

CHAPTER 9
TRADE IN SERVICES

Article 9.1
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services, including measures with respect to:

- (a) the supply of a service;

Note: Measures with respect to the supply of a service include those with respect to the provision of any financial security as a condition for the supply of a service.

- (b) the purchase or use of, or payment for, a service;
- (c) the access to services offered to the public generally and the use of them, in connection with the supply of a service; and
- (d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:

- (a) with respect to air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services;

Note: The Parties note the multilateral negotiations with respect to the review of the Annex on Air Transport Services of the GATS. 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.

- (b) government procurement;
- (c) subsidies provided by a Party or a state enterprise thereof including grants, government-supported loans, guarantees and insurance, except as provided for in Article 9.11;
- (d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis; and
- (e) services supplied in the exercise of governmental authority.

Article 9.2

Definitions

For the purposes of this Chapter:

- (a) the term "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repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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) the term "commercial presence" means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of an enterprise; 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) the term "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) the term "enterprise of the other Party" means an enterprise which is either:
 - (i) constituted or otherwise organised in accordance with the law 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) enterprises of the other Party identified under subparagraph (i);
- (e) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:
 - (i) central, regional or local governments or authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party;

- (f) the term "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;
- (g) the term "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;
- (h) the term "service consumer" means any person that receives or uses a service;
- (i) the term "services of the other Party" means services which are supplied:
 - (i) from or in the Area of the other Party, or in the case of maritime transport services, by a vessel registered in accordance with the law of the other Party, or by a person of the other Party which supplies the services through the operation of a vessel or its use in whole or in part; or
 - (ii) in the case of the supply of services through commercial presence or through the presence of natural persons, by service suppliers of the other Party;
- (j) the term "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;
- (k) the term "service supplier" means any person that seeks to supply or supplies a service;

Note: Where the service is not supplied or sought to be supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the enterprise) 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 or sought to be 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 or sought to be supplied.

- (l) the term "state enterprise" means an enterprise owned or controlled by a Party;
- (m) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (n) the term "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"); and

- (o) the term "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 9.3
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (n) of Article 9.2, a Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire Area, measures that 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 requirements 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 requirements of an economic needs test;

Note: This subparagraph shall not apply to 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 requirements 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.

2. With respect to the supply of a service through the mode of supply referred to in subparagraph (n)(i) of Article 9.2, where the cross-border movement of capital is an essential part of the service itself, a Party shall allow such movement of capital. With respect to the supply of a service through the mode of supply referred to in subparagraph (n)(iii) of Article 9.2, a Party shall allow related transfers of capital into its Area.

Article 9.4 National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.

Note: Nothing in this Article shall 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. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Article 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 9.5
Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.

Article 9.6
Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the supply of a service.

Note: This Article shall not apply to the supply of a service described in subparagraph (n)(iii) of Article 9.2.

Article 9.7
Non-Conforming Measures

1. Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4 shall not apply to:

- (a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Schedules in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10):
 - (i) the central government of a Party; or
 - (ii) a State or Territory of Australia or a prefecture of Japan;
- (b) any non-conforming measure that is maintained by a local government other than a prefecture or a State or Territory referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
- (d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4.

2. Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10).

3. In cases where a Party makes an amendment or modification to any non-conforming measure set out in its Schedule in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) after the date of entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

- (a) on request of the other Party, promptly provide information and respond to questions pertaining to any such proposed or actual amendment, modification or measure;
- (b) to the extent possible, provide a reasonable opportunity for comments by the other Party on any such proposed or actual amendment, modification or measure; and
- (c) to the maximum extent possible, notify the other Party of any such amendment, modification or measure that may substantially affect the other Party's interests under this Agreement.

4. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) respectively.

Article 9.8 Domestic Regulation

1. 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, 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.

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. With a view to ensuring that any measure adopted or maintained by a Party relating to the authorisation, licensing or qualification of service suppliers or to the technical standards of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall endeavour to ensure that such measure:

- (a) is based on objective and transparent criteria, such as the competence and ability to supply services;
- (b) is not more burdensome than necessary to ensure the quality of services; and

- (c) does not constitute a disguised restriction on the supply of services.

5. If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, the Parties shall jointly review those results with a view to their incorporation into this Agreement, as considered appropriate by the Parties.

6. Where a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, the Party shall:

- (a) where practicable, make publicly available:
 - (i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and
 - (ii) information on technical standards;
- (b) where any form of authorisation is required for the supply of a service, ensure that it will:
 - (i) within a reasonable period of time after the submission of an application deemed complete under its laws and regulations, consider the application, make a decision as to whether or not to grant the relevant authorisation and inform the applicant of the decision;
 - (ii) on request of the applicant, provide without undue delay, information concerning the status of the application;
 - (iii) where practicable, in the case of an incomplete application, on request of an applicant, identify all the additional information that is required to complete the application;
 - (iv) endeavour to provide the service supplier whose application has been found to be deficient with at least one means to achieve the authorisation; and

Note: Such means to achieve authorisation may include, but are not limited to, additional experience under the supervision of a professional qualified or licensed in that Party, additional academic training or exams in a specialised field, or language exams.

- (v) where a competent authority of a Party notifies an unsuccessful applicant of the administrative decision in writing, ensure that the competent authority informs the applicant of the reasons for denial of the application in writing; and
- (c) provide for adequate procedures to verify the competency of professionals of the other Party.

7. A Party shall, subject to its laws and regulations, permit service suppliers of the other Party to use the enterprise names under which they trade in the Area of the other Party and otherwise ensure that the use of enterprise names is not unduly restricted.

8. The Parties shall endeavour to implement the Disciplines on Domestic Regulation in the Accountancy Sector adopted under the auspices of the World Trade Organization on 14 December 1998.

9. This Article shall not apply to any measures which fall within the responsibility of non-government bodies. However, each Party shall encourage, where possible, such non-government bodies to comply with the relevant requirements of this Article.

Article 9.9 Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party 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 of the other Party.

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

3. Where a Party recognises the education or experience obtained, requirements met, or licences or certifications granted in any non-Party:

- (a) nothing in Article 9.5 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 other Party;
- (b) in cases where such recognition is accorded by an agreement or arrangement between the Party and the non-Party, the Party shall afford the other Party, on request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate one comparable with it; and
- (c) in cases where such recognition is accorded unilaterally, the Party shall afford the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the other Party 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 services suppliers, or a disguised restriction on trade in services.

5. Wherever appropriate, recognition provided for in paragraph 1 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 9.10
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 obligations under Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4, except those covered by the non-conforming measures under Article 9.7.

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 obligations under Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4, except those covered by the non-conforming measures under Article 9.7, 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 obligations.

Note: For the purposes of this paragraph, the definition of the term "affiliated" provided for in subparagraph (n)(iii) of Article XXVIII of the GATS shall apply *mutatis mutandis*.

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 Area.

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 Area.

Article 9.11
Subsidies

1. Each Party shall review the treatment of subsidies related to trade in services taking into account the development of the multilateral disciplines pursuant to paragraph 1 of Article XV of the GATS.

2. In the event that either Party considers that its interests have been adversely affected by a subsidy of the other Party, the Parties shall, on request of the former Party, enter into consultations with a view to resolving the matter.

3. During the consultations referred to in paragraph 2, the Party granting a subsidy shall, if it deems fit, consider a request of the other Party for information relating to the subsidy program such as:

- (a) laws and regulations under which the subsidy is granted;
- (b) form of the subsidy (e.g. grant, loan, tax concession);
- (c) policy objective or purpose of the subsidy;
- (d) dates and duration of the subsidy and any other time limits attached to it; and
- (e) eligibility requirements of the subsidy.

4. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Article.

Article 9.12
Payments and Transfers

1. Except under the circumstances envisaged in Article 9.13, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

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 obligations under this Chapter regarding such transactions, except under Article 9.13, or on request of the International Monetary Fund.

Article 9.13

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 restrictive measures on trade in services, including on payments or transfers for transactions.

2. Restrictive measures referred to in paragraph 1:

- (a) shall be applied such that the other Party is treated no less favourably than 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 restrictive measures, a Party may give priority to the supply of services which are more essential to its economic or development programs. However, such restrictive measures shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictive measures adopted or maintained in accordance with paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. The Party which has adopted any restrictive measures in accordance with paragraph 1 shall, on request, commence consultations with the other Party in order to review the restrictive measures adopted by it.

Article 9.14 Denial of Benefits

1. A Party may deny the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) to a service supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party, and that the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) to a service supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party or of the denying Party and has no substantial business activities in the Area of the other Party.

Note: For the purposes of this Article, an enterprise is:

- (a) "owned" by persons if more than 50 per cent of the equity interests in it is beneficially owned by such persons; and

- (b) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

Article 9.15
Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee").

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

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) reviewing this Chapter in light of developments elsewhere;
- (c) considering promotion of recognition of qualifications as outlined in Article 9.9 and Annex 8 (Recognition of Qualifications of Service Suppliers);
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) considering any other matters identified by the Parties.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.