

CHAPTER 7

TRADE IN SERVICES

Article 1: Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service but does not include line maintenance;

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services does not include air navigation services;

commercial presence means any type of business or professional establishment, including one operating through:

- (a) the constitution, acquisition or maintenance of an enterprise; or
- (b) the creation or maintenance of a branch or a representative office;

within the territory of a Party for the purposes of supplying a service;

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;

ground handling services means the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems;

measures adopted or maintained by a Party means any measure taken by:

- (a) central, state, regional or local Government and authorities; or
- (b) non-governmental bodies in the exercise of powers delegated by central, state, regional or local Governments or authorities;

Such measures include measures in respect of:

- (a) the purchase, payment or use of a service;
- (b) 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
- (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

monopoly supplier of a service means any person, public or private, who 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;

person means either a natural person or an enterprise;

sector of a service means:

- (a) with reference to a specific commitment, one or more, or all subsectors of that service, as specified in a Party's Schedule of Specific Services Commitments at Annex 7-A to this Agreement;
- (b) otherwise, the whole of that service sector, including all of its subsectors;

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;

service of another Party means a service which is supplied:

- (a) from or in the territory of that other Party; or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party who supplies the service through the operation of a vessel or its use in whole or in part; or
- (b) 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;

service consumer means any person that receives or uses a service;

service supplier of a Party means a person of a Party that supplies a service;¹

¹Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (*i.e.*, enterprise) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. 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.

services includes any service in any sector except services supplied in the exercise of governmental authority;

services 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;

specialty air services means any non-transportation air services such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services;

supply of a service includes the production, distribution, marketing, sale and delivery of a service;

trade in services means the supply of a service:

- (a) from the territory of one Party into the territory of another Party ('Mode 1');
- (b) in the territory of one Party to the service consumer of another Party ('Mode 2');
- (c) by a service supplier of one Party, through commercial presence in the territory of another Party ('Mode 3');
- (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of another Party ('Mode 4');

traffic rights means the right 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 2: Scope

1. This Chapter applies to measures affecting trade in services adopted or maintained by a Party.

2. This Chapter shall not apply to:

- (a) services supplied in the exercise of governmental authority;²
- (b) any measures adopted or maintained by a Party with respect to government procurement;

² For greater certainty, nothing in this Chapter shall be construed as requiring the privatisation of public services supplied in the exercise of government authority.

- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, or 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;
- (d) 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;
 - (iii) computer reservation system services;
 - (iv) specialty air services;
 - (v) ground handling services; and
 - (vi) airport operation services.

3. For greater certainty, the Parties recognise the right of all Parties to regulate and to introduce new regulations to regulate the supply of services within their territory in order to meet national policy objectives, provided that such regulation is not inconsistent with this Chapter.³

4. Nothing in this Chapter shall apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Article 3: Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.

2. A Party may maintain a measure inconsistent with Paragraph 1 provided that such a measure falls within the scope of any exemptions list in Annex I (Schedule of Most-Favoured-Nation Exemptions on Services and Investment).

Article 4: Increasing the Participation of Forum Island Countries

1. The increasing participation of Forum Island Countries in services trade shall be

³ For greater certainty, the Parties mutually understand that Parties have the right to regulate, provided that regulation does not nullify or impair obligations and commitments of this Chapter.

facilitated through negotiated specific commitments pursuant to Article 5, Article 6, Article 7 and Article 8 relating to:

- (a) the strengthening of their domestic services capacity and its efficiency and competitiveness *inter alia* through access to technology on a commercial basis;
- (b) the improvement of their access to distribution channels and information networks; and
- (c) the liberalisation of market access in sectors and modes of supply of export interest to Forum Island Countries.

2. Within one year of the date of entry into force of this Agreement, each Party shall establish contact points to facilitate the access of service suppliers to information related to their respective markets in relation to commercial and technical aspects of the supply services, registration, recognition and the obtaining of professional qualifications and the availability of technology.

Article 5: Market Access

1. With respect to market access through the modes of supply identified in the definition of “trade in services” in Article 1, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions specified in its Schedule of Specific Services Commitments at Annex 7-A to this Agreement.

2. In the sectors where market access commitments are undertaken, a Party shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, measures which:

- (a) limit the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- (b) limit the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limit 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, except measures of a Party which limit inputs for the supply of services;
- (d) limit the total number of natural persons who may be employed in a particular service sector or who 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) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or of the total value of individual or aggregate foreign investment.

3. If a Party undertakes a market access commitment in relation to the supply of a service through Mode 1, and if the cross-border movement of capital is an essential part of the service itself, it shall allow such movement of capital.

4. If a Party undertakes a market access commitment in relation to the supply of a service through Mode 3, it shall allow related transfers of capital into its territory.

Article 6: National Treatment

1. In the sectors specified in its Schedule of Specific Services Commitments at Annex 7-A to this Agreement, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of another 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.

2. A Party may meet the requirement in paragraph 1 by according to services and service suppliers of another Party either formally identical treatment or formally different treatment to that which 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 the like service or service suppliers of another Party.

4. 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.

Article 7: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 5 and Article 6, including those regarding qualifications, standards or licensing matters. Such commitments shall be entered in a Party's Schedule of Specific Services Commitments at Annex 7-A to this Agreement.

Article 8: Specific Commitments

1. The specific commitments undertaken by each Party under Article 5 and Article 6 shall be set out in the Schedule of Specific Services Commitments under Annex 7-A to this

Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings related to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Article 5 and Article 6 are inscribed in the column relating to Article 5. In this case, the inscription shall be considered to also provide a condition or qualification to Article 6.

Article 9: Modification of Schedules

1. (a) A Party (referred to in this Article as the “modifying Party”) may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Joint Committee no later than three months before the intended date of implementation of the modification or withdrawal.
2. (a) At the request of any Party whose benefits under this Agreement may be affected (referred to in this Article as an "affected Party") by a proposed modification or withdrawal notified under paragraph 1(b), the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

(b) Compensatory adjustments shall be made on a most-favoured-nation basis.
3. (a) If agreement is not reached between the modifying Party and any affected Party before the end of the period provided for negotiations, such affected Party may refer the matter to the Joint Committee. Any affected Party that wishes to enforce a right that it may have to compensation must participate in meetings that may be convened by the Joint Committee to resolve this matter.

(b) If no affected Party has requested the intervention of the Joint Committee, the modifying Party shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the Joint Committee.
 - (b) If the modifying Party implements its proposed modification or withdrawal and does not comply with the recommendations of the Joint Committee, any affected Party that participated in the Joint Committee's meetings may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article 3, such a modification or withdrawal may be implemented solely with respect to the modifying Party.
5. The Joint Committee shall establish procedures for the rectification or modification of Schedules. Any Party which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

Article 10: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures, which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services, including correction of the contested final administrative actions. Where such tribunals or procedures are not independent of the agency responsible for the administrative action concerned, the Party shall ensure that the tribunals or procedures provide for an objective and impartial review.
- (b) Each Party shall ensure that, in any such tribunal or under any such procedures referred to in subparagraph (a), the parties to any proceedings are provided with the right to:
 - (i) a reasonable opportunity to support or defend their respective positions;
and
 - (ii) a decision in accordance with the Party's laws.
- (c) Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in subparagraph (b) shall be implemented in accordance with its laws.
- (d) The provisions of subparagraph (a) shall not 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.

3. 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 results 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 among the Parties to bring the results of those negotiations into effect under this Agreement. The Parties note that the disciplines arising from such negotiations shall aim to ensure that qualification requirements and procedures, technical standards and licensing requirements and procedures are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

4. In sectors in which a Party has undertaken specific commitments under Article 5, Article 6 and Article 7, pending the incorporation of the disciplines referred to in paragraph 3, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments under this Agreement in a manner which:

- (a) does not comply with the criteria outlined in paragraph 3(a), (b) or (c); and
- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

5. In determining whether a Party is in conformity with its obligations under paragraph 3, account shall be taken of international standards of relevant international organisations applied by that Party.⁴

6. If authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

- (a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (b) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;
- (c) at the request of the applicant, provide, without undue delay, information concerning the status of the application under consideration; and

⁴ The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all of the Parties.

- (d) if an application is rejected, to the maximum extent possible, inform the applicant in writing, and without delay, the reasons for the rejection of the application and of the timeframe to appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

7. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

8. Subject to its domestic laws and regulations, each Party shall permit service suppliers of the other Parties to use the business names under which they ordinarily trade in the territories of the other Parties and otherwise ensure that the use of business names is not unduly restricted.

Article 11: 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 licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where 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 3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of another Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for other interested Parties to negotiate their 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 another 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 other Parties in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

5. If 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. The Parties shall actively encourage their competent bodies to consult with each other and with relevant regional bodies after the entry into force of this Agreement to explore the possibilities for recognition of qualifications or professional recognition or registration. The Parties shall report periodically to the Joint Committee for review.

Article 12: Payments and Transfers

1. Except under the circumstances envisaged in Article 2 of Chapter 11 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific 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 IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 3 of Chapter 11 (General Provisions and Exceptions), or at the request of the IMF.

Article 13: 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 3, Article 5, Article 6 and Article 7.

2. If a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service which is outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the 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 another Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the Party establishing, maintaining or authorising such 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 14: Emergency 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. On

the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purposes of discussing appropriate amendments to this Chapter so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of the commitments made under this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1, that affected Party may request to hold consultations with the other Party or Parties. The requested Party or Parties shall respond to such a request in good faith.

3. In undertaking such consultations, the Parties shall endeavour to reach a mutually agreed solution within a reasonable period of time.

4. The consulting parties shall notify the agreed solution to all other Parties as soon as practicable and by no later than the next meeting of the Joint Committee.

Article 15: Subsidies

1. Notwithstanding Article 2.2(c), where one Party considers that subsidies provided by another Party affecting trade in services nullify or impair any benefits it expected to receive under this Chapter, the Parties agree to consult with a view to reaching a mutually satisfactory solution.

2. Notwithstanding Article 2.2(c), following the conclusion of the negotiations on trade distorting subsidies on trade in services under Article XV of the GATS, the Parties agree to review the operation of this Article with a view to considering the possible modification or elimination of this Article.

Article 16: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that:

- (a) the service is being supplied by an enterprise that is owned or controlled by persons of a non-party and the enterprise has no substantive business operations in the territory of any Party; or
- (b) the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of any Party.

2. In the case of the supply of maritime transport services, a Party may deny the benefits of this Chapter to a service supplier of another Party if it establishes that the service is supplied by a vessel registered under the laws of a non-party, and by a person who operates or uses the vessel in whole or in part but is of a non-party.

Article 17: Contact Points and Transparency

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact point to the other Parties. The Parties shall notify each other promptly of any amendments to the details of their contact points.
2. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory.
3. To the extent of its capacity, each Party shall ensure that all measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are published promptly through printed or electronic means, or otherwise. Information regarding these measures shall include, where applicable:
 - (a) requirements for authorisation, including for application and periodic renewal of such authorisation, and generally applicable terms and conditions of such authorisation;
 - (b) licensing requirements and procedures, including requirements, criteria and procedures for application and renewal, and applicable fees;
 - (c) qualification requirements and procedures, including requirements, criteria and procedures for application and renewal, and procedures for verification and assessment of qualifications, and applicable fees;
 - (d) technical standards;
 - (e) procedures relating to appeals or reviews of decisions concerning applications;
 - (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences;
 - (g) an established timeframe for the processing of an application.
4. Each Party shall respond promptly to all requests by another Party for specific information on any measures of general application which pertain to or affect the operation of this Chapter or international agreements within the meaning of paragraph 2.

Article 18: Review of Commitments

1. The Parties shall review commitments on trade in services, with the first review within three years of entry into force of this Agreement and periodically thereafter as determined by the Joint Committee, with the aim of improving the overall commitments undertaken by the Parties under this Chapter so as to progressively liberalise trade in services among the Parties.

2. The Parties recognise the limited capacities of developing country Parties which will be taken into account in the review process. When improving the overall commitments undertaken by the Parties, appropriate flexibility will be given to the developing country Parties to opening fewer sectors, liberalising fewer types of transaction, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article 4.

Article 19: Joint Committee

The Parties shall, through the Joint Committee or a relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.