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**1 ARTICLE XXVIII OF THE GENERAL AGREEMENT ON TRADE IN SERVICES**

**1.1 Text of Article XXVIII**

**Article XXVIII**

*Definitions*

For the purpose of this Agreement:

- (a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by Members affecting trade in services" include measures in respect of
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;
  - (iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;
- (d) "commercial presence" means any type of business or professional establishment, including through
  - (i) the constitution, acquisition or maintenance of a juridical person, or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service;
- (e) "sector" of a service means,
  - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member's Schedule,
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) "service of another Member" means a service which is supplied,
  - (i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;
- (g) "service supplier" means any person that supplies a service;<sup>12</sup>

*(footnote original)* <sup>12</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office,

the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;
- (i) "service consumer" means any person that receives or uses a service;
- (j) "person" means either a natural person or a juridical person;
- (k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:
  - (i) is a national of that other Member; or
  - (ii) has the right of permanent residence in that other Member, in the case of a Member which:
    - 1. does not have nationals; or
    - 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;
- (l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) "juridical person of another Member" means a juridical person which is either:
  - (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - 1. natural persons of that Member; or
    - 2. juridical persons of that other Member identified under subparagraph (i);
- (n) a juridical person is:
  - (i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;
  - (ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

- (o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

## **1.2 Article XXVIII (k) (ii) 2: "natural person of another Member"**

1. On 1 March 1995, the Council for Trade in Services took note of four communications to the effect that the concerned Members accord substantially the same treatment to their permanent residents as they accord to their nationals with respect to measures affecting trade in services and that they assume, with respect to those permanent residents, the same responsibilities that other members bear with respect to their nationals.<sup>1</sup> At its meeting of 2, 9 and 24 October 2003, the Council took note of a similar notification.<sup>2</sup>

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<sup>1</sup> [S/C/M/1](#), paras. 12-13. The notifications can be found in [S/C/N/1](#), [S/C/N/2](#), [S/C/N/3](#) and [S/C/N/5](#).

<sup>2</sup> [S/C/M/68](#), paras. 6-7. The notification can be found in [S/C/N/232](#).