

## CHAPTER 8

### TRADE IN SERVICES

#### Article 8.1 Definitions

For the purposes of this Chapter:

- (a) **“aircraft repair and maintenance services”** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (b) **“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 Party for the purpose of supplying a service;
- (c) **“computer reservation system services”** means services provided by computerised systems that contain information about air carriers’ schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;
- (d) **“juridical person”** means any entity duly constituted or otherwise organised 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;
- (e) a juridical person is:
  - (i) **“owned”** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
  - (ii) **“controlled”** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; or
  - (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;

- (f) **“juridical person of a Party”** means a juridical person which is either:
- (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or the other Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of that Party; or
    - (B) juridical persons of that Party identified under subparagraph (f)(i);
- (g) **“measures by a Party affecting trade in services”** includes measures in respect of:
- (i) the purchase or use of, or payment for, a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (h) **“monopoly supplier of a service”** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (i) **“natural person of a Party”** means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:
- (i) is a national of that Party; or
  - (ii) has the right of permanent residence<sup>1</sup> in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided no Party is obligated to accord to such permanent residents treatment

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<sup>1</sup> Where a Party has made a reservation with respect to permanent residents in its Schedules in Annex 8H (Schedule of Specific Commitments - India), Annex 8I (Schedule of Non-Conforming Measures - New Zealand), Annex 8J (Schedule of Specific Commitments on Temporary Movement of Natural Persons - India), Annex 8K (Schedule of Specific Commitments on Temporary Movement of Natural Persons – New Zealand) or Annex 8L (Schedule of Commitments on Temporary Employment Entry – New Zealand), that reservation shall not prejudice that Party’s rights and obligations in GATS.

more favourable than would be accorded by that Party to such permanent residents;

- (j) **“person”** means a natural person or a juridical person;
- (k) **“sector”** of a service means:
  - (i) with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule in Annex 8H (Schedule of Specific Commitments - India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand); and
  - (ii) otherwise, the whole of that service sector, including all of its sub-sectors;
- (l) **“selling and marketing of air transport services”** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (m) **“services”** includes any service in any sector except services supplied in the exercise of governmental authority;
- (n) **“service consumer”** means any person that receives or uses a service;
- (o) **“service of the other Party”** means a service which is supplied:
  - (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel 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 Party;
- (p) **“service supplied in the exercise of governmental authority”** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

- (q) **“service supplier”** means a person that supplies a service;<sup>2 3</sup>
- (r) **“supply of a service”** includes the production, distribution, marketing, sale, and delivery of a service;
- (s) **“trade in services”** means the supply of a service:
  - (i) from the territory of one Party into the territory of the other Party;
  - (ii) in the territory of one Party to the service consumer of the other Party;
  - (iii) by a service supplier of one Party, through commercial presence in the territory of the other Party; and
  - (iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of the other Party; and
- (t) **“traffic rights”** means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo, and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged, and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

## **Article 8.2**

### **Scope**

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, “measures by a Party” means measures taken by:
  - (a) central, regional, or local governments and authorities of that Party; and

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<sup>2</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 this Chapter. 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.

<sup>3</sup> The Parties confirm their shared understanding that “service supplier” in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.

- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

3. This Chapter shall not apply to measures affecting:

- (a) government procurement;
- (b) subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers;
- (c) services supplied in the exercise of governmental authority;
- (d) cabotage<sup>4</sup> in maritime transport services; and
- (e) in respect of air transport services, measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services; and
  - (iii) computer reservation system services.

4. This Chapter shall not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment. For greater certainty, this Chapter shall not

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<sup>4</sup> "Maritime cabotage" means the transportation of passengers or goods between any port or place located in a Party and any other port or place located in that Party and transportation of passengers or goods originating or terminating in the same port or place located in that Party, including transportation of passengers or goods between a port or a place located in that Party and another port, place, installation or structures situated in the Exclusive Economic Zone of that Party or on the continental shelf of that Party. Maritime cabotage shall further include services such as floating storage, offloading, towing, anchor-handling, dredging, off-shore drilling or production, diving support, maintenance support, various types of surveys, cable laying, sea-bed mining operations, pipe-laying, lighterage, salvage, marine construction, hook-up, port and terminal related support services, provided such services are supplied in the above areas by the vessels.

apply to measures regarding citizenship, nationality or residence on a permanent basis.

### **Article 8.3 Scheduling of Commitments**

1. Each Party shall make commitments under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment) in accordance with either Article 8.7 (Schedule of Specific Commitments) or Article 8.8 (Schedule of Non-Conforming Measures).
2. A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) may also make commitments under Article 8.9 (Additional Commitments).
3. A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) may also make commitments under Article 8.9 (Additional Commitments).
4. For greater certainty, a Party's schedule in Annex 8H (Schedule of Specific Commitments - India) and Annex 8I (Schedule of Non-Conforming Measures - New Zealand) shall form an integral part of this Chapter.

### **Article 8.4 National Treatment**

1. A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall, in the sectors inscribed in its schedule of specific commitments and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of

services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>5</sup>

2. A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to its non-conforming measures as provided in Article 8.8 (Schedule of Non-Conforming Measures).
3. A Party may meet the requirement under paragraph 1 or 2 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.
4. 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.

#### **Article 8.5 Market Access**

1. With respect to market access through the modes of supply identified in subparagraph (s) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex 8H (Schedule of Specific Commitments - India).<sup>6</sup>
2. The measures which a Party shall not adopt or maintain either on the basis of a regional sub-division or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Annex 8H (Schedule of Specific Commitments - India), or subject to its

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<sup>5</sup> Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

<sup>6</sup> If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (s)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (s)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

non-conforming measures, as provided in Article 8.8 (Schedule of Non-Conforming Measures) are defined as:

- (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 of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on 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 test;
- (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.

### **Article 8.6 Most-Favoured-Nation Treatment**

1. A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall, in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex 8H (Schedule of Specific Commitments - India) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.
2. A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand), accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.

3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.
4. The provisions of this Chapter shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

### **Article 8.7** **Schedule of Specific Commitments**

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 8H (Schedule of Specific Commitments - India), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.9 (Additional Commitments).
2. With respect to sectors where the commitments referred to in paragraph 1 are undertaken, each Schedule in Annex 8H (Schedule of Specific Commitments - India) shall specify:
  - (a) terms, limitations, and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments; and
  - (d) where appropriate, the time frame for implementation of such commitments.
3. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.5 (Market Access) shall be inscribed in the column relating to Article 8.5 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

### **Article 8.8** **Schedule of Non-Conforming Measures**

1. For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by that Party at:

- (i) the central level of government, as set out by that Party in List A of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand);
  - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand); or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment).
2. Article 8.4 (National Treatment), Article 8.5 (Market Access) and Article 8.6 (Most-Favoured-Nation Treatment) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities set out in List B of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand).

### **Article 8.9 Additional Commitments**

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:
- (a) Article 8.4 (National Treatment), Article 8.5 (Market Access), or Article 8.6 (Most-Favoured-Nation Treatment), for a Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments); or
  - (b) Article 8.4 (National Treatment), Article 8.5 (Market Access), or Article 8.6 (Most-Favoured-Nation Treatment), for a Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures).
2. A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex 8H (Schedule of Specific Commitments - India).

3. A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand).

### **Article 8.10 Transition**

1. A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) (“transitioning Party”) shall submit a schedule of non-conforming measures agreed between the Parties in accordance with paragraphs 2 through 6 (“Agreed Schedule”) that accords with Article 8.8 (Schedule of Non-Conforming Measures – New Zealand) to the Committee on Trade in Services no later than 6 years after the date of entry into force of this Agreement.
2. The transitioning Party shall provide to the other Party (“responding Party”) its proposed schedule of non-conforming measures within 5 years after the date of entry into force of this Agreement.
3. The commitments contained in the transitioning Party’s proposed schedule of non-conforming measures shall provide an equivalent level of liberalisation and shall not result in a decrease in the level of commitments as compared to the transitioning Party’s schedule of specific commitments in Annex 8H (Schedule of Specific Commitments - India).
4. The responding Party shall consider the transitioning Party’s proposed schedule of non-conforming measures and shall have the opportunity to make comments to ensure that the transitioning Party’s proposed schedule of non-conforming Measures meets the requirements specified in paragraph 3. The transitioning Party shall have the opportunity to respond to any comments received and to modify or revise its proposed schedule, as may be necessary, with a view to resolving any ambiguities, omissions, or errors in its proposed schedule of non-conforming measures.
5. In the event that the verification and clarification process undertaken pursuant to paragraph 4 is not completed within 12 months from the date the transitioning Party’s proposed schedule of non-conforming measures is provided to the other Party, the Parties may agree to extend the time as provided under paragraph 1, to any other date agreed to by the Parties.
6. Upon completion of the verification and clarification process as set out in paragraph 4, the Parties may agree in writing to amend this Agreement by replacing the transitioning Party’s Schedule of Specific Commitments in Annex 8H (Schedule of Specific Commitments - India) with the transitioning Party’s Agreed Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand). The transitioning Party

may then submit the Agreed Schedule to the Committee on Trade in Services in accordance with paragraph 1.

7. Notwithstanding Article 20.2 (Amendments), once:
  - (a) the transitioning Party has submitted its Agreed Schedule to the Committee on Trade in Services in accordance with paragraph 1;
  - (b) that transitioning Party has notified the responding Party in writing of the completion of its applicable domestic legal procedures; and
  - (c) the responding Party notifies the transitioning Party in writing of the completion of its applicable domestic procedures,

the transitioning Party's Agreed Schedule shall enter into force between the Parties after 60 days of the responding Party's written notification in accordance with subparagraph (c), or on such other date as the Parties may agree.

#### **Article 8.11 Modification of Schedules**

1. A Party (the "modifying Party") may modify or withdraw any commitment in its Schedule in Annex 8H (Schedule of Specific Commitments - India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand) at any time after three years from the date on which that commitment entered into force, provided that:
  - (a) it notifies the other Party (the "affected Party") of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal;
  - (b) upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment; and
  - (c) such an agreement between the Parties has been reached.
2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is no less favourable to trade than provided for in the Schedules in Annex 8H (Schedule of Specific Commitments - India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand) prior to such negotiations.

3. If agreement under subparagraph 1(c) is not reached between the modifying Party and the affected Party within three months of the commencement of the process under subparagraph 1(a), the modifying Party may refer the matter to a panel in accordance with the procedures set out in Chapter 19 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure. The modifying Party may modify or withdraw a commitment once it has made the compensatory adjustments in conformity with the findings of the panel.
4. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the panel, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the panel.

### **Article 8.12 Transparency**

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.
2. Each Party shall:
  - (a) publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application affecting trade in services and all international agreements pertaining to or affecting trade in services to which the Party is a signatory; and
  - (b) to the extent practicable, make the measures and international agreements referred to in subparagraph (a) publicly available on the internet and, to the extent provided under its legal framework, in the English language.
3. Where publication referred to in paragraph 2 is not practicable, such information<sup>7</sup> shall be made otherwise publicly available.
4. To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the other Party on measures referred to in subparagraph 2(a) before adoption.
5. Each Party shall respond promptly to any request by the other Party for specific information on:

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<sup>7</sup> For greater certainty, such information may be published in each Party's chosen language.

- (a) any measures or international agreements referred to in subparagraph 2(a); and
- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

### **Article 8.13** **Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral, or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Nothing in paragraph 2 shall be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the result of the WTO negotiations on disciplines on such measures, pursuant to Article VI.4 of GATS and shall amend this Article, as appropriate, after consultations between the Parties to bring the results of those negotiations into effect under this Chapter. Such disciplines shall aim to ensure that such requirements, *inter alia*:
  - (a) are based on objective and transparent criteria, such as competence and the ability to supply the service;
  - (b) are not more burdensome than necessary to ensure the quality of the service; and
  - (c) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.
5. In sectors in which a Party has undertaken commitments, pending the entry into force of disciplines in these sectors pursuant to paragraph 4, that Party shall not apply licensing and qualification requirements and

technical standards that nullify or impair such commitments in a manner which:

- (a) does not comply with the criteria outlined in subparagraphs 4(a) through 4(c); and
  - (b) could not reasonably have been expected of that Party at the time the commitments in those sectors were made.
6. In determining whether a Party is in conformity with its obligations under subparagraph 5(a), international standards of relevant international organisations<sup>8</sup> applied by that Party shall be taken into account.
7. Where a Party requires authorisation for the supply of a service, that Party shall ensure that its competent authorities:
- (a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;
  - (b) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
  - (c) to the extent practicable, establish an indicative time frame for processing of an application;
  - (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
  - (e) if the competent authorities consider an application incomplete for processing under the Party's laws and regulations, inform the applicant that the application is incomplete within a reasonable period of time, and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;
  - (f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing of the

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<sup>8</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;

- (g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;
  - (h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and
  - (i) where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.
8. Each Party shall provide adequate procedures to verify the competence of professionals of the other Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:
- (a) the examination is scheduled at reasonable intervals; and
  - (b) a reasonable period of time is provided to enable interested persons to submit an application.
9. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.
10. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities to the extent practicable permit submission of an application at any time throughout the year.<sup>9</sup> If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application.
11. If a Party adopts or maintains measures relating to the authorisation of the supply of a service, the Party shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorisation is required.<sup>10</sup>
12. Paragraphs 1 through 10 shall not apply to:
- (a) a sector which remains non-committed by reason of a Party's Schedule in Annex 8H (Schedule of Specific Commitments -

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<sup>9</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

<sup>10</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand); and

- (b) a measure to the extent that such measure is not subject to Article 8.4 (National Treatment) or Article 8.5 (Market Access) by reason of a Party's commitments made in accordance with either Article 8.7 (Schedule of Specific Commitments) or Article 8.8 (Schedule of Non-Conforming Measures).

#### **Article 8.14 Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a non-Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the non-Party concerned, or may be accorded autonomously.
2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-Party, nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.
3. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.
4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-Parties in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.
5. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international

standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

6. As set out in Annex 8D (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

#### **Article 8.15 Monopolies and Exclusive Service Suppliers**

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 8.4 (National Treatment) and Article 8.5 (Market Access).
2. Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraphs 1 or 2, it may request that Party establishing, maintaining, or authorising such a supplier to provide specific information concerning the relevant operations.
4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
  - (a) authorises or establishes a small number of service suppliers; and
  - (b) substantially prevents competition among those suppliers in its territory.

#### **Article 8.16 Disclosure of Confidential Information**

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Party confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

**Article 8.17**  
**Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.15 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. Each Party shall, on request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

**Article 8.18**  
**Payments and Transfers**

1. Except under the circumstances envisaged in Article 18.4 (Measures to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.
2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund ("IMF") under the *Articles of Agreement of the International Monetary Fund*, adopted at the United Nations Monetary and Financial Conference (Bretton Woods, New Hampshire) on July 22, 1944 ("IMF Articles of Agreement"), as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its commitments under this Chapter regarding such transactions, except under Article 18.4 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

**Article 8.19**  
**Denial of Benefits**

1. A Party may deny the benefits of this Chapter:
  - (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
  - (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party; and
  - (c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
    - (i) by a vessel registered under the laws and regulations of a non-Party; and
    - (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.
  
2. A Party may deny the benefit of this Chapter to a service supplier of the other Party, if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

**Article 8.20**  
**Safeguard Measures**

1. The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.
  
2. In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Party to address such difficulties.

**Article 8.21**  
**Subsidies**

1. Notwithstanding subparagraph 3(b) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. A Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations with the other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.
3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

### **Article 8.22 Cooperation**

1. The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.
2. Recognising that trade in audiovisual services, including film and television co-productions, can significantly contribute to the development of the audiovisual industry and to the intensification of cultural and economic exchange between them, the Parties shall endeavour to enhance cooperation in the sector.

### **Article 8.23 Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services ("Services Committee") composed of representatives of each Party.
2. Unless otherwise agreed by the Parties, the Services Committee shall meet once a year, or without undue delay at the request of either Party. The meetings shall take place in India or in New Zealand alternately or by any other appropriate means of communication, as agreed by the representatives of the Parties.
3. With respect to issues relating to this Chapter, the Services Committee shall:
  - (a) monitor and review the implementation and operation of this Agreement;
  - (b) consider and discuss technical issues arising from the implementation of this Agreement;
  - (c) adopt decisions or make recommendations;

- (d) conduct the preparatory work necessary to support the functions of the Joint Commission, including when the Joint Commission adopts decisions or recommendations; and
  - (e) provide a forum for the Parties to exchange information, discuss best practices and share implementation experiences.
- 4. The Services Committee may decide on its own rules of procedure, in the absence of which the Rules of Procedure of the Joint Commission shall apply *mutatis mutandis*.
- 5. The Services Committee shall report to the Joint Commission on the results and conclusions from each of its meetings.

#### **Article 8.24 Contact Points**

Each Party shall, within 60 days of entry into force of this Agreement, designate an official contact point to receive and facilitate official communications between the Parties on any matter relating to this Chapter. Each Party shall promptly notify the other Party, in writing, of any change to its contact point. On request of the other Party, the contact point shall:

- (a) identify the office or official responsible for the relevant matter; and
- (b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.