

criteria, such as competence and the ability to supply the services; not more burdensome than necessary to ensure the quality of the services; and do not constitute a disguised restriction on the cross-border supply of the service.

J. RECOGNITION

111. Where a Party recognizes education, experience, licenses or certifications obtained in a non-Party, it is not bound to accord this treatment to the other Party. The Party shall provide the other Party adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted in the other Party should also be recognized (Article 133.3).

K. SAFEGUARDS

112. In the event of serious balance-of-payments and external financial difficulties, the Parties may take temporary safeguard measures taking the form of restrictions to cross-border trade in services (Article 114) or, in the case of the investment chapter, measures regarding payments and transfers that are inconsistent with national treatment or with the transfer obligation (Article 85). Temporary safeguards under the investment chapter can also be used in situations where, in exceptional circumstances, movements of capital cause serious difficulties for macroeconomic management. Any restrictions applied pursuant to Articles 85 and 114 have to comply with a number of requirements, for example, to be consistent with the Articles of the Agreement of the IMF, to avoid unnecessary damage to the commercial, economic and financial interests of the other Party, to not exceed those necessary, to be temporary and subject to progressive phase-out, and to be promptly notified.

V. PROVISIONS AFFECTING TRADE IN GOODS, SERVICES AND INVESTMENT

A. COMPETITION POLICY

113. Chapter 14 contains provisions relating to competition. The Parties agree to take appropriate measures against anti-competitive activities so that the benefits of trade and investment liberalization are not diminished or nullified. They agree to cooperate in controlling anti-competitive activities subject to their respective available resources and to apply their competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality. In addition, they agree to implement administrative and judicial procedures in a fair manner to control anti-competitive activities, pursuant to their relevant laws and regulations, and to promote transparency of the implementation of their competition laws and regulations and their competition policy. The dispute settlement provisions of the Agreement do not apply to the competition policy provisions.

B. GOVERNMENT PROCUREMENT

114. Chapter 12 and Annex 14 contain the provisions relating to government procurement. The Parties must provide immediately and unconditionally to the goods, services and suppliers of the other Party, treatment no less favourable than that they accords to their own goods, services and suppliers (Article 137.1). Other general principles are the prohibition of offsets (Article 139), and notice of procurement (Article 143). Challenge procedures are laid out in Article 149.

115. In the case of Japan, Chapter 12 applies to the entities covered by Annexes 1-3 of Japan's Appendix I to the Agreement on Government Procurement (GPA) in Annex 4 to the WTO Agreement except for 13 Japanese companies which are detailed in Annex 14.²⁵ For Chile, Chapter 12 applies to the office of the president and 20 government ministries or councils, regional governments,

²⁵ Japan is a signatory of the WTO Agreement on Government Procurement, Chile is an observer.

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municipalities and a number of state-owned companies. Chapter 12 applies to the goods and services covered by Japan's Appendix I to the GPA and to construction services covered by Annex 5 of Japan's Appendix I to the GPA. In the case of Chile, Chapter 12 applies to all goods and to all services except financial services, and to all construction services except those intended for Easter Island.

- ✓ 116. The thresholds applied by Japan are the same as those under the GPA, except that the thresholds for procurement of goods and services (other than construction services and architectural, engineering and other technical services) by such entities other than those covered by Annex 5 of Japan's Appendix I to the GPA Agreement are SDR 100,000.²⁶ The thresholds applied by Chile are detailed in Table V.1.

Table V.1 Thresholds applied to government procurement by Chile under the Agreement (SDR)

Entity	Goods	Services	Construction services
Government Ministries	100,000	100,000	5,000,000
Municipalities	200,000	200,000	10,000,000
State-owned companies	300,000	300,000	10,000,000

- ✓ 117. Article 156 provides for the establishment of a Committee on Government Procurement whose functions include reviewing and monitoring the implementation and operation of Chapter 12 of the Agreement; analyzing of available information on each Party's government procurement market; reporting the findings of the Committee to the Commission; and carrying out other functions as may be delegated by the Commission.

C. INTELLECTUAL PROPERTY

118. Chapter 13 of the Agreement contains provisions governing intellectual property. The Parties shall ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of the intellectual property protection system, and provide for measures for adequate and effective enforcement of IPR against infringement, counterfeiting and piracy (Article 158.1). The Parties affirm their existing rights and obligations under the TRIPS Agreement (Article 158.3). In addition to the categories of IPR mentioned in the TRIPS Agreement, the Parties provide protection for new varieties of plants (Article 162). Under geographical indications, Japan has listed Satsuma for spirits, while Chile has listed Pisco Chileno.

119. A committee on intellectual property is established under the Agreement which is responsible for reviewing and monitoring the implementation and operation of Chapter 13; discussing any issues related to intellectual property, such as areas and forms of cooperation, enforcement of IPR, geographical indications, and public awareness concerning protection of intellectual property; reporting the findings of the committee to the Commission; and carrying out other functions as may be delegated by the Commission (Article 165).

D. INSTITUTIONAL PROVISIONS

1. General Provisions and Exceptions

120. General exceptions for goods and services are maintained by incorporating into the Agreement *mutatis mutandis* Article XX of the GATT 1994 for goods²⁷ and Article XIV of the GATS

²⁶ The thresholds for Japan, contained in document GPA/W/299/Add.5 (8 February 2008), which are effective from 1 April 2008 – 31 March 2010, provide for a corresponding threshold of SDR 130,000.

²⁷ For the purposes of trade in goods, rules of origin, customs procedures, sanitary and phytosanitary measures, technical regulations, standards and conformity assessment procedures and investment.

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