

CHAPTER III

TRADE IN SERVICES

ARTICLE 31

Definitions

For the purposes of this Agreement, trade in services is defined as the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party to the service consumer of any other Party;
- (c) by a service supplier of one Party , through commercial presence in the territory of the other Party;
- (d) by a service supplier of one Party, through presence of natural persons² of a Party in the territory of other Party .

ARTICLE 32

Market Access

1. Each Party shall impose no restriction on the ability of the nationals and companies of the other Party to engage in trade in services in the sectors listed in paragraphs 1 and 2 of Article 34, and to this end shall not maintain or adopt either with respect to a regional subdivision or with respect to its entire territory the following restrictions in those sectors:

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

² The obligations of this Chapter with respect to supply of a service through presence of natural persons shall extend only to supply of a service through (1) services sales persons (persons not based in the Party, and receiving no remuneration from a source located in that Party, who are engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier); and (2) intra-corporate transferees (managers, executives, and specialists, who are employees of firms that provide within the Party through a branch, subsidiary, or affiliate established in the Party and who have been in the prior employ of their firm outside the Party).

numerical quotas or the requirement of an economic needs test;

- (c) limitations on 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 test³;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

2. Obligations of the United States are subject to the terms, limitations and conditions for market access set out in the United States schedule of specific commitments under the WTO General Agreement on Trade in Services (“GATS”).

ARTICLE 33

National Treatment

1. Each Party shall accord to services and service suppliers of the other party, in respect to all measures affecting the supply of services, treatment no less favorable than it accords to its own like service and service suppliers.

2. A Party may meet the requirements of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

4. Obligations of the United States are subject to the conditions and qualifications on national treatment set out in the United States schedule of specific commitments under the GATS.

³ Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

ARTICLE 34

Covered Sectors

1. For the purpose of this Agreement only, and without prejudice to any future requests by the United States in the Lao PDR's accession to the WTO Agreement, or any other bilateral, regional, or multilateral trade negotiation, this Chapter shall apply to the following service sectors:

- (a) the following professional services: legal services, accounting, auditing and bookkeeping services, taxation consulting services, architectural services, engineering services, integrated engineering services;
- (b) computer and related services;
- (c) the following business services: advertising services, market research and market polling services, management consulting services;
- (d) basic and value-added telecommunications services, as indicated in the list in paragraph 2, including commitments to regulate basic telecommunications providers fairly and to provide market access to and use of basic telecommunications networks;
- (e) the following audiovisual services: motion picture and video tape production and distribution services, motion picture projection services, sound recording;
- (f) construction and related engineering services;
- (g) the following distribution services: wholesale trade, retail trade, and franchising;
- (h) insurance, banking, and other financial services, as indicated in the list in paragraph 3;
- (i) health and medical care services;
- (j) educational services; and
- (k) tourism and travel related services.

2. Further to paragraph 1 above, this Chapter shall apply to the following basic and value-added telecommunications services:

- (a) Basic telecommunications services:⁴
 - (i) voice services;
 - (ii) packet-switched data transmission services;
 - (iii) circuit-switched data transmission services;
 - (iv) telex services;
 - (v) telegraph services;
 - (vi) facsimile services;
 - (vii) private leased circuit services;⁵ and
 - (viii) other basic communications services.
- (b) Mobile services:
 - (i) analogue/Digital cellular services;
 - (ii) PCS (Personal Communications Services);
 - (iii) paging services;
 - (iv) mobile data services;
- (c) Value-added telecommunications services:
 - (h) electronic mail;

⁴ Any service listed encompasses local, long distance and international services for public and non-public use, unless otherwise noted in the sector column. Any service listed may be provided on a facilities-basis or by resale, unless otherwise noted. Any service listed may be provided through any means of technology (e.g., fiber optic cable, cable TV, wireless, satellites).

⁵ Sub sector (vii), "private leased circuit transmission services" includes the sale or lease of any type of network capacity for the supply of services listed in any other subsector, and shall include network capacity with respect to submarine cables, satellite space segment, satellite earth or ground stations and terrestrial wireless networks.

- (ii) voice mail;
- (iii) on-line information and data base retrieval;
- (iv) electronic data interchange;
- (v) enhanced/value-added facsimile services (including store and forward, store and retrieve);
- (vi) code and protocol conversion;
- (vii) on-line information and/or data processing (including transaction processing); and
- (viii) other value-added telecommunications services.

3. Further to paragraph 1 above and subject to the provisions of Article 35, this Chapter shall apply to the following financial services:

- (a) Insurance and insurance-related services:
 - (i) direct insurance (including co-insurance):
 - (A) life; and
 - (B) non-life.
 - (ii) reinsurance and retrocession;
 - (iii) insurance intermediation, such as brokerage and agency; and
 - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- (b) Banking and other financial services (excluding insurance):
 - (i) acceptance of deposits and other repayable funds from the public;
 - (ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (iii) financing leasing;

- (iv) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (v) guarantees and commitments;
- (vi) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including , but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion;
- (vii) 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;
- (viii) money broking;
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xi) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (xii) advisory, intermediation and other auxiliary financial services with respect to all the activities listed in subparagraphs (i) through (xi), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

ARTICLE 35

Financial Services

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
2. Not all of the services listed in paragraph 3 of Article 34 are provided in Laos as of the date of signature of this Agreement. Where such services are not provided by the private sector in the Lao PDR, access by financial service suppliers of the United States and the provision of new financial services may be subject to measures adopted for prudential reasons, in accordance with paragraph 1 above.
3. The obligations in Articles 32 and 33 shall not, with respect to the financial services sector, apply to the United States. The United States will review the application of this paragraph one year after the date of entry into force of this Agreement.