

CHAPTER 10

TRADE IN SERVICES AND INVESTMENT

SECTION A

GENERAL PROVISIONS

ARTICLE 10.1

Objectives

1. The Parties, affirming their commitment to create a better climate for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and investment.
2. The Parties reaffirm each Party's right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment, including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, the promotion and protection of cultural diversity and, in the case of New Zealand, the promotion or protection of the rights, interests, duties and responsibilities of Māori.

ARTICLE 10.2

Scope

1. This Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
2. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures that are necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter¹.
3. This Chapter does not apply to:
 - (a) air services or related services in support of air services², other than the following:
 - (i) aircraft repair and maintenance services;

¹ The sole fact of requiring a visa for natural persons of certain countries and not for those of other countries shall not be regarded as nullifying or impairing benefits accruing under this Chapter.

² For greater certainty, the term "air services or related services in support of air services" includes the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; rental of aircraft with crew; and airport operation services.

- (ii) computer reservation system (CRS) services;
 - (iii) ground handling services;
 - (iv) the selling and marketing of air transport services; and
 - (v) the following services provided using a manned aircraft, whose primary purpose is not the transportation of goods or passengers: aerial fire-fighting; flight training; spraying; surveying; mapping; photography; aviation adventure services³; and other airborne agricultural, industrial and inspection services;
- (b) audio-visual services; and
- (c) national maritime cabotage⁴.

³ For greater certainty, the term "aviation adventure services" means services provided using a manned aircraft where users engage in an aerial operation for the purpose of sports or recreation, such as a ride in an ex-military, replica or historic aircraft, hot air balloon rides, or aerobatic rides.

⁴ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, for the purposes of this Chapter the term "national maritime cabotage" covers:

- (i) for the Union, transportation of passengers or goods between a port or point located in a Member State and another port or point located in that same Member State, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, (hereinafter referred to as "UNCLOS"), and traffic originating and terminating in the same port or point located in a Member State;
- (ii) for New Zealand, the carriage by sea of passengers or cargo between a port or point located in New Zealand and another port or point located in New Zealand, and traffic originating and terminating in the same port or point located in New Zealand. For greater certainty, feeder services, as defined in point (d) of Article 10.70(2) (Scope and definitions), and repositioning of empty containers which are not being carried as cargo against payment shall not be considered as national maritime cabotage for the purposes of this Chapter.

ARTICLE 10.3

Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "activity performed in the exercise of governmental authority" means any activity which is performed, including any service that is supplied, neither on a commercial basis nor in competition with one or more economic operators;
- (b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service, it does not include line maintenance;
- (c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) "covered enterprise" means an enterprise in the territory of a Party established in accordance with point (g), directly or indirectly, by an investor of the other Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;

- (e) "cross-border trade in services" means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party; or
 - (ii) in the territory of a Party to the service consumer of the other Party;
- (f) "economic activity" means any activity of an industrial, commercial or professional character or any activity of a craftsperson, including the supply of services, except for an activity performed in the exercise of governmental authority;
- (g) "establishment" means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in a Party, with a view to creating or maintaining lasting economic links;
- (h) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation; administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. The term "ground handling services" does not include: self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra airport transport systems;

(i) "investor of a Party" means a natural person of a Party or a juridical person of a Party, including a Party, that seeks to establish, is establishing or has established an enterprise in accordance with point (g), in the territory of the other Party;

(j) "juridical person of a Party" means:⁵

(i) for the Union:

(A) a juridical person constituted or organised under the law of the Union or of at least one of the Member States and engaged in substantive business operations⁶ in the Union; and

(B) shipping companies established outside the Union, and controlled by natural persons of a Member State, whose vessels are registered in, and fly the flag of, a Member State;

(ii) for New Zealand:

(A) a juridical person constituted or organised under the law of New Zealand and engaged in substantive business operations in New Zealand; and

⁵ For greater certainty, the shipping companies mentioned in this point are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

⁶ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the Union understands that the concept of "effective and continuous link" with the economy of a Member State of the Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

- (B) shipping companies established outside New Zealand, and controlled by natural persons of New Zealand, whose vessels are registered in, and fly the flag of, New Zealand;
- (k) "operation" means the conduct, management, maintenance, use, enjoyment, or sale or other form of disposal of an enterprise;
- (l) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services, including all aspects of marketing such as market research, advertising and distribution, but not including the pricing of air transport services nor the applicable conditions;
- (m) "service" means any service in any sector, except services supplied in the exercise of governmental authority; and
- (n) "service supplier" means any natural or juridical person that seeks to supply or supplies a service.

SECTION B

INVESTMENT LIBERALISATION

ARTICLE 10.4

Scope

1. This Section applies to measures of a Party affecting establishment or operation to perform economic activities by:

- (a) investors of the other Party;
- (b) covered enterprises; and
- (c) for the purposes of Article 10.9 (Performance requirements), any enterprise in the territory of the Party which adopts or maintains the measure.

2. This Section does not apply to any measure of a Party with respect to public procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is covered procurement within the meaning of Article 14.1(4) (Incorporation of certain provisions of the GPA).

3. Articles 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment) and 10.8 (Senior management and boards of directors) do not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.

ARTICLE 10.5

Market access

A Party shall not adopt or maintain, with regard to market access through establishment or operation by an investor of the other Party or by a covered enterprise, either on the basis of its entire territory or on the basis of a territorial subdivision, measures that:

- (a) impose limitations on⁷:
 - (i) the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;
 - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

⁷ Points (a)(i), (a)(ii) and (a)(iii) do not cover measures taken in order to limit the production of an agricultural or fishery product.

- (iii) the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
 - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
 - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity, in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which an investor of the other Party may perform an economic activity.

ARTICLE 10.6

National treatment

Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that which it accords, in like situations, to its own investors and to their enterprises, with respect to establishment and operation in its territory.

ARTICLE 10.7

Most-favoured-nation treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that which it accords, in like situations, to investors of a third country and to their enterprises, with respect to establishment and operation in its territory.
2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or to covered enterprises the benefit of any treatment resulting from existing or future agreement or arrangement providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of the Annex on Financial Services to GATS.
3. For greater certainty, the treatment referred to in paragraph 1 does not include dispute settlement procedures provided for in other international agreements.
4. For greater certainty, substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute the treatment referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article. The mere transposition of the substantive provisions in other international agreements concluded by a Party with a third country into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as the treatment referred to in paragraph 1.

ARTICLE 10.8

Senior management and boards of directors

A Party shall not require a covered enterprise to appoint natural persons of any particular nationality to senior management positions or as members of the board of directors.

ARTICLE 10.9

Performance requirements

1. A Party shall not impose or enforce any requirement, or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory:
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entities in its territory;

- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the enterprise;
- (e) to restrict sales of goods or services in its territory that the enterprise produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange inflows;
- (f) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;
- (g) to supply exclusively from the territory of that Party a good produced or a service supplied by the enterprise to a specific regional market or to the world market;
- (h) to locate the headquarters for a specific region or the world market in its territory;
- (i) to employ a given number or percentage of natural persons of that Party;
- (j) to achieve a given level or value of research and development in its territory;
- (k) to restrict the exportation or sale for export; or

(1) with regard to any licence contract⁸ in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with such licence contract by an exercise of non-judicial governmental authority of a Party⁹, to adopt:

(i) a given rate or amount of royalty under a licence contract; or

(ii) a given duration of the term of a licence contract.

2. A Party shall not condition the receipt, or continued receipt of an advantage¹⁰, in connection with the establishment or operation of an enterprise in its territory, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entities in its territory;

⁸ The term "licence contract" means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

⁹ For greater certainty, point (1) does not apply when the licence contract is concluded between the enterprise and the Party.

¹⁰ For greater certainty, a conditioning of the receipt or continued receipt of an advantage does not constitute a requirement or a commitment or undertaking for the purposes of paragraph 1.

- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the enterprise;
- (d) to restrict sales of goods or services in its territory that the enterprise produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange inflows; or
- (e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Points (f) and (l) of paragraph 1 do not apply when:

- (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, pursuant to the Party's competition law, to prevent or remedy a distortion of competition; or
- (b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31*bis* of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or other proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement.

5. Points (a), (b) and (c) of paragraph 1 and points (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.
6. Points (a) and (b) of paragraph 2 do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
7. Point (l) of paragraph 1 does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.
8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.
9. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.¹¹
10. This Article does not apply to the establishment or operation of a financial service supplier.
11. With regard to performance requirements relating to financial service suppliers, the Parties shall negotiate disciplines on performance requirements with respect to the establishment or operation of a financial service supplier.

¹¹ For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis if that Party adopts or maintains restrictions or prohibitions on the provision of that service which are consistent with its reservations in Annex 10-A (Existing measures) or Annex 10-B (Future measures).

12. Within 180 days of the date of the successful negotiation by the Parties of the performance requirement disciplines pursuant to paragraph 11 of this Article, the Trade Committee shall amend paragraph 1 of this Article by means of a decision to integrate those performance requirement disciplines into this Article and may amend, as appropriate, the non-conforming measures of each Party in Annex 10-A (Existing measures) and Annex 10-B (Future measures). This Article shall then apply to the establishment and operation of a financial service supplier.

ARTICLE 10.10

Non-conforming measures

1. Articles 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.8 (Senior management and boards of directors) and 10.9 (Performance requirements), do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

(A) the Union, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(B) the central government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

- (C) a regional government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures); or
 - (D) a local government, other than that referred to in point (C); and
 - (ii) for New Zealand:
 - (A) the central government, as specified in the Schedule of New Zealand in Annex 10-A (Existing measures); or
 - (B) a local government;
 - (b) the continuation or prompt renewal of any existing non-conforming measure referred to in point (a); or
 - (c) a modification of, or amendment to, any existing non-conforming measure referred to in points (a) and (b), to the extent that it does not decrease the conformity of such measure, as it existed immediately before the modification or amendment, with Article 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.8 (Senior management and boards of directors) or 10.9 (Performance requirements).
2. Articles 10.5 (Market access), 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.8 (Senior management and boards of directors) and 10.9 (Performance requirements) shall not apply to a measure of a Party with respect to sectors, sub-sectors or activities specified in its Schedule in Annex 10-B (Future measures).

3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 10-B (Future measures), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.6 (National treatment) and 10.7 (Most-favoured-nation treatment) do not apply to any measure that constitutes an exception to, or a derogation from, Article 3 or Article 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of that Agreement.

ARTICLE 10.11

Information requirements

Notwithstanding Articles 10.6 (National treatment) and 10.7 (Most-favoured-nation treatment), a Party may require an investor of the other Party or its covered enterprise to provide information concerning that covered enterprise solely for information or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered enterprise. Nothing in this Article shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable application of its law in good faith.

ARTICLE 10.12

Denial of benefits

A Party may deny the benefits of this Section to an investor of the other Party or to a covered enterprise if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that investor or covered enterprise; or
- (b) would be violated or circumvented if the benefits of this Section were accorded to that investor or covered enterprise, including where the measures prohibit transactions with a natural or juridical person who owns or controls the investor or the covered enterprise.

SECTION C

CROSS-BORDER TRADE IN SERVICES

ARTICLE 10.13

Scope

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

2. This Section does not apply to:
- (a) any measure of a Party with respect to public procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is covered procurement within the meaning of Article 14.1(4) (Incorporation of certain provisions of the GPA); or
 - (b) subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.

ARTICLE 10.14

Market access

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

- (a) imposes limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or

- (iii) the total number of service operations or 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; or
- (b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 10.15

Local presence

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

ARTICLE 10.16

National treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that which it accords, in like situations, to its own services and services suppliers.¹²

¹² Nothing in this Article shall be construed as requiring either Party to compensate for 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 the other Party either formally identical treatment or formally different treatment to that which it accords to its own 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 services or service suppliers of the other Party.

ARTICLE 10.17

Most-favoured-nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that which it accords, in like situations, to services and service suppliers of a third country.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from existing or future agreement or arrangement providing for the recognition of qualifications or licences or of prudential measures as referred to in Article VII of GATS or paragraph 3 of the Annex on Financial Services to GATS.

3. For greater certainty, substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute the treatment referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

ARTICLE 10.18

Non-conforming measures

1. Articles 10.14 (Market access), 10.15 (Local presence), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment) do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

(A) the Union, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(B) the central government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(C) a regional government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures); or

(D) a local government, other than that referred to in point (C); and

(ii) for New Zealand:

(A) the central government, as specified in the Schedule of New Zealand in Annex 10-A (Existing measures); or

(B) a local government;

- (b) the continuation or prompt renewal of any existing non-conforming measure referred to in point (a); or
- (c) a modification of, or amendment to, any existing non-conforming measure referred to in points (a) and (b), to the extent that it does not decrease the conformity of such measure, as it existed immediately before the modification or amendment, with Article 10.14 (Market access), 10.15 (Local presence), 10.16 (National treatment) or 10.17 (Most-favoured-nation treatment).

2. Articles 10.14 (Market access), 10.15 (Local presence), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment) shall not apply to a measure of a Party with respect to sectors, sub-sectors, or activities specified in its Schedule in Annex 10-B (Future measures).

ARTICLE 10.19

Denial of benefits

A Party may deny the benefits of this Section to a service supplier of the other Party if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that service supplier; or

- (b) would be violated or circumvented if the benefits of this Section were accorded to that service supplier, including where the measures prohibit transactions with a natural or juridical person who owns or controls that service supplier.

SECTION D

ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 10.20

Scope and definitions

1. Subject to paragraphs 1 and 2 of Article 10.2 (Scope) of Section A, this Section applies to measures of a Party affecting the entry and temporary stay in its territory of natural persons of the other Party for business purposes, who fall within the scope of the following categories: short-term business visitors, business visitors for establishment purposes, contractual service suppliers, independent professionals and intra-corporate transferees.
2. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with, or otherwise affect, the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in such dispute or negotiation.

3. For the purposes of this Section, the following definitions apply:
- (a) "business visitor for establishment purposes" means a natural person, working in a senior position within a juridical person of a Party, who:
 - (i) is responsible for setting up or winding down an enterprise of such juridical person in the territory of the other Party;
 - (ii) does not offer or provide services or engage in any economic activity other than that which is required for the purpose of establishing that enterprise; and
 - (iii) does not receive remuneration from a source located within the other Party;
 - (b) "contractual service supplier" means a natural person employed by a juridical person of a Party, other than through an agency for placement and supply services of personnel, which is not established in the territory of the other Party and has concluded a *bona fide* service contract¹³ to supply services to a final consumer in the other Party requiring the temporary presence of its employee who:
 - (i) has offered those services as an employee of the juridical person for a period of not less than one year immediately preceding the date of that employee's application for entry and temporary stay;

¹³ The service contract shall comply with the requirements of the law of the Party where that service contract is executed.

- (ii) possesses, on the date of that employee's application for entry and temporary stay, the required level of professional experience¹⁴ in the sector of activity that is the object of the contract, a degree or a qualification demonstrating knowledge of an equivalent level¹⁵ and the professional qualification legally required to exercise that activity in the other Party; and
 - (iii) does not receive remuneration from a source located within the other Party;
- (c) "independent professional" means a natural person engaged in the supply of a service and established as self-employed in the territory of a Party who:
- (i) has not established in the territory of the other Party;
 - (ii) has concluded a *bona fide* service contract¹⁶, other than through an agency for placement and supply services of personnel, for a period not exceeding 12 months to supply services to a final consumer in the other Party, requiring that person's presence on a temporary basis; and

¹⁴ The professional experience required by each Party is set out in Annex 10-E (Contractual service suppliers and independent professionals).

¹⁵ The level of the degree or a qualification required by each Party is set out in Annex 10-E (Contractual service suppliers and independent professionals). Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree or a qualification required in its territory.

¹⁶ The service contract shall comply with the requirements of the law of the Party where that service contract is executed.

- (iii) possesses, on the date of that person's application for entry and temporary stay, at least six years professional experience in the sector of activity that is the object of the contract, a university degree or a qualification demonstrating knowledge of an equivalent level¹⁷ and the professional qualification legally required to exercise that activity in the other Party;
- (d) "intra-corporate transferee" means a natural person who:
 - (i) has been employed by a juridical person of a Party, or has been a partner in such person, for a period of not less than one year immediately preceding the date of that person's application for the entry and temporary stay in the other Party¹⁸;
 - (ii) at the time of that person's application for the entry and temporary stay resides outside the territory of the other Party;
 - (iii) is temporarily transferred to an enterprise of the juridical person in the territory of the other Party that is a member of the group of the originating juridical person, including its representative office, subsidiary, branch or head company; and
 - (iv) belongs to one of the following categories:
 - (A) manager or executive; or
 - (B) specialist;
- (e) "manager" or "executive" means a natural person working in a senior position, who primarily directs the management of the enterprise or a substantial part of it in the other

¹⁷ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree or a qualification required in its territory.

¹⁸ For greater certainty, a manager or specialist may be required to demonstrate that they possess the professional qualifications and experience needed in the juridical person to which they are transferred.

Party, receiving general supervision or direction principally from higher level executives or the board of directors or from stockholders of the business or their equivalent, and whose responsibilities include:

- (i) directing the enterprise or a department or subdivision thereof;
 - (ii) supervising and controlling the work of other supervisory, professional or managerial employees. This does not include a first-line supervisor unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment; and
 - (iii) having the authority to recommend hiring, dismissing or other personnel-related actions; and
- (f) "specialist" means a natural person possessing specialised knowledge at an advanced level of technical expertise, essential to the enterprise's areas of activity, techniques or management, which is to be assessed taking into account not only knowledge that is specific to the enterprise, but also whether the person has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession.

ARTICLE 10.21

Business visitors for establishment purposes and intra-corporate transferees

1. Subject to the relevant conditions and qualifications specified in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors):
 - (a) a Party shall allow:
 - (i) the entry and temporary stay of business visitors for establishment purposes and intra-corporate transferees; and
 - (ii) the employment in its territory of intra-corporate transferees of the other Party;
 - (b) a Party shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes, or that an investor may employ as intra-corporate transferees either on the basis of a territorial subdivision or on the basis of its entire territory; and
 - (c) each Party shall accord to business visitors for establishment purposes and intra-corporate transferees of the other Party, with regard to measures affecting their business activities during their temporary stay in its territory, treatment no less favourable than that which it accords, in like situations, to its own natural persons.

2. The permissible length of stay for managers or executives and specialists shall be for a period of up to three years.

3. The permissible length of stay for business visitors for establishment purposes shall be up to 90 days in any six-month period for the Union and up to 90 days in any 12-month period for New Zealand.

ARTICLE 10.22

Short-term business visitors

1. Subject to the relevant conditions and qualifications specified in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), a Party shall allow the entry and temporary stay of short-term business visitors of the other Party for the purpose of carrying out the activities listed in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), subject to the following conditions:

- (a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;

- (b) the short-term business visitors do not receive remuneration from an entity in the territory of the Party where they are staying temporarily; and
- (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has not established in the territory of the Party where they are staying temporarily, and a consumer in such territory, except as provided for in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors).

2. Unless otherwise specified in Annex 10-C (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), a Party shall allow entry of short-term business visitors without the requirement of an economic needs test or other prior approval procedures of similar intent.

3. The permissible length of stay shall be for a period of up to 90 days in any 12-month period.

ARTICLE 10.23

Contractual service suppliers and independent professionals

1. In the sectors, sub-sectors and activities listed in Annex 10-E (Contractual service suppliers and independent professionals), and subject to the relevant conditions and qualifications specified therein, each Party shall:

- (a) allow the entry and temporary stay of contractual service suppliers and independent professionals in its territory;

- (b) not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party allowed temporary entry, in the form of numerical quotas or an economic needs test, either on the basis of a territorial subdivision or on the basis of its entire territory; and
- (c) accord to contractual service suppliers and independent professionals of the other Party, with regard to measures affecting the supply of services in its territory, treatment no less favourable than that which it accords, in like situations, to its own service suppliers.

2. For greater certainty, access accorded under this Article relates only to the service that is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.

3. The permissible length of stay shall be for a cumulative period of 12 months, or for the duration of the contract, whichever is less.

ARTICLE 10.24

Non-conforming measures

1. Points (b) and (c) of Article 10.21(1) (Business visitors for establishment purposes and intra-corporate transferees) and points (b) and (c) of 10.23(1) (Contractual service suppliers and independent professionals) shall not apply to:

(a) any existing non-conforming measure that affects the temporary stay of natural persons for business purposes and that is maintained at the level of:

(i) for the Union:

(A) the Union, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(B) the central government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures);

(C) a regional government of a Member State, as specified in the Schedule of the Union in Annex 10-A (Existing measures); or

(D) a local government, other than that referred to in point (C); and

(ii) for New Zealand:

(A) the central government, as specified in the Schedule of New Zealand in Annex 10-A (Existing measures); or

(B) a local government;

(b) the continuation or prompt renewal of any existing non-conforming measure referred to in point (a); or

(c) a modification of, or amendment to, any existing non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of such measure, as it existed immediately before the modification or amendment, with points (b) and (c) of Article 10.21(1) (Business visitors for establishment purposes and intra-corporate transferees) or points (b) and (c) of Article 10.23(1) (Contractual service suppliers and independent professionals).

2. Points (b) and (c) of Article 10.21(1) (Business visitors for establishment purposes and intra-corporate transferees) or points (b) and (c) of Article 10.23(1) (Contractual service suppliers and independent professionals) shall not apply to any measure that a Party adopts or maintains that affects the temporary stay of natural persons for business purposes with respect to sectors, sub-sectors or activities as set out by that Party in its Schedule in Annex 10-B (Future measures).

ARTICLE 10.25

Transparency

1. Each Party shall make publicly available, if possible by publishing on a website, information on its measures affecting the entry and temporary stay in its territory of natural persons of the other Party as referred to in Article 10.20(1) (Scope and definitions).
2. The information referred to in paragraph 1 shall include the following information relevant to the entry and temporary stay of natural persons, where it exists:
 - (a) entry conditions;
 - (b) an indicative list of documentation that may be required in order to verify fulfilment of the entry conditions;
 - (c) indicative processing time;
 - (d) applicable fees;
 - (e) appeal procedures; and
 - (f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 1

DOMESTIC REGULATION

ARTICLE 10.26

Scope and definitions

1. This Sub-Section applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards¹⁹ that affect:
 - (a) cross-border trade in services;
 - (b) establishment or operation; or
 - (c) the supply of services through the presence of a natural person of a Party in the territory of the other Party of categories of natural persons as defined in Article 10.20(3) (Scope and definitions);

¹⁹ As far as measures relating to technical standards are concerned, this Sub-Section only applies to measures that affect cross-border trade in services. The term “technical standards” does not include regulatory technical standards or implementing technical standards for financial services.

2. This Sub-Section does not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards pursuant to a measure that does not conform with Article 10.5 (Market access), 10.6 (National treatment), 10.14 (Market access) or 10.16 (National treatment), and is referred to in Article 10.10(1) or (2) (Non-conforming measures), or in Article 10.18(1) or (2) (Non-conforming measures).

3. For the purposes of this Sub-Section, the following definitions apply:

(a) "authorisation" means the permission to carry out any of the activities referred to in points (a), (b) and (c) of paragraph 1 resulting from a procedure which a natural or juridical person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards; and

(b) "competent authority" means a central, regional or local government or authority or non-governmental body which exercises powers delegated by central, regional or local governments or authorities, and which is entitled to take a decision concerning the authorisation.

ARTICLE 10.27

Submission of applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

ARTICLE 10.28

Application timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation is set, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

ARTICLE 10.29

Electronic applications and acceptance of copies

If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) endeavour to accept applications in electronic format; and
- (b) accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the process of authorisation.

ARTICLE 10.30

Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:
 - (a) to the extent practicable, provide an indicative timeframe for the processing of an application;
 - (b) at the request of the applicant, provide without undue delay information concerning the status of the application;
 - (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's laws and regulations;
 - (d) if they consider an application complete for processing²⁰ under the Party's laws and regulations, within a reasonable period of time after the submission of the application, ensure that:
 - (i) the processing of the application is completed; and

²⁰ Competent authorities may require that all information is submitted in a specified format to consider it as complete for processing.

- (ii) the applicant is informed of the decision concerning the application,²¹ to the extent possible in writing²²;
- (e) if they consider an application incomplete for processing under the Party's laws and regulations, within a reasonable period of time of the date on which the relevant competent authority determined that the application was incomplete, and to the extent practicable:
 - (i) inform the applicant that the application is incomplete;
 - (ii) at the request of the applicant identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and
 - (iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application²³;

if the steps in points (i) to (iii) are not practicable, and the application is rejected due to incompleteness, ensure that they inform the applicant within a reasonable period of time; and

²¹ Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application.

²² For greater certainty, "in writing" should be understood as including in electronic form.

²³ Such opportunity does not require a competent authority to provide extensions of deadlines.

(f) if they reject an application, either on their own initiative or on request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.

2. Each Party shall ensure that its competent authorities grant an authorisation as soon as it is established, in the light of an appropriate examination, that an applicant meets the conditions for obtaining it.

3. Each Party shall ensure that its competent authorities ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

ARTICLE 10.31

Fees

1. For all economic activities covered by this Sub-Section other than financial services, each Party shall ensure that the authorisation fees²⁴ charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity.

²⁴ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of a universal service.

2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

ARTICLE 10.32

Assessment of qualifications

If a Party requires an examination for authorisation, it shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall consider accepting requests in electronic format to take such examinations and the use of electronic means in other aspects of the examination processes.

ARTICLE 10.33

Objectivity, impartiality and independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that its competent authorities process applications, reach and administer decisions objectively and impartially and in a manner independent from any person carrying out the economic activity for which authorisation is required.

ARTICLE 10.34

Publication and information available

If a Party requires authorisation, the Party shall promptly publish²⁵ the information necessary for service suppliers, including those seeking to supply a service, and for persons carrying out or seeking to carry out the economic activity for which the licence or authorisation is required, to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such licence or authorisation. Such information shall include, where it exists:

- (a) the requirements and procedures;
- (b) contact information of relevant competent authorities;
- (c) authorisation fees;
- (d) applicable technical standards;
- (e) procedures for appeal or review of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences or qualifications;

²⁵ For the purposes of this Sub-Section, "publish" means to include in an official publication, such as an official journal, or on an official website. Parties are encouraged to consolidate electronic publications in a single portal.

- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for the processing of an application.

ARTICLE 10.35

Technical standards

A Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage all persons or entities, including relevant international organisations, designated to develop technical standards, to do so through open and transparent processes.

ARTICLE 10.36

Development of measures

If a Party adopts or maintains measures relating to authorisation, it shall ensure that:

- (a) such measures are based on clear, objective and transparent criteria²⁶;

²⁶ Such criteria may include competence and the ability to supply a service or carry out any other economic activity, including to do so in a manner consistent with a Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

- (b) the procedures are impartial, easily accessible to all applicants and are adequate for applicants to demonstrate whether they meet the requirements, where requirements exist; and
- (c) the procedures do not in themselves unjustifiably prevent fulfilment of requirements.

ARTICLE 10.37

Limited numbers of licences

If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall, in accordance with its laws and regulations, apply a selection procedure to potential candidates that provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate policy objectives, including considerations of health, safety, protection of the environment and preservation of cultural heritage.

ARTICLE 10.38

Review procedures for administrative decisions

A Party shall maintain judicial, arbitral or administrative tribunals or procedures that provide, at the request of an affected investor or service supplier of the other Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions that affect establishment or operation, cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of the other Party. If such procedures are not independent of the authority entrusted with the administrative decision concerned, a Party shall ensure that the procedures provide for an objective and impartial review in fact.

SUB-SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 10.39

Mutual recognition of professional qualifications

1. For the purposes of this Article, the term "professional qualifications" means formal qualifications, professional experience, professional registration or other attestation of competence.

2. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary professional qualifications specified in the territory where the service is supplied, for the sector of activity concerned.

3. Where appropriate, the Parties shall encourage the establishment of dialogue between their relevant experts, regulators and industry bodies to share and facilitate understanding of their respective professional qualifications, registration requirements and processes, and cooperate with a view to achieving mutual recognition of professional qualifications.

4. The Parties shall encourage the relevant professional bodies or authorities in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, established pursuant to Article 24.4 (Specialised committees). That joint recommendation shall be supported by evidence of:

- (a) the economic value of an envisaged instrument on mutual recognition of professional qualifications (hereinafter referred to as "mutual recognition instrument"); and
- (b) the compatibility of the respective regimes, being the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of professionals are compatible.

5. On receipt of a joint recommendation referred to in paragraph 4, the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, shall review the consistency of that joint recommendation with this Chapter within a reasonable period of time. Following such review, the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, may develop a mutual recognition instrument²⁷ and the Trade Committee may adopt it by means of decision as an annex to this Agreement.

SUB-SECTION 3

DELIVERY SERVICES

ARTICLE 10.40

Scope and definitions

1. This Sub-Section sets out principles of the regulatory framework for the supply of delivery services and applies to measures of a Party affecting trade in delivery services.

²⁷ For greater certainty, such mutual recognition instruments shall not lead to the automatic recognition of qualifications but shall set, in the mutual interest of both Parties, the conditions for the competent authorities granting recognition.

2. For the purposes of this Sub-Section, the following definitions apply:
- (a) "delivery services" means postal services, courier services, express delivery services or express mail services, which include the collection, sorting, transport and delivery of postal items;
 - (b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit, or confirmation of receipt;
 - (c) "express mail services" means international express delivery services supplied through the EMS Cooperative, the voluntary association of designated postal operators under the Universal Postal Union;
 - (d) "licence" means an authorisation that a regulatory authority of a Party may require of an individual supplier in order for that supplier to offer postal and courier services;
 - (e) "postal item" means an item up to 31,5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;
 - (f) "postal monopoly" means the exclusive right to supply specified delivery services within a Party's territory or a subdivision thereof pursuant to a legislative measure; and

- (g) "universal service" means the permanent supply of a delivery service of specified quality at all points in the territory of a Party or a subdivision of a Party at an affordable price for all users.

ARTICLE 10.41

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on the scope and implementation of such obligation. Each Party shall administer any universal service obligation in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to that universal service obligation.

2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to those express mail services over other international express delivery services.

ARTICLE 10.42

Universal service funding

A Party shall not impose fees or other charges on the supply of a delivery service that is not a universal delivery service for the purpose of funding the supply of a universal service.²⁸

²⁸ This Article does not apply to generally applicable taxation measures or administrative fees.

ARTICLE 10.43

Prevention of market distortive practices

Each Party shall ensure that suppliers of delivery services subject to a universal service obligation or postal monopoly do not engage in market distortive practices such as:

- (a) using revenues derived from the supply of the service subject to a universal service obligation or from the monopoly to cross-subsidise the supply of an express delivery service or any delivery service that is not subject to a universal service obligation; or
- (b) unjustifiably differentiating among customers with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

ARTICLE 10.44

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

- (a) all the licensing requirements 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. Each Party shall ensure that the procedures, obligations and requirements of a licence are transparent, non-discriminatory and based on objective criteria.

3. Each Party shall ensure, if a licence application is rejected by a competent authority, that the competent authority informs the applicant of the reasons for the rejection in writing. Each Party shall establish an appeal procedure through an independent body to be available to applicants whose application for a licence has been rejected. Such body may be a court.

ARTICLE 10.45

Independence of the regulatory body

1. Each Party shall establish or maintain a regulatory body that shall be legally distinct and functionally independent from any supplier of delivery services. If a Party owns or controls a supplier of delivery services, it shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that the regulatory body performs its tasks in a transparent and timely manner and has adequate financial and human resources to carry out the task assigned to it, and that the regulatory body's decisions are impartial with respect to all market participants.

SUB-SECTION 4

TELECOMMUNICATIONS SERVICES

ARTICLE 10.46

Scope

1. This Sub-Section sets out principles of the regulatory framework affecting telecommunications networks and services and applies to measures of a Party affecting trade in telecommunications services.
2. This Sub-Section does not apply to measures affecting:
 - (a) broadcasting services as defined in the laws and regulations of each Party; and
 - (b) services providing, or exercising editorial control over, content transmitted using telecommunications networks and services.
3. Notwithstanding point (a) of paragraph 2, a supplier of broadcasting services shall be considered as a supplier of public telecommunications services, and the networks of that supplier of broadcasting services shall be considered as public telecommunications networks when and to the extent that those public telecommunications networks are also used for providing public telecommunications services.

4. Nothing in this Sub-Section shall be construed as requiring a Party:
- (a) to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services other than as provided for in this Agreement; or
 - (b) to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

ARTICLE 10.47

Definitions

For the purposes of this Sub-Section, the following definitions apply:

- (a) "associated facilities" means services, physical infrastructure and other facilities associated with a telecommunications network or telecommunications service that enable or support the supply of services via that network or that service or have the potential to do so;
- (b) "essential facilities" means facilities of a public telecommunications network or telecommunications 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;
- (c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or telecommunications services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;
- (d) "leased circuit" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points;
- (e) "major supplier" means a supplier of telecommunications networks or telecommunications services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or telecommunications services as a result of control over essential facilities or the use of its position in such market;
- (f) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of such facility or equipment;
- (g) "number portability" means the ability of subscribers who so request to retain the same telephone numbers, at the same location in the case of a fixed line, without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;

- (h) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;
- (i) "public telecommunications service" means any telecommunications service that is offered to the public generally;
- (j) "subscriber" means any natural or juridical person that is a party to a contract with a supplier of public telecommunications services for the supply of public telecommunications services;
- (k) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (l) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements that are not active, which permit the transmission and reception of signals by wire, radio, optical or other electromagnetic means;
- (m) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and telecommunications services covered by this Sub-Section;
- (n) "telecommunications service" means a service that consists wholly or mainly in the transmission and reception of signals, including broadcasting signals, over telecommunications networks, including those used for broadcasting, but not a service providing or exercising editorial control over content transmitted using telecommunications networks and telecommunications services;

- (o) "universal service" means the minimum set of services of specified quality that must be made available to all users, or to a set of users, in the territory of a Party, or in a subdivision of a Party, regardless of their geographical location and at an affordable price; and
- (p) "user" means any person using a public telecommunications service.

ARTICLE 10.48

Approaches to regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective and sustainable competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that a Party may determine how to implement its obligations under this Sub-Section.
2. In that respect, the Parties recognise that each Party may:
 - (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;
 - (b) rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities; or

- (c) rely on market structure rules that restrict the activities of some suppliers of telecommunications services that own network facilities, for example by requiring provision of wholesale services on a non-discriminatory basis or prohibiting participation in a retail market, with a view to ensuring market behaviour equivalent to that of participants in a competitive market.

3. For greater certainty, a Party that refrains from engaging in regulation in accordance with point (b) of paragraph 2 of this Article remains subject to the obligations under this Sub-Section. Nothing in this Article shall prevent a Party from regulating telecommunications services.

ARTICLE 10.49

Telecommunications regulatory authority

1. Each Party shall establish or maintain a telecommunications regulatory authority that:
 - (a) is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment;
 - (b) uses procedures and issues decisions that are impartial with respect to all market participants;

- (c) acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it by law to enforce the obligations set out in Articles 10.51 (Interconnection), 10.52 (Access and use), 10.53 (Resolution of telecommunications disputes), 10.55 (Interconnection with major suppliers) and 10.56 (Access to major suppliers' essential facilities);
- (d) is sufficiently empowered to carry out the tasks referred to in point (c);
- (e) has the power to ensure that suppliers of telecommunications networks or telecommunications services provide it, promptly upon request, with all the information²⁹, including financial information, necessary to carry out the tasks referred to in point (c); and
- (f) exercises its powers transparently and in a timely manner.

2. Each Party shall ensure that the tasks to be undertaken by its telecommunications regulatory authority are made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. A Party that retains ownership or control of suppliers of telecommunications networks or telecommunications services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

²⁹ Each Party shall ensure that its telecommunications regulatory authority treats information requested in accordance with the requirements of confidentiality.

4. Each Party shall ensure that a user or supplier of telecommunications networks or telecommunications services affected by a decision of its telecommunications regulatory authority has a right of appeal before an appeal body that is independent of both the regulatory authority and other affected parties. Pending the outcome of the appeal, the decision shall stand, unless interim measures are granted in accordance with the law of the Party concerned.

ARTICLE 10.50

Authorisation to provide telecommunications networks or telecommunications services

1. If a Party requires authorisation for the provision of telecommunications networks or telecommunications services, it shall make publicly available the types of telecommunications services requiring authorisation, together with all authorisation criteria, applicable procedures, and terms and conditions generally associated with the authorisation.

2. Each Party shall endeavour to authorise the provision of telecommunications networks or telecommunications services without a formal procedure and permit the supplier to start providing its telecommunications networks or telecommunications services without having to wait for a decision by its telecommunications regulatory authority. If a Party requires a formal authorisation decision, it shall state a reasonable period of time normally required to obtain such a decision and communicate this in a transparent manner. The Party shall endeavour to ensure that the decision is taken within the stated period of time.

3. Each Party shall ensure that any authorisation criteria or applicable procedure, and any obligation or condition imposed on or associated with an authorisation, is objective, transparent, non-discriminatory, related to the service provided and not more burdensome than necessary for the kind of service provided.

4. Each Party shall ensure that an applicant receives in writing the reasons for the denial or revocation of an authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall have a right of appeal before an appeal body.

5. Each Party shall ensure that administrative fees imposed on suppliers are objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Sub-Section.³⁰

ARTICLE 10.51

Interconnection

1. The Parties recognise that interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications networks or public telecommunications services concerned.

³⁰ Administrative fees do not include payments for rights to use scarce resources and mandated contributions to the provision of a universal service.

2. To this end each Party shall ensure that a supplier of public telecommunications networks or public telecommunications services in its territory has the right and, when requested by another supplier of public telecommunications networks or public telecommunications services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or public telecommunications services.

ARTICLE 10.52

Access and use

1. Each Party shall ensure that any covered enterprise or service supplier of the other Party is accorded access to and use of public telecommunications networks or public telecommunications services on reasonable and non-discriminatory³¹ terms and conditions. This obligation shall be carried out, *inter alia*, in line with paragraphs 2 to 5 of this Article.

2. Each Party shall ensure that covered enterprises or service suppliers of the other Party have access to and use of any public telecommunications network or public telecommunications service offered within or across its border, including private leased circuits, and to that end shall ensure, subject to paragraph 5, that such enterprises and suppliers are permitted:

(a) to purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications network and that is necessary to conduct their operations;

³¹ For the purposes of this Article, the term "non-discriminatory" means national treatment and most-favoured-nation treatment as referred to in Articles 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment), as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or public telecommunications services in like situations.

- (b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another covered enterprise or service supplier; and
- (c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of the public telecommunications services.

3. Each Party shall ensure that covered enterprises or service suppliers of the other Party may use public telecommunications networks and public telecommunications services for the movement of information within and across borders, including for their intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner that would constitute either a disguised restriction on trade in services or on the pursuit of any other economic activity covered by this Chapter or a means of arbitrary or unjustifiable discrimination.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or public telecommunications services other than as necessary:

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or public telecommunications services, in particular their ability to make their public telecommunications services available; or
- (b) to protect the technical integrity of public telecommunications networks or public telecommunications services.

ARTICLE 10.53

Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or telecommunications services in connection with rights and obligations that arise from this Sub-Section, and at the request of either party involved in the dispute, its telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.
2. Each Party shall ensure that a decision by its telecommunications regulatory authority is made available to the public, having regard to the requirements of business confidentiality, and that the parties concerned are given a full statement of the reasons on which the decision is based and have the right of appeal as referred to in Article 10.49(4) (Telecommunications regulatory authority).
3. Each Party shall ensure that the procedure specified in paragraphs 1 and 2 does not preclude either party concerned from bringing an action before a judicial authority, in accordance with the laws and regulations of the Party.

ARTICLE 10.54

Competitive safeguards on major suppliers

Each Party shall adopt or maintain appropriate measures that prevent suppliers of telecommunications networks or telecommunications services who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. The anti-competitive practices may include:

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

ARTICLE 10.55

Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or public telecommunications services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms and conditions, including as regards rates, and technical standards and specifications, including quality and maintenance, and of a quality no less favourable than that provided for their own like services of such major supplier, or for like services of its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms and conditions, including as regards rates, and technical standards and specifications, including quality and maintenance, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier does not need to pay for network elements 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.

2. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

3. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or its reference interconnection offers as appropriate.

ARTICLE 10.56

Access to major suppliers' essential facilities

Each Party shall ensure that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or telecommunications services on reasonable and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority.

ARTICLE 10.57

Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio frequency spectrum, numbers and rights of way, is carried out using procedures that are objective, timely, transparent, non-discriminatory and that do not create a disincentive for the application for the rights of use of scarce resources.

2. Each Party shall endeavour to take into account the public interest, including the promotion of competition, and to rely on market-based approaches, including mechanisms such as auctions, when allocating and granting rights of use of radio frequency spectrum for public telecommunication services.

3. Each Party shall ensure that the current use of allocated frequency bands is made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.

4. Measures of a Party allocating and assigning spectrum and managing frequency are not *per se* inconsistent with Articles 10.5 (Market access) and 10.14 (Market access). Each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

ARTICLE 10.58

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Each Party shall administer the universal service obligations in a transparent, objective and non-discriminatory way which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the Party.

3. If a Party designates a universal service supplier, it shall do so in a manner that is efficient, transparent, non-discriminatory and open to all suppliers of public telecommunication networks or public telecommunication services.

4. If a Party decides to compensate a universal service supplier, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

ARTICLE 10.59

Number portability

Each Party shall ensure that a supplier of public telecommunications services provides number portability on reasonable terms and conditions.

ARTICLE 10.60

Confidentiality of information

1. Each Party shall ensure that a supplier that acquires information from another supplier in the process of negotiating an arrangement pursuant to Article 10.51 (Interconnection), 10.52 (Access and use), 10.55 (Interconnection with major suppliers) or 10.56 (Access to major suppliers' essential facilities) uses such information solely for the purpose for which it was supplied and respects at all times the confidentiality of information transmitted or stored.³²
2. Each Party shall adopt or maintain measures to protect the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, in a manner that is non-discriminatory and that does not unduly restrict the supply of telecommunication services.

ARTICLE 10.61

Telecommunications connectivity

The Parties recognise the importance of the availability and take-up of very high capacity networks and of high quality telecommunications services, including in rural and remote areas, as a means of enabling persons and businesses to access the benefits of trade.

³² For greater certainty, a Party may meet this obligation by enabling the enforcement of non-disclosure agreements between suppliers.

SUB-SECTION 5

FINANCIAL SERVICES

ARTICLE 10.62

Scope

1. This Sub-Section applies to measures of a Party affecting the supply of financial services. This Sub-Section does not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 10.10 (Non-conforming measures) or 10.18 (Non-conforming measures).

2. For the purposes of this Sub-Section, activity performed in the exercise of governmental authority defined in point (a) of Article 10.3 (Definitions) means the following:
 - (a) an activity conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

 - (b) an activity forming part of a statutory system of social security or public retirement plans; and

 - (c) other activities conducted by a public entity on the account of or with the guarantee of or using the financial resources of the Party or its public entities.

3. If a Party allows any of the activities referred to in point (b) or (c) of paragraph 2 of this Article to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, service defined in point (m) of Article 10.3 (Definitions) shall include those activities.

4. Point (a) of Article 10.3 (Definitions) does not apply to financial services covered by this Sub-Section.

ARTICLE 10.63

Definitions

For the purposes of this Sub-Section and of Sections B (Investment liberalisation), C (Cross-border trade in services), D (Entry and temporary stay of natural persons for business purposes) and Sub-Section 1 (Domestic regulation) of Section E (Regulatory framework) of this Chapter, the following definitions apply:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(i) insurance and insurance-related services:

(A) direct insurance (including co-insurance):

(1) life; and

(2) non-life;

(B) reinsurance and retrocession;

- (C) insurance intermediation, such as brokerage and agency; and
 - (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (ii) banking and other financial services (excluding insurance):
- (A) acceptance of deposits and other repayable funds from the public;
 - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
 - (C) financial leasing;
 - (D) all payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;
 - (E) guarantees and commitments;

- (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (1) money market instruments (including cheques, bills and certificates of deposits);
 - (2) foreign exchange;
 - (3) derivative products, including futures and options;
 - (4) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
 - (5) transferable securities; and
 - (6) other negotiable instruments and financial assets, including bullion;
- (G) 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;
- (H) money broking;

- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
 - (K) provision and transfer of financial information, and financial data processing and related software; and
 - (L) advisory, intermediation and other auxiliary financial services in respect of the activities listed in points (A) to (K), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and corporate restructuring and strategy;
- (b) "financial service supplier" means any natural or juridical person of a Party that seeks to supply or supplies financial services and does not include a public entity;
- (c) "public entity" means:
- (i) a government, a central bank or 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 service of a financial nature, including services related to existing and new products, or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but that is supplied in the territory of the other Party; and
- (e) "self-regulatory organisation" means any non-governmental body, including a securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

ARTICLE 10.64

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
 - (b) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

ARTICLE 10.65

Disclosure of information

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 10.66

International standards

1. Each Party shall give due consideration to ensuring that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance in the financial services sector are implemented and applied in its territory. Such internationally agreed standards include those adopted by the G20, the Financial Stability Board, the Basel Committee on Banking Supervision, in particular its Core Principles for effective banking supervision, the International Association of Insurance Supervisors, in particular its Insurance Core Principles, the International Organization of Securities Commissions, in particular its Objectives and Principles of Securities Regulation, the Financial Action Task Force, and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

2. The Parties shall aim to cooperate and exchange information regarding the development of international standards.

ARTICLE 10.67

Financial services new to the territory of a Party

1. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require an amendment of an existing law or the adoption of a new law. This does not apply to branches of financial service suppliers of the other Party established within the territory of a Party.

2. A Party may determine the institutional and legal form through which the new financial service may be supplied and require authorisation for the supply of such service. Where such authorisation is required, a decision shall be made within a reasonable time and authorisation may only be refused for prudential reasons.

ARTICLE 10.68

Self-regulatory organisations

If a Party requires membership of, participation in, or access to, any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, the Party shall ensure observance by that self-regulatory organisation of the obligations under Articles 10.6 (National treatment), 10.7 (Most-favoured-nation treatment), 10.16 (National treatment) and 10.17 (Most-favoured-nation treatment).

ARTICLE 10.69

Clearing and payment systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article shall not confer access to the Party's lender of last resort facilities.

SUB-SECTION 6

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 10.70

Scope and definitions

1. This Sub-Section sets out principles of the regulatory framework for the provision of international maritime transport services pursuant to Sections B (Investment liberalisation), C (Cross-border trade in services) and D (Entry and temporary stay of natural persons for business purposes) of this Chapter and applies to measures of a Party affecting trade in international maritime transport services. This Sub-Section does not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 10.10 (Non-conforming measures) or 10.18 (Non-conforming measures).
2. For the purposes of this Sub-Section and Sections B (Investment liberalisation), C (Cross-border trade in services) and D (Entry and temporary stay of natural persons for business purposes) of this Chapter, the following definitions apply:
 - (a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

- (b) "customs clearance" means activities consisting in carrying out, on behalf of another party, customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;
- (c) "door-to-door or multimodal transport operations" means transporting cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;
- (d) "feeder services" means the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in the territory of a Party, international cargo *en route* directed to a destination, or coming from a port of shipment, outside the territory of that Party;
- (e) "freight forwarding services" means the activity consisting in 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;
- (f) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third country, or between ports of different Member States;
- (g) "international maritime transport services" means transporting passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country, including direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but not the right to provide those other transport services;

- (h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent 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;
- (i) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services; and
- (j) "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 or discharging of cargo to or from a ship;
 - (ii) the lashing or unlashng of cargo; and

- (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge.

ARTICLE 10.71

Obligations

1. Each Party shall implement unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis by:

- (a) according 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, including with regard to:
 - (i) access to ports;
 - (ii) the use of infrastructure and services of ports;
 - (iii) the use of maritime auxiliary services;
 - (iv) related fees and charges; and
 - (v) customs facilities and the assignment of berths and facilities for loading and unloading;

- (b) permitting international maritime service suppliers of the other Party to establish and operate an enterprise in its territory under conditions no less favourable than those that it accords to its own service suppliers;
- (c) making available to international maritime transport service suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at its ports: pilotage; towing and tug assistance; provisioning; fuelling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; berth and berthing services; and shore-based operational services essential to ship operations, including communications, water and electrical supplies;
- (d) permitting international maritime transport service suppliers of the other Party, subject to authorisation by the competent authority where applicable, to reposition owned or leased empty containers which are not being carried as cargo against payment between ports of New Zealand or between ports of a Member State; and
- (e) permitting international maritime transport service suppliers of the other Party to provide feeder services between the ports of New Zealand or between ports of a Member State, subject to authorisation by the competent authority where applicable.

2. In applying points (a) and (b) of paragraph 1, the Parties shall:

- (a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including in respect of dry or liquid bulk cargo and liner trade;

- (b) terminate, within a reasonable period of time, existing cargo-sharing arrangements as referred to in point (a) that exist in previous agreements; and

- (c) not adopt or maintain any administrative, technical or other measures which could constitute a disguised restriction, or have arbitrary or unjustifiable discriminatory effects where like conditions prevail, on the free supply of services in international maritime transport.