developed under Article XV of the GATS as may be reviewed with a view to their incorporation into this Agreement.

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services; other than measures affecting:

- (a) aircraft repair and maintenance services;
- (b) the selling and marketing of air transport services; and
- (c) computer reservation system ("CRS") services.

Article 3

Market Access

A Party shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;²
 - (iv) 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

² Paragraph (a)(iii) does not cover measures by a Party which limit inputs for the supply of services.

service in the form of numerical quotas or the requirement of an economic needs test; and

- (b) restrict or require specific types of legal entities or joint ventures through which a service supplier may supply a service.

Article 4 **National Treatment³**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances,⁴ to its own service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 5 **Most-Favoured-Nation Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party.

2. The provisions of this Chapter shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 6 **Local Presence**

³ Nothing in this Article shall 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.

⁴ For greater certainty, whether treatment is accorded in “like circumstances” under Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services and service suppliers on the basis of legitimate public welfare objectives.

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 7

Reservations and Non-Conforming Measures

1. Article 3 (Market Access), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Local Presence) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in List I of its Schedule in Annex 5 (Schedules of Reservations and Non-Conforming Measures);
 - (ii) a regional level of government, as set out by that Party in List I of its Schedule in Annex 5 (Schedules of Reservations and Non-Conforming Measures); or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a); or
- (c) an amendment to any non-conforming measure referred to in sub-paragraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 3 (Market Access), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Local Presence).

2. Article 3 (Market Access), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out by that Party in List II of its Schedule in Annex 5 (Schedules of Reservations and Non-Conforming Measures).

Article 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. (a) 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, 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.

- (b) The provisions of sub-paragraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

- (a) in the case of an incomplete application and at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (b) at the request of the applicant, provide, without undue delay, information concerning the status of the application; and
- (c) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. With the objective of ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to paragraph 4 of Article VI of the GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

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

5. (a) Pending the incorporation of the disciplines referred to in paragraph 4, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligations under this Agreement in a

manner which:

- (i) does not comply with the criteria outlined in paragraphs 4(a), (b) or (c); and
 - (ii) could not reasonably have been expected of that Party at the time the obligations were undertaken.
- (b) In determining whether a Party is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organisations⁵ applied by that Party.

6. In sectors where obligations regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

7. Paragraphs 1 to 6 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 3 (Market Access), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) or Article 6 (Local Presence) by reason of a Party's commitments made in accordance with Article 7 (Reservations and Non-Conforming Measures).

Article 9

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously.

2. Nothing in Article 5 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licences or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords

⁵ Relevant international organisations refers to international bodies whose membership is open to the relevant bodies of both Parties to this Agreement.

recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

Article 10

Recognition Cooperation

1. The Parties shall ensure that their relevant competent authorities commence negotiations on areas for mutual recognition of the equivalence of each Party's:

- (a) accounting work experience and qualifications;
- (b) auditing work experience and qualifications; and
- (c) accounting and auditing standards,

as soon as possible.

2. The Parties shall commence negotiations on a Mutual Recognition Arrangement ("MRA") for qualifications or experience obtained, requirements met, or licenses or certifications for architects following the entry into force of this Agreement, with a view to reaching such an MRA as soon as possible, and exploring the possibilities for expanding the MRA to other architectural and engineering areas.

Article 11

Joint Committee on Recognition Cooperation

1. For the purposes of effective implementation of Article 10 (Recognition Cooperation), a Joint Committee on Recognition Co-operation (the "Committee"), including a working group on accounting and auditing, shall be established. The functions of the Committee shall be:

- (a) reviewing and discussing the issues concerning the effective implementation of Article 10 (Recognition Cooperation);

- (b) identifying and recommending areas for and ways of furthering cooperation between the Parties; and
- (c) discussing other issues relating to the implementation of Article 10 (Recognition Cooperation).

2. The Committee, including the working group on accounting and auditing, shall meet on the request of either Party or the FTA Joint Committee established under Article 111 (Implementation and Review) at a mutually acceptable time and venue.

Article 12

Monopolies and Exclusive Service Suppliers

1. Each 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 Party's obligations under Article 3 (Market Access) and Article 4 (National Treatment).

2. Where a 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 Party's obligations, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such obligations.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraphs 1 or 2, it may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. This Article shall also apply to cases of exclusive service suppliers, where a 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.

Article 13

Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 12 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of

relevance to the matter in question. The requested Party shall also provide other information available to the requesting Party, subject to its domestic laws and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 14

Safeguard Measures

The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

Article 15

Payments and Transfers

1. Except under the circumstances envisaged in Article 107 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* (the "Articles of Agreement"), including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations regarding such transactions, except under Article 107 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the International Monetary Fund.

Article 16
Transparency

Article III of the GATS is incorporated, *mutatis mutandis*, into and shall form an integral part of this Agreement.

Article 17
Disclosure of Confidential Information

Nothing in this Chapter shall require any 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 18
Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of the other Party.

Article 19

Miscellaneous Provisions

The following GATS Annexes shall be incorporated, *mutatis mutandis*, into and form an integral part of this Agreement:

- (a) *Annex on Movement of Natural Persons Supplying Services;*
- (b) *Annex on Air Transport Services; and*
- (c) *Annex on Financial Services.*