

CHAPTER 3: NATIONAL TREATMENT

Article 3.1: Objective

1. The Parties recognize that non-discrimination is a cornerstone of fair competition in the global marketplace.
2. The Parties further recognize that it is inappropriate to nullify the benefits of tariff concessions through the use of regulatory and other means to discriminate against goods, services, investors, or intellectual property of the other Party.

Article 3.2: Goods

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end, Article III of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.
3. No Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless the duty, tax, or charge is also applied to the good if destined for domestic consumption.

Article 3.3: Cross Border Trade in Services

1. With respect to services set out in Annex 3, each Party shall accord to services or service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers, in matters involving cross-border trade in services or cross-border trade in supply of services.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to services and service suppliers of the Party of which it forms a part.
3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.
4. Financial service or service suppliers shall be covered to the extent the Parties agree.

Article 3.4: Investors

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, whether treatment is accorded in “like circumstances” under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 3.5: Digital Trade

1. No Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products.
2. Paragraph 1 does not apply to a subsidy or grant provided by a Party, including a government-supported loan, guarantee, or insurance.
3. Further to paragraph 1, no Party shall require the transfer of, or access to, a source code of software owned by a person of another Party, or to an algorithm expressed in that source code, as a condition for the importation of software, or of products containing that software, in its territory.
4. Paragraph 3 does not preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding, subject to safeguards against unauthorized disclosure.

Article 3.6: Intellectual Property

1. Each Party shall accord to nationals of another Party treatment no less favorable than it accords to its own nationals with regard to the protection of intellectual property rights.
2. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 3.7: Nationality

For purposes of this Chapter, the nationality of a person shall be determined in accordance with Chapter 6 (Tax).

Article 3.8: Definitions

algorithm means a defined sequence of steps, taken to solve a problem or obtain a result;

digital product means a computer program, text, video, image, sound recording, or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically. For greater certainty, digital product does not include a digitized representation of a financial instrument, including money;

good of a Party means a domestic product as understood in the GATT 1994 or such good as the Parties may agree, and includes an originating good of a Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

- (a) from the territory of a Party into the territory of another Party;
- (b) in the territory of a Party by a person of that Party to a person of another Party; or
- (c) by a national of a Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

investor of a Party means a Party, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of another Party;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

person of a Party means a national of a Party or an enterprise of a Party;

service supplier of another Party means a person of a Party that seeks to supply or supplies a service.

Annex 3: Services Commitments

[To be negotiated, with a positive list if the other Parties prefer.]