

## **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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;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 (CRS) 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 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;

**(e) juridical person of the other Party** means a juridical person which is either:

(i) constituted or otherwise organised under the law of the other Party, and is engaged in substantive business operations in the territory of the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. a natural person of the other Party; or

2. a juridical person of the other Party identified under subparagraph (i);

**(f)** A juridical person is:

(i) **owned** by persons of a Party if more than 50 percent 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;
- (g) **measures** 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 or local governments and authorities; or
  - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.
- (h) **measures by the 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; or
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (i) **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;
- (j) **natural person of a Party** means:
- (i) with respect to China, a natural person who resides in the territory of either Party, and who under Chinese law is a national of China; or
  - (ii) with respect to Korea, a national of Korea under its domestic law;
- (k) **person** means either a natural person or a juridical person;
- (l) **sector of a service** means,
- (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of Specific Commitment in Annex 8-A; or
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (m) **selling and marketing of air transport services** mean 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;

- (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 the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the 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 the service supplier of the 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 any person that supplies a service<sup>1</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 a Party into the territory of the other Party;
  - (ii) in the territory of a Party by a person of that Party to a person of the other Party;
  - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
  - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party; and
- (t) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or to 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.

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<sup>1</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.

## Article 8.2: 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) subsidies or grants provided by a Party except as provided for in Article 8.13 including government-supported loans, guarantees and insurance;
- (b) services provided in the exercise of governmental authority within the territory of each respective Party;
- (c) cabotage in maritime transport services;
- (d) measures affecting air traffic rights, however granted or measures affecting services directly related to the exercise of air 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 ("CRS") services;
- (e) financial services as defined in Article 9.14 (Definitions)<sup>2</sup>; and
- (f) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits<sup>3</sup> accruing to the other Party under the terms of this Chapter as well as the terms of specific commitments undertaken.

4. Articles 8.3 and 8.4 shall not apply to laws, regulations or requirements governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for

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<sup>2</sup> Nevertheless, the Specific Commitments with regards to financial services are included in the Annex 8-A (Schedule of Specific Commitments).

<sup>3</sup> The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

commercial sale.

### **Article 8.3: Market Access**

1. With respect to market access through the modes of supply defined in Article 8.1, each Party shall accord to 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-A<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 territory, unless otherwise specified in its Schedule 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 requirement 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 the total quantity of services 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.

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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 Article 8.1(s)(i) 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 Article 8.1(s)(iii), it is thereby committed to allow related transfers of capital into its territory.

<sup>5</sup> This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

#### **Article 8.4: National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each Party 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>6</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.

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 like service or service suppliers of the other Party.

#### **Article 8.5: Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 or Article 8.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

#### **Article 8.6: Schedule of Specific Commitments**

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 8.3, 8.4, and 8.5. With respect to sectors where such commitments are undertaken, each 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 Articles 8.3 and 8.4 shall be inscribed in the column relating to Article 8.3. In this case, the inscription will be considered to provide a condition or qualification to Article 8.4 as well.

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<sup>6</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.

3. Schedules of Specific Commitments shall be annexed to this Chapter and shall form an integral part of this Agreement.

4. Neither Party may adopt new, or more, discriminatory measures with regard to services and service supplier of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.<sup>7</sup>

#### **Article 8.7: 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 a 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 has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. On the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring 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 Article VI.4 of GATS, with a view to incorporating them into this Chapter. 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

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<sup>7</sup> This paragraph is only applicable to Annex 8-A under this Chapter.

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 subparagraphs 4(a), (b) or (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 paragraph 5(a), account shall be taken of international standards of relevant international organisations applied by that Party.<sup>8</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.

#### **Article 8.8: Transparency**

1. Each Party shall publish promptly all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Party shall promptly and at least annually inform the Committee on Trade in Services referred to in Article 8.14 of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Chapter.
4. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of this Agreement.
5. Each Party may notify to the Committee on Trade in Services referred to in Article 8.14 any measure, taken by the other Party, which it considers affects the operation of this Chapter.

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<sup>8</sup> The term “relevant international organizations” refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

## **Article 8.9: 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 services 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 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 the relevant competent bodies or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, the Party is not obliged to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory 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 future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, 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 countries 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. Each Party shall endeavour:

- (a) within 12 months from the date on which this Agreement takes effect for it, to inform the Committee on Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
- (b) to promptly inform the Committee on Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to the other Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and
- (c) to promptly inform the Committee on Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

6. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation with relevant intergovernmental 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.

#### **Article 8.10: Payments and Transfers**

1. Except under the circumstances envisaged in Article XII (Restrictions to Safeguard the Balance of Payments) of GATS, 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 the Parties as members of the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* (“Articles of Agreement”), including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII (Restrictions to Safeguard the Balance of Payments) of GATS or at the request of the International Monetary Fund.

#### **Article 8.11: Denial of Benefits**

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to service suppliers of the other Party where the service is being supplied by a juridical person, if it is:

- (a) owned or controlled by persons of a non-Party and has no substantive business operations in the territory of the other Party;
- (b) owned or controlled by persons of the denying Party and has no substantive business operations in the territory of the other Party; or
- (c) 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 8.12: 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 and 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, 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 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 authorizing 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 8.13: Subsidies**

1. The Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement.

2. At the request of a Party which considers that it is adversely affected by a subsidy of the other Party, the Parties shall enter into consultations on such matters.

#### **Article 8.14: Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee's functions shall include:

- (a) reviewing the implementation and operation of this Chapter;
- (b) identifying and recommending measures to promote trade in services; and
- (c) at a Party's request, consulting on any matter arising under this Chapter.

3. The Committee shall meet within one year after the date this Agreement enters into force and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Commission of the results of each meeting.

#### **Article 8.15: Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.12, may restrain competition and thereby restrict trade in services.

2. Each Party shall, on the request of the other Party (“Requesting Party”), enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed (“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 shall also provide other information available to the Requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the Requesting Party.

#### **Article 8.16: 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. Each Party shall notify each other promptly of any amendments to the details of its contact points.