

CHAPTER 3

TRADE IN ENVIRONMENTAL SERVICES

Article 3.1

Objective

The objective of this Chapter is to promote the liberalisation of trade in environmental and environmentally related services that support climate change mitigation, climate change adaptation, the transition to a circular economy, pollution prevention and control, or the sustainable use, protection or restoration of biodiversity, ecosystems and natural resources, including water and marine resources.

Article 3.2

Scope

1. This Chapter shall apply to measures by Parties affecting trade in the environmental and environmentally related services listed in Annex IV (List of Environmental and Environmentally Related Services).

2. For the purposes of this Chapter, trade in environmental and environmentally related services is defined as the supply of an environmental and environmentally related service:

- (a) from the territory of one Party into the territory of any other Party;
- (b) in the territory of one Party to the service consumer of any other Party;
- (c) by a service supplier of one Party, through commercial presence in the territory of any other Party;
- (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party.

Article 3.3

Definitions

For the purposes of this Chapter:

- (a) “commercial presence” means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or

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

within the territory of a Party for the purpose of supplying a service;

- (b) “direct taxes” comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (c) “environmental and environmentally related services” means services that:
 - (i) contribute substantially to the environmental goals in Article 3.1 (Objective) by:
 - (A) having as primary purpose a purpose listed in Annex III (Environmental Purposes – Trade in Environmental Services);
 - (B) directly serving a purpose listed in Annex III (Environmental Purposes – Trade in Environmental Services);
 - (C) being directly related to goods whose use is beneficial for a purpose listed in Annex III (Environmental Purposes – Trade in Environmental Services), including adapted goods; or
 - (D) being directly related to a technical process, installations or equipment, methods or knowledge whose primary purpose is listed in Annex III (Environmental Purposes – Trade in Environmental Services); and
 - (ii) do not significantly harm any purpose listed in Annex III (Environmental Purposes – Trade in Environmental Services);
- (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) “juridical person of another Party” means a juridical person which is either:

- (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of that other Party; or
 - (B) juridical persons of that other Party identified under subparagraph (i);
- (f) a “juridical person” is:
 - (i) “owned” by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) “affiliated” with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;
- (g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (h) “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.

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

- (i) “measures by Parties affecting trade in services” includes measures in respect of:
 - (i) the purchase, payment or use of a service;

- (ii) the access to, and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (j) “natural person of another Party” means a natural person who resides in the territory of that other Party or any other WTO Member, and who under the law of that other Party:
- (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other Party, in the case of a Party which:
 - (A) does not have nationals; or
 - (B) accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents;
- (k) “person” means either a natural person or a juridical person;
- (l) “sector” of a service means:
- (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule;
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (m) “services” means any service listed in Annex IV (List of Environmental and Environmentally Related Services) except for services supplied in the exercise of governmental authority;
- (n) “service consumer” means any person that receives or uses a service;
- (o) “service of another Party” means a service which is supplied:
- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies

the service through the operation of a vessel and/or its use in whole or in part; or

- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (p) “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;
- (q) “service supplier” means any person that supplies a service;⁴ and
- (r) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service.

Article 3.4 Government Procurement

Article 3.5 (Market Access) and Article 3.6 (National Treatment) shall not apply to laws, 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.

Article 3.5 Market Access

1. With respect to market access through the modes of supply identified in paragraph 2 of Article 3.2 (Scope), each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.⁵

2. In sectors listed in Annex IV (List of Environmental and Environmentally

⁴ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (*i.e.* the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied.

⁵ 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 2(a) of Article 3.2 (Scope) 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 market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article 3.2 (Scope), it is thereby committed to allow related transfers of capital into its territory.

Related Services) 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 its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁶
- (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 3.6 National Treatment

1. In the sectors listed in Annex IV (List of Environmental and Environmentally Related Services) inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any 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.⁷

⁶ This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

⁷ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any 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 any other Party.

Article 3.7 Additional Commitments

Parties may negotiate commitments with respect to measures affecting trade in environmental and environmentally related services not subject to scheduling under Article 3.5 (Market Access) or Article 3.6 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 3.8 Movement of Natural Persons

1. This Article shall apply to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of an environmental and environmentally related service.

2. This Chapter 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.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.⁸

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

Article 3.9 Transparency

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

Article 3.10 Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in environmental and environmentally related services are administered in a reasonable, objective and impartial manner.
2. 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.
3. Where authorisation is required by a Party for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application considered complete under that Party's domestic laws and regulations has been submitted, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.
4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Joint Commission shall take a decision aiming at incorporating into this Agreement any disciplines developed in the WTO pursuant to paragraph 4 of Article VI of GATS, which states that such disciplines shall 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. In sectors in which a Party has undertaken specific commitments under this Agreement, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:⁹

- (a) does not comply with the criteria outlined in subparagraphs 4(a), 4(b) or 4(c); and
- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

6. In determining whether a Party is in conformity with the obligations of paragraph 5, account shall be taken of international standards of relevant international organisations¹⁰ applied by that Party.

7. In sectors where specific commitments regarding professional services are undertaken with regard to services listed in Annex IV (List of Environmental and Environmentally Related Services), each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

8. The Parties are encouraged to undertake as additional commitments, in accordance with Article 3.7 (Additional Commitments), the disciplines on domestic regulation contained in Section II and III of the WTO Joint Statement Initiative on Domestic Regulation Reference Paper (INF/SDR/2).

Article 3.11 **Payments and Transfers**

1. Except under the circumstances envisaged in Article 1.9 (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 under the *Articles of Agreement of the International Monetary Fund*, including the

⁹ For the purposes of this Agreement, the application of paragraph 5 shall be subject to such reservations as may be recorded, upon agreement between the Parties, in a Party's schedule.

¹⁰ The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties.

use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 1.9 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

Article 3.12 General Exceptions

1. For the purposes of this Chapter, Article XIV of GATS shall apply and is hereby incorporated into, and made part of, this Agreement, *mutatis mutandis*.
2. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

Article 3.13 Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 3.5 (Market Access), Article 3.6 (National Treatment) and Article 3.7 (Additional Commitments) in sectors and subsectors listed in Annex IV (List of Environmental and Environmentally Related Services). With respect to the sectors and subsectors where commitments are undertaken, each schedule of specific commitments shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments referred to in Article 3.7 (Additional Commitments); and
 - (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.
2. Measures inconsistent with both Article 3.5 (Market Access) and Article 3.6 (National Treatment) shall be inscribed in the column relating to Article 3.5 (Market Access). Such inscription shall be considered to provide a condition or qualification to Article 3.6 (National Treatment).
3. The respective schedules of specific commitments of the Parties are set out in Annex V (Schedules of Specific Commitments).

Article 3.14 Modification of Schedules

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's schedule of specific commitments. The consultations shall be held within three months of the request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the schedule of specific commitments prior to such consultations is maintained. Modifications of schedules are subject to the procedures set out in Article 6.2 (Functions of the Joint Commission) and in Article 8.5 (Amendments).

Article 3.15 Review

1. The Joint Commission may, upon reasoned request from a Party or in the context of the general review referred to in Article 6.7 (General Review), undertake a review of this Chapter, including Annex III (Environmental Purposes – Trade in Environmental Services), taking into account in particular on-going work under the auspices of the WTO and other *fora*.
2. The Joint Commission shall, upon reasoned request from at least one Party or in the context of the general review referred to in Article 6.7 (General Review), undertake a review of Annex IV (List of Environmental and Environmentally Related Services) and modify it, where appropriate.
3. The following procedure shall apply to the review referred to in paragraph 2:
 - (a) a Party may, individually or jointly with another Party, propose a modification to Annex IV (List of Environmental and Environmentally Related Services);
 - (b) the Joint Commission shall assess the proposed change in accordance with the definition of environmental and environmentally related services in Article 3.3 (Definitions). It may also take other relevant matters into account, as appropriate;
 - (c) upon completion of its assessment, the Joint Commission may modify Annex IV (List of Environmental and Environmentally Related Services) in accordance with Article 6.2 (Functions of the Joint Commission). Such modification decision shall include a consolidated version of Annex IV (List of Environmental and Environmentally Related Services), as modified; and
 - (d) any new specific commitment or withdrawal of a specific commitment undertaken by a Party in a sector or subsector shall be

reflected in that Party's schedule of specific commitments. Each Party concerned shall submit a draft modified consolidated schedule of specific commitments, reflecting the modifications of the Annex IV (List of Environmental and Environmentally Related Services), to the Joint Commission. Provided that the Joint Commission does not object, such schedule shall be modified in accordance with Article 6.2 (Functions of the Joint Commission).

Article 3.16
Annexes

The following Annexes form an integral part of this Chapter:

- (a) Annex III (Environmental Purposes – Trade in Environmental Services);
- (b) Annex IV (List of Environmental and Environmentally Related Services);
- (c) Annex V (Schedules of Specific Commitments); and
- (d) Annex VI (Financial Services).