

## CHAPTER 2

### TRADE IN SERVICES

#### Article 2.1

#### Scope and Coverage

1. This Chapter shall apply to measures by a Party affecting trade in services by service suppliers of the other Party.
2. 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.
3. With regard to financial services, as defined in paragraph 5(a) of the GATS Annex on Financial Services:
  - (a) this Chapter shall only apply in respect of the sectors inscribed in each Party's Schedule of Specific Commitments under the GATS, subject to any conditions and qualifications set out therein;
  - (b) in addition to the provisions of this Chapter, the rights and obligations of the Parties in respect of financial services shall also be governed by the provisions of the GATS Annex on Financial Services, which are hereby incorporated into this Agreement, *mutatis mutandis*; and
  - (c) in the event of any inconsistency between this Chapter and the GATS Annex on Financial Services, this Chapter shall prevail to the extent of the inconsistency.
4. With regard to telecommunications services:
  - (a) this Chapter shall only apply in respect of the sectors inscribed in each Party's Schedule of Specific Commitments under the GATS, subject to any conditions and qualifications set out therein;

- (b) in addition to the provisions of this Chapter, the rights and obligations of the Parties in respect of telecommunications services shall also be governed by the provisions of the GATS Annex on Telecommunications and the GATS Reference Paper developed in the Negotiating Group on Basic Telecommunications attached to each Party's Schedule of Specific Commitments under the GATS, which are hereby incorporated into this Agreement, *mutatis mutandis*; and
- (c) In the event of any inconsistency between this Chapter and the GATS Annex on Telecommunications or between this Chapter and the GATS Reference Paper developed in the Negotiating Group on Basic Telecommunications attached to each Party's Schedule of Specific Commitments under the GATS, this Chapter shall prevail to the extent of the inconsistency.

## **Article 2.2**

### **Most-Favoured-Nation Treatment**

1. Subject to exceptions that may derive from harmonisation of regulations based on agreements concluded by a Party with a non-party providing for mutual recognition in accordance with Article VII of the GATS, and except as provided in a Party's Annex on Article II Exemptions to the GATS, with respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-party.
2. The provisions of this Chapter shall not be so 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.
3. Nothing in this Chapter shall be interpreted as to oblige a Party to provide to services or service suppliers of the other Party benefits or privileges that the former Party is providing or will provide in future:

- (a) under any economic or customs union, or free trade area or common market, including other forms of regional or bilateral cooperation, or similar international agreements to which either of the Parties is or may become a party, including investment agreements among them;
- (b) under any bilateral investment treaties to which either of the Parties is or may become a party;
- (c) under any international investment agreements between or among member States of a regional economic community, including investment agreements between or among member States of a regional economic community and any one or more non-parties to that regional economic community;
- (d) under any arrangement with a non-party or non-parties in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields; and
- (e) on the basis of agreements meant to avoid double taxation, or other arrangements on taxation issues.

### Article 2.3

#### **Market Access**

1. With respect to market access through the modes of supply defined in subparagraph (x) of Article 1.4 (Definitions of General Application), 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 2 – 1 (Schedules of Specific Commitments).<sup>1</sup>

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<sup>1</sup> If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(i) of Article 1.4 (Definitions of General Application) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a commitment in relation to the supply of a service through a mode of supply referred to in subparagraph (x)(iii) of Article 1.4 (Definitions of General Application), it is thereby committed to allow related transfers of capital into its territory.

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 2 – 1 (Schedules 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;<sup>2</sup>
- (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 2.4**

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<sup>2</sup> Subparagraph 2(c) shall not cover measures of a Party which limit inputs for the supply of services.

## **National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 2 – 1 (Schedules of Specific Commitments), 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.
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 a Party compared to like services or service suppliers of the other Party.

### **Article 2.5**

#### **Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 2.3 (Market Access) and 2.4 (National Treatment), including those regarding qualifications, standards and licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 2 – 1 (Schedules of Specific Commitments).

### **Article 2.6**

#### **Payments and Transfers**

1. Except under the circumstances envisaged in Article 7.6 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the IMF under the Articles of Agreement of the IMF, 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 7.6 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

### **Article 2.7**

#### **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 specific commitments.

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 specific commitments, 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 commitments.

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 paragraph 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 2.8**

### **Domestic Regulation**

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

2. Where a Party requires authorisation for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

3. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure that such measures are:

- (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.

4. If authorisation is required for the supply of a service in sectors where specific commitments are undertaken, each Party shall endeavour to ensure that:

- (a) its competent authorities provide an indicative timeframe for processing of an application for a licence;
- (b) its competent authorities make a decision on the granting or denial of a licence without undue delay;

- (c) once the indicative timeframe for the processing of an application has lapsed, on the request of the applicant, its competent authorities inform the applicant the of status of its application;
- (d) in the case of an unsuccessful application, an applicant is permitted, within reasonable time limits, to resubmit an application.

5. If the results of the negotiations related to paragraph 4 of Article VI of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement.