

## CHAPTER 8

### TRADE IN SERVICES

#### PART I: DEFINITIONS AND SCOPE

##### Article 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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called “line maintenance”;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 Area of a Party for the purpose of supplying a service;
- (c) **computer reservation system (“CRS”) services** mean 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) **controlled** means having the power to name a majority of directors or otherwise legally direct a juridical

person's actions;

- (e) **juridical person** of a Party means any legal 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, which is either:
  - (i) constituted or otherwise organised in accordance with the law of that Party, and is engaged in substantive business operations in the Area of that Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (1) natural persons of that Party; or
    - (2) juridical persons of that Party identified under subparagraph (i);
- (f) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, taken by:
  - (i) central, regional or local governments and authorities if any; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities if any;
- (g) **measures by Parties affecting trade in services** include measures in respect of:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the

supply of a service, services which are required by the Parties 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 Area of the other Party;
- (h) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (i) **owned by persons of a Party** means more than 50 per cent of the equity interest in a juridical person is beneficially owned by such persons;
- (j) **person of a Party** means either a natural person or a juridical person of a Party;
- (k) **sector of a service** means, with reference to a specific commitment, one or more or all subsectors of that service, as specified in a Party's Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments), or otherwise the whole of that service sector, including all of its subsectors;
- (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, but 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 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;
- (p) **service supplier of a Party** means any person of a Party that supplies a service;<sup>2</sup>
- (q) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (r) **trade in services** means the supply of a service:
  - (i) from the Area of a Party into the Area of the other Party (“cross-border supply mode”);
  - (ii) in the Area of a Party to the service consumer of the other Party (“consumption abroad mode”);
  - (iii) by a service supplier of a Party, through commercial presence in the Area of the other Party (“commercial presence mode”); and
  - (iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party (“presence of natural persons mode” or “movement of natural persons mode”); and
- (s) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or to carry

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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 commercial presence be accorded the treatment provided for service suppliers in accordance with this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the Area of a Party where the service is supplied.

passengers, cargo and mail for remuneration or hire from, to, within, or over the Area 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 shall apply to measures adopted or maintained by a Party affecting trade in services.
2. This Chapter shall not apply to:
  - (a) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights and air traffic control and air navigation services, other than measures affecting:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) CRS services;
  - (b) government procurement;
  - (c) services supplied in the exercise of governmental authority in a Party's Area;
  - (d) subsidies, including grants, provided by a Party or a governmental enterprise thereof, including government-supported loans, guarantees, and insurance, or to any conditions attached to the

receipt or continued receipt of such subsidies, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 14 (Subsidies); and

- (e) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding citizenship, residence or employment on a permanent basis.

3. The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

## **PART II: GENERAL OBLIGATIONS AND DISCIPLINES**

### **Article 3**

#### **Scheduling of Specific Commitments**

1. Where a Party schedules commitments in accordance with this Part, it shall set out in a schedule (its "Schedule of Specific Commitments") the specific commitments it undertakes in accordance with Article 4 (National Treatment), Article 5 (Market Access) and Article 7 (Additional Commitments). With respect to sectors where such commitments are undertaken, its Schedule of Specific Commitments 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.

2. Measures inconsistent with both Article 4 (National Treatment) and Article 5 (Market Access) shall be inscribed in the column relating to Article 5 (Market Access). In this case the inscription will be considered to provide a condition or qualification to Article 4 (National Treatment) as well.

3. Schedules of Specific Commitments are annexed to this Chapter as Annex 8-1 (Schedules of Specific Commitments) and shall form an integral part thereof.

## **Article 4**

### **National Treatment**

1. Where a Party schedules commitments in accordance with this Part, in the sectors inscribed in its Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments), and subject to any conditions and qualifications set out therein, it 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.<sup>3</sup>

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

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<sup>3</sup> Specific commitments assumed under this Article shall not be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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

## **Article 5**

### **Market Access**

1. With respect to market access through the modes of supply identified in paragraph (r) of Article 1 (Definitions), a Party 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 of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments).<sup>4</sup>

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments), 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

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<sup>4</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 (r)(i) of Article 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 (r)(iii) of Article 1 (Definitions), it is thereby committed to allow related transfers of capital into its Area.

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;<sup>5</sup>
- (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 6**

### **Most-Favoured-Nation Treatment**

1. Without prejudice to measures taken in accordance with Article VII of GATS, each Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of the other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment granted under other existing or future

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<sup>5</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

agreements concluded by a Party and notified under Article V or Article V *bis* of GATS shall not be subject to paragraph 1.

3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it shall, upon request from the other Party, endeavour to accord to the other Party treatment no less favourable than that provided under that agreement. The former Party shall, upon request from the other Party, afford adequate opportunity to the other Party to negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement.

4. The provisions of this Chapter shall not be so construed as to prevent the Parties 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 7**

### **Additional Commitments**

A Party may also negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 4 (National Treatment) and Article 5 (Market Access), including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in that Party's Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments).

## **PART III: OTHER PROVISIONS**

### **Article 8**

#### **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. Each Party shall also ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are not formulated, introduced, implemented, administered or applied with a view to creating unnecessary barriers to trade in services.

2. (a) 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.

(b) 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. Where authorisation is required for the supply of a service on which a specific commitment under this Agreement has been made, the competent authorities of each Party shall:

- (a) in the case of an incomplete application, on 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 its internal laws and regulations, inform the applicant of the decision whether or not to grant the relevant authorisation;

- (c) at the request of the applicant, provide without undue delay information concerning the status of the application; and
- (d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. To ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to paragraph 4 of Article VI of GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements 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.

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

- (i) does not comply with the criteria outlined in subparagraph 4(a), 4(b) or 4(c); and

- (ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

(b) In determining whether a Party is in conformity with the obligation under subparagraph (a), account shall be taken of international standards of relevant international organisations applied by that Party.<sup>6</sup>

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

7. A Party shall, in accordance with its laws and regulations, permit services suppliers of the other Party to use enterprise names under which they trade in the Area of the other Party.

8. Where a Party maintains measures relating to qualification requirements and procedures, technical standards and licensing requirements, the Party shall make publicly available:

- (a) information on requirements and procedures to obtain, renew or retain any licenses or professional qualifications; and
- (b) information on technical standards.

9. In respect of non-governmental bodies which are not exercising governmental authorities or are not administering mandatory domestic regulations, each Party shall encourage them to comply with the provisions of this Article.

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<sup>6</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

## **Article 9**

### **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 the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties 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 Area of a non-party, nothing in Article 6 (Most-Favoured-Nation Treatment) 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 Area of the other Party.
3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or in the future, shall afford adequate opportunity for the other Party, on 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 the education, experience, licences or certifications obtained or requirements met in that other Party's Area should also 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.

## **Article 10**

### **Qualifications Recognition Cooperation**

1. The Parties agree to encourage, where possible, the relevant bodies in their respective Area responsible for issuance and recognition of professional and vocational qualifications to strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications.
2. The Parties may discuss, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional and vocational services.

## **Article 11**

### **Payments and Transfers**

1. Except in the circumstances envisaged in Article 6 (Measures to Safeguard the Balance of Payments) of Chapter 17 (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 that apply to the Parties under the Articles of Agreement of the International Monetary Fund ("IMF"), including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 6 (Measures to Safeguard the Balance of Payments) of Chapter 17 (General Provisions and Exceptions), or at the request of the IMF.

## **Article 12**

### **Denial of Benefits**

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person:

- (a) owned or controlled by persons of a non-party or of the denying Party; and
- (b) has no substantive business operations in the Area of the other Party.

## **Article 13**

### **Transparency**

1. Each Party shall ensure that:
  - (a) regulatory decisions, including the basis for such decisions, are promptly published or otherwise made available to all interested persons; and
  - (b) its measures relating to services are made publicly available, including the requirements, if any, for permits.
2. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of services are made publicly available, including:
  - (a) the circumstances in which a licence is required;
  - (b) all applicable licencing procedures;
  - (c) the period of time normally required to reach a decision concerning a licence application;

- (d) the cost of, or fees for applying for, or obtaining, a licence; and
- (e) the period of validity of a licence.

3. Each Party shall, in accordance with its laws and regulations, ensure that, on request, an applicant receives reasons for the denial of, revocation of, refusal to renew, or the imposition or modification of conditions on, a licence. Each Party shall endeavour to provide, to the extent possible, such information in writing.

## **Article 14**

### **Subsidies**

1. A Party which considers that it is adversely affected by a subsidy of the other Party may request *ad hoc* consultations with that Party on such matters. The requested Party shall enter into such consultations.
2. The Parties shall review any disciplines agreed under Article XV of GATS with a view to incorporating them into this Chapter.

## **Article 15**

### **Monopolies and Exclusive Service Suppliers**

1. Each Party shall ensure that any monopoly supplier of a service in its Area 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 6 (Most-Favoured-Nation Treatment) and its Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments).
2. Where a Party's monopoly supplier 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 specific commitments in its Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments), the Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments in its Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments), that Party shall notify the other Party no later than three months before the intended implementation of the grant of monopoly rights, and subparagraph 1(b) and paragraph 2 of Article 17 (Modification of Schedules) shall apply.

5. 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 Area.

## **Article 16**

### **Miscellaneous Provisions**

1. The GATS Annex on Movement of Natural Persons Supplying Services under the Agreement, the GATS Annex on Financial Services and the GATS Annex on

Telecommunications are incorporated into and made part of this Chapter, *mutatis mutandis*.

2. This Chapter shall include the Annexes and the contents therein which shall form an integral part of this Chapter, and all future legal instruments agreed pursuant to this Chapter.

3. Except as otherwise provided in this Chapter, this Chapter or any action taken under it shall not affect or nullify the rights and obligations of a Party under existing agreements to which it is a party.

## **Article 17**

### **Modification of Schedules**

1. A Party (referred to in this Article as the “modifying Party”) may modify or withdraw any commitment in its Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments) at any time after three years have elapsed from the date on which that commitment entered into force, provided that:

- (a) it notifies the other Party (referred to in this Article as 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; and
- (b) upon notification of a Party’s intent to make such modification or withdrawal, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is not less favourable to trade

than provided for in the Schedules of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments) prior to such negotiations.

3. If agreement under subparagraph 1(b) is not reached between the modifying Party and the affected Party within three months, the affected Party may refer the matter to an arbitral tribunal in accordance with the procedures set out in Chapter 16 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure.

4. The modifying Party may not modify or withdraw its commitment until it has made the compensatory adjustments in conformity with the findings of the arbitral tribunal in accordance with paragraph 3.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitral tribunal, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the arbitral tribunal.

## **Article 18**

### **Contact Points**

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

## **Article 19**

### **Review**

1. The Parties shall consult within three years of the date of entry into force of this Agreement and every five years

thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

2. Where a Party unilaterally liberalises a measure affecting market access of a service supplier or suppliers of the other Party, the other Party may request consultations to discuss the measure. Following such consultations, if the Parties agree to incorporate the liberalised measure into the Agreement as a new commitment, the relevant Schedule of Specific Commitments in Annex 8-1 (Schedules of Specific Commitments) shall be amended.

**LIST OF ANNEXES TO CHAPTER 8 (TRADE IN SERVICES)**

**ANNEX 8-1**

SCHEDULES OF SPECIFIC COMMITMENTS

**ANNEX 8-2**

INTERNATIONAL MARITIME TRANSPORT