

CHAPTER SIX
TRADE IN SERVICES

ARTICLE 6.1: DEFINITIONS

For the purposes of this Chapter:

a juridical person is:

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;

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

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;

a 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;

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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

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

- (a) the constitution, acquisition or maintenance of a juridical person; or
- (b) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

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;

direct taxes comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

financial services means "financial service" as defined in Annex 6-C;

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, cooperative or society¹;

juridical person of the other Party means a juridical person which is either:

¹ A cooperative or a society are legal entities constituted under the relevant applicable laws in India

- (a) 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 a non-Party; or
- (b) in the case of the supply of a service through commercial presence, owned or controlled by natural or juridical person of the other Party;

measures by Parties affecting trade in services 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 the Parties to be offered to the public generally; or
- (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

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;

natural person of a Party means a natural person who resides in the territory of the Party or elsewhere and who under its laws:

- (a) is a national of that Party; or
- (b) has the right of permanent residence in that Party;

person means either a natural person or a juridical person;

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;

services means all services except services supplied in the exercise of governmental authority;

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

service of the other Party means a service which is supplied:

- (a) 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
- (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 the other Party;

service supplier means any person that supplies or seeks to supply a service²;

² 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

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

trade in services is defined as the supply of a service:

- (a) from the territory of a Party into the territory of the other Party (cross-border);
- (b) in the territory of a Party by a person of that Party to a person of the other Party (consumption abroad);
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party (commercial presence); or
- (d) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party (presence of natural persons).

ARTICLE 6.2: SCOPE AND COVERAGE

1. This Chapter applies to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, measures adopted or maintained by a Party mean measures adopted or maintained by central, regional or local governments and authorities, or by non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated by central, regional or local governments and authorities.
3. This Chapter does not apply to:
 - (a) government procurement;
 - (b) subsidies or grants, including government-supported loans, guarantees and insurance; 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 provided in the exercise of governmental authority, provided that such services are supplied neither on a commercial basis, nor in competition with one or more service providers; and
 - (d) transportation and non-transportation air services, including domestic and international services, whether scheduled or non-scheduled, and related services in support of air services³ other than:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services.

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. The Parties understand that 'seeks to provide' or 'provides a service' has the same meaning as 'supplies a service' as used in Article XXVIII(g) of GATS.

³ The Parties understand that ground handling services are part of related services in support of air services.

4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

5. 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 accruing to the other Party under the terms of this Chapter as well as the terms of specific commitments undertaken.

6. New services, including new financial services, shall be considered for possible incorporation into this Chapter at future reviews held in accordance with Article 6.19, or at the request of either Party immediately. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

ARTICLE 6.3: REVIEW OF MOST FAVOURED NATION COMMITMENTS

If, after the date of entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

ARTICLE 6.4: MARKET ACCESS

1. With respect to market access through the modes of supply defined in Article 6.1, each 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 commitments⁴.

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 test⁵;

⁴ 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 6.1 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 6.1, it is thereby committed to allow related transfers of capital into its territory.

⁵ Subparagraph (c) does not cover measures of a Party which limits inputs for the supply of services.

- (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 6.5: 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 treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers⁶.

2. Any subsequent establishment, acquisition and expansion of investments by a service supplier that is incorporated, constituted, set up or otherwise duly organised under the law of a Party, and which is owned by a service supplier of the other Party, shall be regarded as an investment of the other Party, for the purpose of determining the applicable treatment to be accorded under this Article⁷.

3. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional or local level government, treatment no less favourable than the most favourable treatment accorded by that regional or local level government to like service suppliers of the Party of which it forms a part.

4. A Party may meet the requirement of 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.

5. 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 a Party compared to like services or service suppliers of the other Party.

ARTICLE 6.6: ADDITIONAL COMMITMENTS

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 6.4 or 6.5, including those regarding qualifications, standards or licencing matters. Such commitments shall be inscribed in a

⁶ 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.

⁷ The Parties understand that although such service suppliers may be accorded any better treatment which is available under the regime of that Party, at the time of such subsequent establishment, acquisition and expansion of investments, any such better treatment accorded shall not be construed as an automatic modification to the Parties' respective Schedules in Annex I (Non-Conformity Measures for Investment(Existing Measures)) or II (Non-Conformity Measures for Investment(Future Measures)) in Chapter Ten (Investment).

Party's Schedule of specific commitments.

ARTICLE 6.7: 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. 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 of the other Party, 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. Paragraph 2 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.

4. 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 laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

5. With the objective of ensuring that domestic regulations, including measures relating to qualification requirements and procedures, technical standards and licencing 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 their incorporation 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 licencing procedures, not in themselves a restriction on the supply of the service.

6. Pending the incorporation of disciplines pursuant to paragraph 5 for sectors where a Party has undertaken specific commitments and subject to any terms, limitations, conditions or qualifications set out therein, a Party shall not apply licencing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

- (a) does not comply with the criteria outlined in paragraph 5(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.
7. In determining whether a Party is in conformity with the obligations under paragraph 6, account shall be taken of international standards of relevant international

organisations⁸ applied by that Party.

8. 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 6.8: RECOGNITION

1. For the purposes of the fulfillment of its standards or criteria for the authorisation, licencing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party.

2. After the date of entry into force of this Agreement, upon request being made in writing by a Party to the other Party in any regulated service sector, the Parties shall encourage that their respective professional bodies negotiate and conclude, within 12 months of the date of entry into force of this Agreement, in that service sector for mutual recognition of education, or experience obtained, requirements met, or licences or certifications granted in that service sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreement or arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to Chapter Fourteen (Dispute Settlement). Progress in this regard will be continually reviewed by the Parties in the course of the review pursuant to Article 15.2 (Joint Committee and Review).

3. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a country that is not a Party to this Agreement, that Party shall accord the other Party, upon request, adequate opportunity 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 or experience obtained, requirements met or licences or certifications granted in the territory of that other Party should also be recognised.

4. The Parties agree that they shall not be responsible in any way for the settlement of disputes arising out of or under these agreements or arrangements for mutual recognition concluded by their respective professional, standard-setting or self-regulatory bodies under this Article and that the provisions of Chapter Fourteen (Dispute Settlement) shall not apply to disputes arising out of, or under the provisions of such agreements or arrangements.

ARTICLE 6.9: MONOPOLY 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 Schedule 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 Schedule of specific commitments, the Party shall ensure

⁸ The term "relevant international organisations" refers to international bodies whose membership is open to relevant bodies of both Parties.

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, it may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations in its territory.

4. The provisions of 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 6.10: BUSINESS PRACTICES

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 6.9, may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed 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 Party addressed shall also provide other information available to the requesting Party, subject to its law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 6.11: SAFEGUARD MEASURES

1. Neither Party shall take safeguard action against services and service suppliers of the other Party from the date of entry into force of this Agreement. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.

2. The Parties shall review the issue of safeguard measures in the context of developments in international fora of which both Parties are party.

ARTICLE 6.12: PAYMENTS AND TRANSFERS

1. Except under the circumstances envisaged in Article 6.13, 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*, including the use of exchange actions which are in conformity with them, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 6.13 or at the request of the Fund.

ARTICLE 6.13: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or a threat thereof, a Party may, in accordance with Articles XI and XII of GATS adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions relating to such obligations. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

- (a) be consistent with the *Articles of Agreement of the International Monetary Fund*;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any country that is not a Party to this Agreement.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

ARTICLE 6.14: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order⁹;
- (b) necessary to protect human, animal or plant life or health;

⁹ The public order exception may be invoked by a Party only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
 - (iii) safety; or
- (d) inconsistent with Article 6.5, provided that the difference in treatment is aimed at ensuring the equitable or effective¹⁰ imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

2. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures under which it accords more favourable treatment to persons of a non-Party than that accorded to persons of the other Party to this Agreement as a result of a bilateral double taxation avoidance agreement between the Party and such non-Party.

ARTICLE 6.15: SECURITY EXCEPTIONS

1. Nothing in this Chapter shall be construed:
 - (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or

¹⁰ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of nonresidents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on world-wide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base. Tax terms or concepts in paragraph 1(d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

- (iv) relating to protection of critical public infrastructure for communications, power and water supply from deliberate attempts intended to disable or degrade such infrastructures¹¹; or
 - (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. Each Party shall inform the other Party to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.
3. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to a service supplier of the other Party where a Party adopts or maintains measures in any laws and regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or a service supplier of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such a service supplier.

ARTICLE 6.16: SUBSIDIES

1. The Parties shall review the treatment of subsidies in the context of developments in multilateral fora of which both Parties are party.
2. In the event that either Party considers that its interests have been adversely affected by a subsidy or grant provided by the other Party, upon request, the other Party shall enter into consultations with a view to resolving the matter.
3. During the consultations referred to in paragraph 2, the subsidising Party may, as it deems fit, consider a request of the other Party for information relating to the subsidy scheme or programme such as:
- (a) its laws and regulations under which the measure is introduced;
 - (b) form of the measure, including grant, loan or tax measure;
 - (c) policy objective and/or purpose of the measure;
 - (d) dates and duration of the programme or subsidy and any other time limits attached to it; and
 - (e) eligibility requirements of the measure, including criteria applied with respect to the potential population of beneficiaries.
4. Chapter Fourteen (Dispute Settlement) shall not apply to any requests made or consultations held under this Article or to any disputes that may arise between the Parties under this Article.

ARTICLE 6.17: SCHEDULE OF SPECIFIC COMMITMENTS

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 6.4 through 6.6. With respect to sectors where such commitments are

¹¹ Paragraph 1(b)(iv) is subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services.

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;
 - (d) where appropriate the time frame for implementation of such commitments;
- and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with Articles 6.4 and 6.5 shall be inscribed in the column relating to Article 6.4. In this case the inscription will be considered to provide a condition or qualification to Article 6.5 as well.

3. Schedules of specific commitments shall be annexed to this Chapter as Annexes 6-A and 6-B and shall form an integral part of this Agreement.

4. Regarding commitments on Articles 6.4 and 6.5 for trade in services, only the Schedule of specific commitments in Annex 6-A or 6-B applies.

ARTICLE 6.18: MODIFICATION OF SCHEDULES

1. A 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 this Article. The modifying Party shall notify the other Party of its intent to so modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Party shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedule of specific commitments prior to such negotiations. The Parties shall endeavour to conclude negotiations on such compensatory adjustment to mutual satisfaction within six months, failing which recourse may be had to Chapter Fourteen (Dispute Settlement).

ARTICLE 6.19: PROGRESSIVE LIBERALISATION

The Parties shall endeavour to review their Schedules of specific commitments at least once every three years, or earlier, at the request of either Party, with a view to facilitating the elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Chapter over a period of time. In this process, there shall be due respect for the national policy objectives and the level of development of the Parties, in both overall and individual sectors.

ARTICLE 6.20: TRANSPARENCY

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, 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 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.

ARTICLE 6.21: DISCLOSURE OF CONFIDENTIAL INFORMATION

Nothing in this Agreement shall require each Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 6.22: DENIAL OF BENEFITS

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a country that is not a Party to this Agreement;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied by
 - (i) a vessel registered under the laws of a non-Party, and
 - (ii) a person which operates or uses the vessel in whole or in part but which is of a non-Party;
- (c) to a service provider of the other Party where the Party establishes that the service is being provided by a juridical person that is owned or controlled by persons of a non-Party or of the denying Party and that has no real and continuous business activities or no substantive business operations in the territory of the other Party; or
- (d) 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 which include notification or an order, 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 6.23: SERVICES-INVESTMENT LINKAGE

1. For the avoidance of doubt, the Parties confirm, in respect of this Chapter, that:

- (a) subject to paragraph 2, the following articles of Chapter Ten (Investment) apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to an investment, regardless of whether or not such a service sector is scheduled in a Party's Schedule of specific commitments in Annex 6-A or 6-B:

- (i) Article 10.4 (Minimum Standard of Treatment);
 - (ii) Article 10.10 (Transfers);
 - (iii) Article 10.12 (Expropriation and Compensation);
 - (iv) Article 10.13 (Losses and Compensation);
 - (v) Article 10.14 (Subrogation);
 - (vi) Article 10.15 (Special Formalities and Information Requirements);
 - (vii) Article 10.19 (Access to the Judicial and Administrative Procedures); and
 - (viii) Article 10.21 (Settlement of Disputes between a Party and an Investor of the other Party); and
- (b) Article 10.22 (Entry into Force, Duration and Termination) shall be applicable to paragraph (a).

2. Notwithstanding Article 10.2 (Scope and Coverage), the following articles of Chapter Ten (Investment) apply, *mutatis mutandis*, to measures affecting the supply of financial services by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to an investment, regardless of whether or not such a service sector is scheduled in a Party's Schedule of specific commitments in Annex 6-A or 6-B:

- (a) Article 10.12 (Expropriation and Compensation); and
- (b) Article 10.21 (Settlement of Disputes between a Party and an Investor of the other Party) solely for claims that a Party has breached Article 10.12 (Expropriation and Compensation).