

3. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

4. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties; and
- (b) co-chaired by officials of the Governments of the Parties.

Article 56
Non-application of Chapter 13

Chapter 13 shall not apply to this Chapter.

Chapter 7
Trade in Services

Article 57
Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.

2. This Chapter shall not apply to:

- (a) in respect of air transport services, measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services;
- (b) cabotage in maritime transport services;
- (c) measures pursuant to immigration laws and regulations;
- (d) measures affecting natural persons of a Party seeking access to employment market of the other Party, nor measures regarding nationality, or residence or employment on a permanent basis; and
- (e) government procurement.

3. Annex 4 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

Article 58
Definitions

For the purposes of this Chapter, the term:

- (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repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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 purposes of supplying a service;
- (c) "computer reservation system services" means services provided by computerized 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 organized 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 organized under the law of the other Party and is engaged in substantive business operations in the Area of the other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of the other Party; or
 - (B) juridical persons of the other Party identified under subparagraph (i);
- (f) a juridical person is:

- (i) "owned" by persons of a Party or persons of a non-Party if more than 50 percent of the equity interest in it is beneficially owned either by the former persons or by the latter persons;
 - (ii) "controlled" by persons of a Party or persons of a non-Party if either the former persons or the latter persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
 - (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) "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- Note: "measure" shall include taxation measures to the extent covered by the GATS.
- (h) "measures by a Party" means any measures taken by:
- (i) the central or local governments or authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by the central or local governments or authorities of a Party;
- (i) "measures by a Party affecting trade in services" includes 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 Party to be offered to the public generally; and
 - (iii) the presence, including commercial presence, of persons of the other Party for the supply of a service in the Area of the former Party;
- (j) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

- (k) "natural person of the other Party" means a natural person who resides in the other Party or elsewhere, and who is a national of the other Party under the law of the other Party;
- (l) "person" means either a natural person or a juridical person;
- (m) "sector" of a service means:
 - (i) with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Party's Schedule of Specific Commitments in Annex 5; or
 - (ii) otherwise, the whole of that service sector, including all of its sub-sectors;
- (n) "service" includes any service in any sector except a service supplied in the exercise of governmental authority;
- (o) "service consumer" means any person that receives or uses a service;
- (p) "service of the other Party" means a service which is supplied:
 - (i) from or in the Area 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 a service supplier of the other Party;
- (q) "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;
- (r) "service supplier" means any person that supplies a service;

Note: 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 Area of a Party where the service is supplied.

- (s) "supply of a service" includes the production, distribution, marketing, sale, and delivery of a service;
- (t) "the selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (u) "trade in services" means the supply of services:
 - (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"); and
- (v) "traffic rights" means the rights 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 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 59
Market Access

1. With respect to market access through the modes of supply defined in paragraph (u) of Article 58, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 5.

Note: 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 (u)(i) of Article 58 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 (u)(iii) of Article 58, it is thereby committed to allow related transfers of capital into its Area.

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 5, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: This subparagraph does not cover measures of a Party which limit 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 60
National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 5, 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 favorable than that it accords to its own like services and service suppliers.

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

2. 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.

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

4. A Party shall not invoke the preceding paragraphs under Chapter 13 with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

Article 61
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 59 and 60, including those regarding qualifications, standards, or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 5.

Article 62
Schedule of Specific Commitments

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 59, 60, and 61. With respect to sectors or sub-sectors where such specific commitments are undertaken, the Party's Schedule of Specific Commitments in Annex 5 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 Articles 59 and 60 shall be inscribed in the column relating to Article 59. In this case the inscription will be considered to provide a condition or qualification to Article 60 as well.

Article 63 Most-Favored-Nation Treatment

1. Unless otherwise specified in Annex 6, each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of any non-Party.

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

3. If, after this Agreement enters into force, a Party concludes or amends an agreement of the type referred to in paragraph 2 with a non-Party, it shall provide the other Party an opportunity to consult on the possibility of according treatment no less favorable than that granted to services and service suppliers of the non-Party under that agreement to like services and service suppliers of that other Party.

Article 64 Modification of Schedules

1. Any modification or withdrawal of specific commitments on trade in services shall be made in accordance with paragraph 1 of Article 127. In the negotiations for such modification or withdrawal, the Parties shall endeavor, in line with subparagraph 2(a) of Article XXI of the GATS, to maintain a general level of mutually advantageous commitments not less favorable to trade than that provided for in their Schedules of Specific Commitments in Annex 5 prior to such negotiations.

2. With regard to the same commitment that appears in a Party's Schedule of Specific Commitments under both the GATS and this Agreement, if modification or withdrawal has been made to such commitment with regard to its Schedule of Specific Commitments under the GATS and compensatory adjustment has been made to the other Party as an "affected Member" in accordance with Article XXI of the GATS, the Parties shall agree to amend this Agreement to incorporate such modification or withdrawal into it without further negotiation, subject to their applicable domestic procedures.

Article 65
Qualifications, Technical Standards, and Licensing

With a view to ensuring that measures by a Party relating to qualification requirements and procedures, technical standards, and licensing requirements of service suppliers of the other Party do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure that such measures:

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

Article 66
Recognition

1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met, or licenses or certifications granted in the non-Party:

- (a) nothing in Article 63 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the other Party;

- (b) the Party shall accord the other Party an adequate opportunity to negotiate the accession of that other Party to such an agreement or arrangement or to negotiate comparable ones with it between the Parties; and
- (c) where the Party accords such recognition unilaterally, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted in the other Party should also be recognized.

Article 67
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 the Party's commitments under this Chapter.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated juridical person, 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 the Area of the Party in a manner inconsistent with such commitments.

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

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

- (a) authorizes or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its Area.

Article 68
Payments and Transfers

1. Except under the circumstances envisaged in Article 69, 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 the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 69, or at the request of the International Monetary Fund.

Article 69

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressure on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

- (a) shall ensure that the other Party is treated as favorably as any non-Party;
- (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) shall avoid unnecessary damage to the commercial, economic, and financial interests of the other Party;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

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

Article 70

Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier that is a juridical person, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party, and that denying Party:

- (a) does not maintain diplomatic relations with that non-Party; or
- (b) adopts or maintains measures with respect to that 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.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier that is a juridical person, if the denying Party establishes that the juridical person is not a service supplier of the other Party.

Article 71
Sub-Committee on Trade in Services

1. For the purposes of effective implementation and operation of this Chapter, the Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be:

- (a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations;
- (b) reviewing and monitoring the implementation and operation of this Chapter;
- (c) discussing any issues related to this Chapter;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed; and

- (b) co-chaired by officials of the Governments of the Parties.

4. The working group on financial services (hereinafter referred to in this Article as "the Working Group") shall be established under the Sub-Committee. The details and procedures of the Working Group shall be specified in Annex 4.

Article 72 Review of Commitments

1. The Parties shall review commitments on trade in services within five years from the date of entry into force of this Agreement, with the aim of improving the overall level of commitments undertaken by the Parties under this Chapter.

2. In reviewing their commitments pursuant to paragraph 1, the Parties shall take into account the principles in paragraph 1 of Article IV and paragraph 2 of Article XIX of the GATS.

Article 73 Emergency Safeguard Measures

In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. In such consultations, the Parties shall take into account the circumstances of the particular case and the result of the multilateral negotiations pursuant to Article X of the GATS if the said negotiations have been concluded at the time of such consultations.

Chapter 8 Movement of Natural Persons

Article 74 Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the other Party and fall under one of the categories referred to in Annex 7.

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