

CHAPTER 2

INVESTMENT LIBERALISATION

ARTICLE 127

Scope

This Chapter applies to measures of a Party affecting the establishment of an enterprise to perform economic activities and the operation of such an enterprise by:

- (a) investors of the other Party;
- (b) covered enterprises; and
- (c) for the purposes of Article 132, any enterprise in the territory of the Party which adopts or maintains the measure.

ARTICLE 128

Market access

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

- (a) impose limitations on:
 - (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;
 - (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;^{1 2}

¹ Points (a)(i) to (iii) of Article 128 do not cover measures taken in order to limit the production of an agricultural or fishery product.

² Point (a)(iii) of Article 128 does not cover measures by a Party which limit inputs for the supply of services.

- (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 129

National treatment

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

2. The treatment accorded by a Party under paragraph 1 means:
 - (a) with respect to a regional or local level of government of the United Kingdom, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to investors of the United Kingdom and to their enterprises in its territory; and
 - (b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Member State and to their enterprises in its territory.

ARTICLE 130

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

3. Paragraphs 1 and 2 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:

- (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or
- (b) measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.

4. For greater certainty, the "treatment" referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements.

5. For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a third country, or the mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the "treatment" referred to in paragraphs 1 and 2. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

ARTICLE 131

Senior management and boards of directors

A Party shall not require a covered enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors.

ARTICLE 132

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 provided in its territory or to purchase goods or services from natural or legal 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 such enterprise;
- (e) to restrict sales of goods or services in its territory that such enterprise produces or supplies, by relating those 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 legal person or any other entity in its territory¹;
- (g) to supply exclusively from the territory of that Party a good produced or a service supplied by the enterprise to a specific regional or world market;
- (h) to locate the headquarters for a specific region of the world which is broader than the territory of the Party 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 For greater certainty, point (f) of Article 132(1) is without prejudice to the provisions of Article 207.

- (l) with regard to any licence contract 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 legal 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 direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party, to adopt:
 - (i) a rate or amount of royalty below a certain level; or
 - (ii) a given duration of the term of a licence contract.

This point does not apply where the licence contract is concluded between the enterprise and the Party. For the purposes of this point, a "licence contract" means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

- 2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, on compliance with any of the following requirements:
 - (a) achieving a given level or percentage of domestic content;
 - (b) purchasing, using or according a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or legal persons or any other entity in its territory;

- (c) relating 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 that enterprise;
- (d) restricting the sales of goods or services in its territory that that enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or
- (e) restricting 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 of this Article do not apply where:

- (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court or administrative tribunal, or by a competition authority pursuant to a Party's competition law to prevent or remedy a restriction or a distortion of competition; or

(b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.

5. Points (a) to (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. For greater certainty, this Article does not preclude the enforcement by the competent authorities of a Party of any commitment or undertaking given between persons other than a Party which was not directly or indirectly imposed or required by that Party.

7. For greater certainty, points (a) and (b) of paragraph 2 do not apply to requirements imposed by an importing Party in relation to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. 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.

9. A Party shall neither impose nor enforce any measure inconsistent with its obligations under the Agreement on Trade-Related Investment Measures (TRIMs), even where such measure has been listed by that Party in Annex 19 or 20.

10. 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 where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex 19 or 20.

11. A condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purposes of paragraph 1.

ARTICLE 133

Non-conforming measures and exceptions

1. Articles 128, 129, 130, 131 and 132 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 set out in the Schedule of the Union in Annex 19;

(B) The central government of a Member State, as set out in the Schedule of the Union in Annex 19;

(C) a regional government of a Member State, as set out in the Schedule of the Union in Annex 19; or

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

(ii) for the United Kingdom:

(A) the central government, as set out in the Schedule of the United Kingdom in Annex 19;

(B) a regional government, as set out in the Schedule of the United Kingdom in Annex 19;

or

(C) a local government;

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

(c) a modification to any non-conforming measure referred to in points (a) and (b) of this paragraph, to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with Article 128, 129, 130, 131 or 132.

2. Articles 128, 129, 130, 131 and 132 do not apply to a measure of a Party which is consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex 20.

3. Articles 129 and 130 of this Agreement do not apply to any measure that constitutes an exception to, or a derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided for in Articles 3 to 5 of that Agreement.

4. For greater certainty, Articles 129 and 130 shall not be construed as preventing a Party from prescribing information requirements, including for statistical purposes, in connection with the establishment or operation of investors of the other Party or of covered enterprises, provided that it does not constitute a means to circumvent that Party's obligations under those Articles.

CHAPTER 3

CROSS-BORDER TRADE IN SERVICES

ARTICLE 134

Scope

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