

TITLE III

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 159

Objective, Scope and Coverage

1. The Parties, reaffirming their commitments under the WTO Agreement, hereby lay down the necessary provisions for the progressive liberalisation of establishment and trade in services and for cooperation on electronic commerce (hereinafter referred to as "e-commerce").
2. Nothing in this Title shall be construed to require the privatisation of public undertakings or public utilities services supply in the exercise of governmental authority or to impose any obligation with respect to government procurement.
3. The provisions of this Title shall not apply to subsidies granted by the Parties.

4. Consistent with the provisions of this Title, each Party retains the right to regulate and to introduce new regulations to meet legitimate national policy objectives.
5. This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
6. Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay within its territory, including those measures necessary to protect the integrity, 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 Party under the terms of a specific commitment⁸.

ARTICLE 160

Definitions

For the purposes of this Title:

- (a) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

⁸ The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

- (b) "measures adopted or maintained by a Party" 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;
- (c) "natural person of a Party" means a national of one of the Member States of the European Union or of a Republic of the CA Party according to their respective legislation;
- (d) "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;

- (e) an "EU Party juridical person" or a "juridical person of a Republic of the CA Party" means a juridical person established in accordance with the laws of a Member State of the European Union or of a Republic of the CA Party respectively, and having its registered office, central administration, or principal place of business within the territory of the EU Party or the territory of a Republic of the CA Party, respectively.

Where the juridical person has only its registered office or central administration within the territory of the EU Party or within the territory of a Republic of the CA Party, respectively, it shall not be considered as an EU Party juridical person or a juridical person of a Republic of the CA Party respectively, unless it is engaged in substantive business operations within the territory of a Member State of the European Union or within the territory of a Republic of the CA Party, respectively⁹; and

⁹ In line with its notification of the EC Treaty to the WTO (doc. WT/REG39/1), the EU understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the Treaty on the Functioning of the European Union (TFEU) is equivalent to the concept of "substantive business operations" provided in Article V, paragraph 6, of the GATS.

- (f) Notwithstanding the preceding subparagraph, shipping companies established outside the EU Party or the Republics of the CA Party and controlled by nationals of a Member State of the European Union or of a Republic of the CA Party, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State of the European Union or in a Republic of the CA Party and carry the flag of a Member State of the European Union or of a Republic of the CA Party.

ARTICLE 161

Cooperation on Establishment, Trade in Services and E-Commerce

The Parties agree that it is in their common interest to promote mutual cooperation and technical assistance initiatives on issues related to Establishment, Trade in Services and E-Commerce. In this sense, the Parties have identified a number of cooperation activities which are set out in Article 56 of Title VI (Economic and Trade Development) of Part III of this Agreement.

CHAPTER 2

ESTABLISHMENT

ARTICLE 162

Definitions

For the purposes of this Chapter:

- (a) "branch of a juridical person of a Party" means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, does not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
- (b) "economic activity" covers the activities committed in Annex X (Lists of Commitments on Establishment). "Economic activity" does not include activities carried out in the exercise of governmental authority, for example, activities carried out neither on a commercial basis nor in competition with one or more economic operators;

(c) "establishment" means:

(i) the constitution, acquisition or maintenance of a juridical person¹⁰; or

(ii) the creation or maintenance of a branch or representative office,

within the territory of a Party for the purpose of performing an economic activity;

(d) "investor of a Party" means any natural or juridical person of a Party that seeks to perform or performs an economic activity through setting up an establishment; and

(e) "subsidiary of a juridical person of a Party" means a juridical person which is effectively controlled by another juridical person of that Party¹¹.

¹⁰ The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

¹¹ A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

ARTICLE 163

Coverage

This Chapter applies to measures by the Parties affecting establishment¹² in all economic activities as defined in Article 162, with the exception of:

- (a) mining, manufacturing and processing of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- (d) national and inland waterway cabotage transport¹³; and
- (e) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

¹² Investment protection, other than the treatment deriving from Article 165, including investor-state dispute settlement procedures, is not covered by this Chapter.

¹³ Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Republic of the CA Party or a Member State of the European Union and another port or point located in the same Republic of the CA Party or Member State of the European Union, including on its continental shelf, and traffic originating and terminating in the same port or point located in a Republic of the CA Party or Member State of the European Union.

- (ii) the selling and marketing of air transport services;
- (iii) computer reservation system (CRS) services; and
- (iv) other ancillary services that facilitate the operation of air carriers, as contained in Annex X (Lists of Commitments on Establishment).

ARTICLE 164

Market Access

1. With respect to market access through establishment, each Party shall accord to establishments and investors of the other Party a treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex X (Lists of Commitments on Establishment).
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 X, are defined as:
 - (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;

- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of operations or on the total quantity of output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹⁴;
- (d) 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; and
- (e) measures which restrict or require specific types of establishment (subsidiary, branch, representative office)¹⁵ or joint ventures through which an investor of the other Party may perform an economic activity.

¹⁴ Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

¹⁵ Each Party may require that in the case of incorporation under its own law, investors must adopt a specific legal form. To the extent that such requirement is applied in a non-discriminatory manner, it does not need to be specified in Annex X (Lists of Commitments on Establishment) in order to be maintained or adopted by the Parties.

ARTICLE 165

National Treatment

1. In the sectors inscribed in Annex X (Lists of Commitments on Establishment), and subject to any conditions and qualifications set out therein, each Party shall grant to establishments and investors of the other Party treatment no less favourable than that it accords to its own like establishments and investors.
2. A Party may meet the requirement of paragraph 1 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments or investors of the Party compared to like establishments or investors of the other Party.
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 investors.

ARTICLE 166

Lists of Commitments

The sectors committed by each of the Parties pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations, conditions and qualifications applicable to establishments and investors of the other Party in those sectors are set out in lists of commitments included in Annex X (Lists of Commitments on Establishment).

ARTICLE 167

Other Agreements

Nothing in this Title shall be taken to limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international investment agreement to which a Member State of the European Union and a Republic of the CA Party are Parties. Nothing in this Agreement shall be subject, directly or indirectly, to any investor-to-State dispute settlement procedures established in those agreements.

ARTICLE 168

Review

The Parties commit to review the investment legal framework, the investment environment, and the flow of investment between them consistent with their commitments in international agreements no later than three years after the entry into force of this Agreement and at regular intervals thereafter.

CHAPTER 3

CROSS-BORDER SUPPLY OF SERVICES

ARTICLE 169

Coverage and Definitions

1. This Chapter applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:

- (a) audio-visual services;

- (b) national and inland waterway cabotage transport¹⁶; and
- (c) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) other ancillary services that facilitate the operation of air carriers, as contained in Annex XI (Lists of Commitments on Cross-Border Supply of Services).

¹⁶ Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Republic of the CA Party or a Member State of the European Union and another port or point located in the same Republic of the CA Party or Member State of the European Union, including on its continental shelf, and traffic originating and terminating in the same port or point located in a Republic of the CA Party or Member State of the European Union.

2. For the purposes of this Chapter:

(a) "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party (Mode 1);

(ii) in the territory of a Party to the service consumer of the other Party (Mode 2);

(b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

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;

(c) "service supplier of a Party" means any natural or juridical person of a Party seeking to supply or supplies a service; and

(d) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service.

ARTICLE 170

Market Access

1. With respect to market access through the modes of supply identified in Article 169, paragraph 2(a), each Party shall accord services and service suppliers of the other Party treatment not less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex XI (Lists of Commitments on Cross-Border Supply of Services).
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 XI, are defined as:
 - (a) limitations on the number of services 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; and
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.¹⁷

¹⁷ Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

ARTICLE 171

National Treatment

1. In the sectors inscribed in Annex XI (Lists of Commitments on Cross-Border Supply of Services) and subject to any conditions and qualifications set out therein, each Party shall grant to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services 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 the Party compared to like services or service suppliers of the other Party.
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 services suppliers.

ARTICLE 172

Lists of Commitments

The sectors committed by each of the Parties pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations, conditions and qualifications applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex XI (Lists of Commitments on Cross-Border Supply of Services).

CHAPTER 4

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 173

Coverage and Definitions

1. This Chapter applies to measures of the Parties concerning the entry into and temporary stay in their territories of key personnel, graduate trainees, business services sellers, contractual services suppliers and independent professionals in accordance with Article 159, paragraph 5 of this Title.

2. For the purposes of this Chapter:

- (a) "key personnel" means natural persons employed within a juridical person of one Party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of an establishment.

"key personnel" comprises "business visitors" responsible for setting up an establishment and "intra-corporate transfers":

- (i) "business visitors" means natural persons employed in a senior position responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party;

- (ii) "intra-corporate transfers" means natural persons who have been employed by a juridical person or have been partners in it for at least one year and who are temporarily transferred to an establishment within the territory of the other Party. The natural person concerned must belong to one of the following categories:

"Managers":

Persons employed in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including:

- directing the establishment or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees;
- having the authority to personally recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

"Specialists":

Persons employed within a juridical person who possess uncommon knowledge essential to the establishment's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

- (b) "graduate trainees" means natural persons who have been employed by a juridical person of one Party for at least one year, possess a university degree and are temporarily transferred to an establishment of the juridical person within the territory of the other Party, for career development purposes or to obtain training in business techniques or methods¹⁸;
- (c) "business services sellers" means natural persons who are representatives of a service supplier of one Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party;

¹⁸ The recipient establishment may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training.

- (d) "contractual services suppliers" means natural persons employed by a juridical person of one Party which has no establishment within the territory of the other Party and which has concluded a *bona fide* contract (other than through an agency as defined by CPC 872)¹⁹ to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services;
- (e) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party, who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services²⁰;
- (f) "qualifications" means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

¹⁹ CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov, 1991.

²⁰ The service contract referred to under (d) and (e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

ARTICLE 174

Key Personnel and Graduate Trainees

1. For every sector liberalised in accordance with Chapter 2 of this Title and subject to any reservations listed in Annex X (Lists of Commitments on Establishment) or in Annex XII (Reservations on Key Personnel and Graduate Trainees of the EU Party), the EU Party shall allow investors of the Republics of the CA Party to employ in their establishment natural persons of the Republics of the CA Party provided that such employees are key personnel or graduate trainees as defined in Article 173. The temporary entry and stay of key personnel and graduate trainees shall be for a period of up to three years for intra-corporate transfers, ninety days in any twelve month period for business visitors, and one year for graduate trainees.

For every sector liberalised in accordance with Chapter 2 of this Title, the measures which the EU 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 XII are defined as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

2. For every sector listed in Annex XIII (Lists of Commitments of the Republics of the CA Party on Key Personnel and Graduate Trainees) and subject to any reservations and conditions set out therein, the Republics of the CA Party shall allow investors of the EU Party to employ in their establishment natural persons of the EU Party provided that such employees are key personnel or graduate trainees as defined in Article 173. The temporary entry and stay of key personnel and graduate trainees shall be for a period up to one year, renewable up to the maximum duration possible in accordance with the relevant provisions of the Parties' respective legislation. The temporary entry and stay of business visitors shall be for a period of up to ninety days in any twelve month period.

For every sector listed in Annex XIII and subject to any reservations and conditions set out therein, the measures which a Republic of the CA Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, are defined as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

ARTICLE 175

Business Services Sellers

1. For every sector liberalised in accordance with Chapters 2 or 3 of this Title and subject to any reservations listed in Annexes X (Lists of Commitments on Establishment) and XI (Lists of Commitments on Cross-Border Supply of Services), the EU Party shall allow the temporary entry and stay of business services sellers of the Republics of the CA Party for a period of up to ninety days in any twelve month period.
2. For every sector listed in Annex XIV (Lists of Commitments of the Republics of the CA Party on Business Service Sellers) and subject to any reservations and conditions set out therein, the Republics of the CA Party shall allow the temporary entry and stay of business services sellers of the EU Party for a period of up to ninety days in any twelve month period.

ARTICLE 176

Contractual Services Suppliers and Independent Professionals

The Parties reaffirm their respective commitments under GATS as regards the entry and temporary stay of contractual services suppliers and independent professionals.

CHAPTER 5

REGULATORY FRAMEWORK

SECTION A

PROVISIONS OF GENERAL APPLICATION

ARTICLE 177

Mutual Recognition

1. Nothing in this Title shall prevent a Party from requiring that natural persons shall possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies or the competent authorities, as applicable, within their respective territories to jointly develop and provide recommendations on mutual recognition to the Association Committee, for the purpose of the fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, professional services.
3. Upon receipt of a recommendation referred to in the preceding paragraph, the Association Committee shall, within a reasonable time, review the recommendation with a view to determining whether it is consistent with this Title.
4. When, in conformity with the procedure set out in paragraph 3, a recommendation referred to in paragraph 2 has been found to be consistent with this Title and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall encourage their competent authorities to negotiate an agreement on mutual recognition of requirements, qualifications, licences and other regulations with a view to implementing that recommendation.
5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

ARTICLE 178

Transparency and Disclosure of Confidential Information

1. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Title. Each Party shall also designate one or more enquiry points to provide specific information to investors and services suppliers of the other Party, upon request, on all such matters, by no later than the entry into force of this Agreement. Enquiry points need not be depositories of laws and regulations.
2. Nothing in Part IV of this Agreement shall be construed to 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, be it public or private.

ARTICLE 179

Procedures

1. Where authorisation is required for the supply of a service or establishment for which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic 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.
2. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties shall ensure that the procedure in fact provides for an objective and impartial review.

SECTION B

COMPUTER SERVICES

ARTICLE 180

Understanding on Computer Services

1. To the extent that trade in computer services is committed in the lists of commitments in accordance with Chapters 2, 3 and 4 of this Title, the Parties subscribe to the understanding defined in the following paragraphs.
2. CPC 84²¹, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programs defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.

²¹ CPC means the Central Product Classification as set out in the Statistical Office of the United Nations, Statistical papers, Series M, No. 77, CPC prov, 1991.

3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
- (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
 - (b) computer programs defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
 - (c) data processing, data storage, data hosting or database services; or
 - (d) maintenance and repair services for office machinery and equipment, including computers; and
 - (e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

4. Computer and related services enable the provision of other services (for example financial services) by both electronic and other means. However, there is an important distinction between the enabling service (for example web-hosting, data processing or application hosting) and the content or core service that is being delivered electronically (for example financial services). In such cases, the content or core service is not covered by CPC 84.

SECTION C

COURIER SERVICES

ARTICLE 181

Scope and definitions

1. This Section sets out the principles of the regulatory framework for courier services committed in the lists of commitments in accordance with Chapters 2, 3 and 4 of this Title.
2. For the purpose of this Section and Chapters 2, 3 and 4 of this Title a "licence" means an authorisation, granted to an individual supplier by a competent authority, which may be required before starting of supplying a given service.

ARTICLE 182

Prevention of Anti-Competitive Practices in the Courier Sector

1. The Parties shall introduce or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.
2. Each Party shall ensure that, where a Party's monopoly supplier of a postal service competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, it does not infringe its obligations under this Title.

ARTICLE 183

Licences

1. Where a licence is required, the following shall be made publicly available:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of licences.

2. The reasons for the denial of a licence shall be made known to the applicant upon request. A supplier affected by the decision shall have a right to seek recourse against that decision before an independent and competent body in accordance with respective legislation. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

ARTICLE 184

Independence of the Regulatory Bodies

Where Parties have regulatory bodies, such bodies shall be legally separate from, and not accountable to, any supplier of courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.

SECTION D

TELECOMMUNICATIONS SERVICES

ARTICLE 185

Definitions and Scope

1. This Section sets out the principles of the regulatory framework for public telecommunications services, other than broadcasting, committed in accordance with Chapters 2, 3 and 4 of this Title, which include voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems²².
2. For the purpose of this Title:
 - (a) "telecommunications services" means all services consisting of the transmission and reception of electro-magnetic signals through telecommunications networks and do not cover the economic activity consisting of the provision of content which requires telecommunications networks or services for its transport;

²² The Parties understand that these services are covered by this Section to that extent that they are considered public telecommunications services in accordance with the applicable domestic legislation.

- (b) "public telecommunications services" or "telecommunications services available to the public" means any telecommunication service that a Party requires to be offered to the public generally in accordance with its respective legislation;
- (c) a "regulatory authority in the telecommunications sector" means the body or bodies charged with any of the regulatory tasks assigned in accordance with the domestic legislation of each Party;
- (d) "essential telecommunications facilities" means facilities of a public telecommunications network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (e) a "major supplier" in the telecommunications sector is a supplier of a public telecommunications services which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of control over essential facilities or the use of its position in the market; and

- (f) "interconnection" means linking between suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.

ARTICLE 186

Regulatory Authority

1. A regulatory authority in the telecommunications sector shall be legally distinct and functionally independent from any supplier of telecommunications services.
2. Each Party shall endeavour to ensure that its regulatory authority has adequate resources to carry out its functions. The tasks of a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of and the procedures used by a regulatory authority shall be impartial with respect to all market participants.

4. A supplier affected by the decision of a regulatory authority shall have a right to, in accordance with the respective legislation, seek recourse against that decision before a competent body that is independent of the suppliers involved. Where the competent body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority.

The decisions taken by such competent bodies shall be effectively enforced in accordance with the applicable legal proceedings. Pending the outcome of any such legal proceedings, the decision of the regulatory authority shall stand unless the competent body or the applicable legislation determines otherwise.

ARTICLE 187

Authorisation to Provide Telecommunications Services²³

1. Provision of services shall, as much as possible, be authorised through simple procedures, and wherever applicable, through mere notification.
2. A licence or specific authorisation can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences or specific authorisations shall be made publicly available.

²³ For the purposes of this Section, the term authorisation shall be understood to include the licenses, concessions, permits, registers and any other authorizations that a Party may require to supply telecommunications services.

3. Where a licence or an authorisation is required:
- (a) all the licensing or authorisation criteria and the reasonable period of time normally required to reach a decision concerning an application for a licence or an authorisation shall be made publicly available;
 - (b) the reasons for the denial of a licence or authorisation application shall be made known in writing to the applicant upon request; and
 - (c) the applicant of a licence or an authorisation shall be able to seek recourse before a competent body in accordance with the respective legislation in case that a licence or authorisation application is unduly denied.

ARTICLE 188

Competitive Safeguards on Major Suppliers

The Parties shall introduce or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation²⁴;

²⁴ Only for the EU Party, "or margin squeeze".

- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 189

Interconnection²⁵

1. Any supplier authorised to provide public telecommunications services shall have the right to negotiate interconnection with other suppliers of public telecommunications networks and services. Interconnection should in principle be agreed on the basis of a commercial negotiation between the suppliers concerned, without prejudice of the power of the regulatory authority to intervene in accordance with the respective legislation.
2. The suppliers that acquire information from another supplier during the process of negotiating interconnection arrangements shall be obliged to use that information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of information transmitted or stored.

²⁵ Paragraphs 3, 4 and 5, do not apply with respect to suppliers of commercial mobile services, nor rural telecommunications services suppliers. For greater certainty, nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided in accordance with the respective domestic legislation:
 - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier does not need to pay for network components or facilities that it does not require for the service to be provided; and
 - (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
4. The procedures applicable for interconnection to a major supplier shall be made publicly available.
5. Major suppliers shall make publicly available either their interconnection agreements in force or their reference interconnection offers, or both, in accordance with the respective legislation.

6. A service supplier requesting interconnection with a major supplier shall have recourse, after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory authority as referred to in Article 186, to decide disputes regarding appropriate terms, conditions and rates for interconnection.

ARTICLE 190

Scarce Resources

Any procedure for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

ARTICLE 191

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to establish or maintain.

2. Such obligations shall not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and be not more burdensome than necessary for the kind of universal service defined by the Party.
3. All suppliers should be eligible to ensure universal service. The designation shall be made through an efficient, transparent and non-discriminatory mechanism, in accordance with the respective legislation.
4. The Parties shall ensure that:
 - (a) directories of all fixed telephony subscribers are available to users in accordance with the respective legislation; and
 - (b) organisations that provide the services referred to in paragraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

ARTICLE 192

Confidentiality of Information

Each Party, in accordance with its respective legislation, shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services.

ARTICLE 193

Disputes between Suppliers

In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations arising from Article 188 and Article 189, the national regulatory authority concerned or another relevant authority shall, at the request of either supplier and in accordance with the procedures established in their respective legislation, issue a binding decision to resolve the dispute in the shortest possible time frame.

SECTION E

FINANCIAL SERVICES

ARTICLE 194

Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all financial services committed in the lists of commitments pursuant to Chapters 2, 3 and 4 of this Title.
2. For the purposes of this Chapter and Chapters 2, 3 and 4 of this Title:
 - (a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:
 - A. Insurance and insurance-related services:
 1. direct insurance (including co-insurance):
 - (a) life;
 - (b) non-life;

2. reinsurance and retrocession;
3. insurance inter-mediation, such as brokerage and agency; and
4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;
2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
3. financial leasing;
4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
5. guarantees and commitments;

6. 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;
7. 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;
8. money broking;

9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs 1 to 11, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) "financial service supplier" means any natural or juridical person of a Party that seeks to provide or provides financial services. 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) "new financial service" means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory.

ARTICLE 195

Prudential Carve-Out

1. Each Party may adopt or maintain measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, financial market users, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;

- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers; and
 - (c) ensuring the integrity and stability of a Party's financial system.
2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under the Chapter.
 3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

ARTICLE 196

Effective and Transparent Regulation

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:
 - (a) by means of an official publication; or
 - (b) in other written or electronic form.

2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

Upon request of an applicant, the Party concerned shall inform the applicant of the status of its application. If the Party concerned requires additional information from the applicant, it shall notify the applicant without undue delay.

3. Each Party shall make its best endeavours to implement and apply in its territory internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering or other assets and terrorism financing, and the fight against tax evasion and avoidance.

ARTICLE 197

New Financial Services

1. A Party shall permit financial services suppliers of the other Party established within its territory to offer in its territory any new financial service within the scope of the subsectors and financial services committed in its lists of commitments and subject to the terms, limitations, conditions and qualifications established in such lists of commitments and provided that the introduction of this new financial service does not require a new law or the modification of an existing law.

2. In accordance with paragraph 1, a Party may determine the legal form through which the service may be provided and may require authorisation for the provision of the financial service. Where such authorisation is required, a decision shall be taken within a reasonable period of time and the authorisation may only be refused for prudential reasons.

ARTICLE 198

Data Processing

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of the financial service supplier²⁶.
2. Each Party shall adopt or maintain adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.

²⁶ For greater certainty, the obligation contained in this Article shall not be considered a specific commitment pursuant to Article 194, paragraph 2(a).

ARTICLE 199

Specific Exceptions

1. Nothing in this Title shall prevent a Party, including its public entities, from exclusively conducting or providing within its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Title shall prevent a Party, including its public entities, from exclusively conducting or providing within its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

SECTION F

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 200

Scope, Definitions and Principles

1. This Section sets out the principles regarding international maritime transport services committed in the lists of commitments pursuant to Chapters 2, 3 and 4 of this Title.
2. For the purpose of this Section and Chapters 2, 3 and 4 of this Title:
 - (a) "international maritime transport" covers door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect includes the right for international maritime transport suppliers to contract directly with providers of other modes of transport²⁷;

²⁷ For greater certainty, the scope of application of this definition shall not imply the supply of a transport service. For the purpose of this definition, single transport document shall refer to a document that permits customers to conclude a single contract with a shipping company for a door to door transport operation.

- (b) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
- (i) the loading/discharging of cargo to/from a ship;
 - (ii) the lashing/unlashing of cargo;
 - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (c) "customs clearance services" (alternatively "customs house brokers' services") means activities consisting of carrying out on behalf of another party, customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (d) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;

- (e) "maritime agency services" means activities consisting in representing as an agent, within a given geographic area, the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
 - (f) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.
3. In view of the existing situation between the Parties in international maritime transport, each Party shall:
- (a) effectively apply the principle of unrestricted access to the international maritime markets and trade routes on a commercial and non-discriminatory basis; and

- (b) grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading²⁸.
4. In applying these principles, each Party shall:
- (a) not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous bilateral agreements; and
 - (b) subject to the lists of commitments pursuant to Chapters 2, 3 and 4 of this Title, ensure that any existing or future measures adopted regarding international maritime transport services are non-discriminatory and do not constitute a disguised restriction on international maritime transport services.
5. Each Party shall permit international maritime service suppliers of the other Party to have an establishment within its territory in accordance with Article 165.

²⁸ The provisions of this subparagraph refer only to access to services but shall not allow the supply of services.

6. The Parties shall ensure that the services provided at ports are offered on non discriminatory terms and conditions. The services available may include pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

CHAPTER 6

ELECTRONIC COMMERCE

ARTICLE 201

Objective and Principles

1. The Parties, recognising that e-commerce increases trade opportunities in many sectors, agree to promote the development of e-commerce between them, in particular by cooperating on the issues relating to e-commerce under the provisions of this Title.
2. The Parties recognise that the development of e-commerce shall be compatible with international standards of data protection, in order to ensure the confidence of users of e-commerce.

3. The Parties agree not to impose customs duties on deliveries by electronic means.

ARTICLE 202

Regulatory Aspects of E-Commerce

The Parties shall maintain a dialogue on regulatory issues relating to e-commerce, which will *inter alia* address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the treatment of unsolicited electronic commercial communications;
- (c) the protection of consumers in the ambit of e-commerce; and
- (d) any other issue relevant for the development of e-commerce.

CHAPTER 7

EXCEPTIONS

ARTICLE 203

General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Title shall be construed to prevent the adoption or enforcement by any Party of measures which are:
 - (a) necessary to protect public security or public morals or to maintain public order;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;

- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;

- (f) inconsistent with Articles 165 and 171 of this Title, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors, services or service suppliers of the other Party²⁹.

2. The provisions of this Title and of the corresponding Annexes on Lists of Commitments shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

²⁹ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (e) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.